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Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedures
Administrative Office of the United States Courts
1 Columbus Circle, N.E.
Washington, D.C. 20055

Re: Proposed FRAP 32.1

Dear Mr. McCabe:

I am very familiar with the issues about the citation of unpublished appellate opinions.

I became a Judge of the United State Court of Appeals for the Ninth Circuit on September 12, 1968. I resigned from the Court at the request of President Carter in the fall of 1979 to become the first Secretary of Education of the United States. Thereafter, I taught and lectured in many universities in this country and abroad. On my return to private life, I have spent most of my time writing appellate briefs and arguing cases in federal and state appellate courts across the country.

Before I became a federal judge, I was an Associate Justice of the California Court of Appeal. In my judicial roles in both federal and state courts, I have participated in numerous debates about the value of unpublished decisions as well as about whether such unpublished decisions should be citable to courts.

I supported the use of unpublished opinion while I was serving on state and federal courts. When properly used, those were decisions of routine cases that should not burden law libraries with repetitious case law. However, I had reservations for two principal reasons:

(1) Before unpublished opinions were available online, public law offices had a distinct advantage in having much easier access to such opinions than other

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practitioners. Unpublished opinions were always available in the clerk's office, but many practitioners were unable to take advantage of that limited access.

(2) My second concern was that some overburdened judges might be tempted to bury conflicts in unpublished decisions. That concern has disappeared in the Ninth Circuit because the internal reviewing procedures adopted with respect to such dispositions make inappropriate use very difficult, if not impossible. Moreover, the Court now permits persons deeply interested in any unpublished disposition to seek publication upon a convincing showing that the issues decided have precedential effect.

I am now opposed to any federal rule that requires every United States Court of Appeals to permit citation to unpublished opinions. No compulsory citation rules should be imposed on all the Circuits because each has a vastly different caseload in both volume and subject matter.

A compulsory citation rule imposed on the Ninth Circuit would impose serious and unwarranted burdens on the members of that Court, the bar and the public. The Ninth Circuit produces more than 3500 unpublished dispositions annually. Practitioners before that bar would thereby be required to keep abreast of all 3500 dispositions, only a handful of which would be of any utility. All the judges within the jurisdiction of the Ninth Circuit would be similarly burdened without any improvement in the administration of justice.

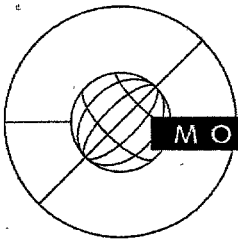
Different rules of non-publication do not raise concerns about inter-circuit conflict that published opinions do. Because each disposition sometimes will give a clue about the attitude of the panel with respect to an issue that had been raised in a non-published opinion, such cases receive cursory attention. That slight benefit, however, does not offset the costs either to the bench or the bar. Most certainly, it is a distinct disadvantage to less affluent litigants who cannot afford to pay for the time that their counsel would have to spend reading unpublished opinions.

I have attached my CV in case you may be interested in additional information.

Sincerely,



Shirley M. Hufstedler



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SHIRLEY M. HUFSTEDLER

Shirley Mount Hufstedler was born in 1925 in Denver, Colorado. She received her Bachelor of Business Administration degree from the University of New Mexico in 1945, and her Bachelor of Law degree from Stanford University in 1949. She married Seth M. Hufstedler in 1949. Seth Hufstedler, a distinguished graduate of Stanford Law School, is a former President of the American Bar Foundation, the Los Angeles County Bar Association and the State Bar of California. Their son, Steven Hufstedler, is a medical doctor with four children.

From 1950 to 1960, Mrs. Hufstedler was in the private practice of law in Los Angeles. From 1960 to 1961, she served as Special Legal Consultant to the Attorney General of California in the complex Colorado River litigation before the United States Supreme Court. In 1961, she was appointed Judge of the Los Angeles County Superior Court, a position to which she was elected in 1962. In 1966, she was appointed Associate Justice of the California Court of Appeal. President Lyndon B. Johnson appointed her Judge of the United States Court of Appeals for the Ninth Circuit in September, 1968. She served in that capacity for eleven years before President Jimmy Carter appointed her United States Secretary of Education. On January 20, 1981, Mrs. Hufstedler returned to private life, teaching and practicing law. She was a visiting professor at the University of California at Irvine, the University of Iowa, and the University of Vermont in 1981 and Phleger Professor of Law, Stanford Law School, for the Spring Semester 1982; Regent's Lecturer, University of California at Santa Cruz 1983; Robert Morse Chair lecturer, University of Oregon 1984; Visiting Fellow, St. Catherine's College, Oxford, England, 1996. She was a partner in the firm Hufstedler & Kaus, now merged into Morrison & Foerster, where she is Senior Of Counsel. She is on the Board of Directors of Harman International Industries, and a trustee of the California Institute of Technology. She was Chairman of the United States Commission on Immigration Reform.

She has earlier served on the Board of Trustees of Carnegie Endowment for International Peace, the Colonial Williamsburg Foundation, the Institute for Advanced Study at Princeton, the Institute for Judicial Administration, Natural Resources Defense Council, American Law Institute, and the governing boards or visiting committees of the United States Military Academy (West Point), Institute for Civil Justice, Harvard Law School, Stanford Law School, the University of Pennsylvania Law School, the University of Southern California Law Center; the Institute for Court Management, the Constitutional Rights Foundation, the Advisory Council for Appellate Justice, American Judicature Society, Center for National Policy, the American Law Institute and

Occidental College. She is an emeritus director of Hewlett Packard Company and U S West, Inc., the Salzburg Seminar and the John D and Catherine T. MacArthur Foundation.

She has been a faculty member of the Appellate Judges Seminars for the Institute of Judicial Administration, and chair of the law faculty of the Salzburg Seminar in American Studies in Austria. She has also been a guest lecturer in England, France, Bulgaria, Israel, Jordan, Iran, India, Nepal, Malaysia and Sweden. She was a member of a three-person delegation from the United States State Department and the American Bar Association to negotiate agreements to exchange legal scholars and judges between the United States and the Soviet Union, Poland and Hungary.

Mrs. Hufstедler has written numerous articles for professional journals, newspapers and magazines in the fields of law, education, government, national and international affairs.

She is the recipient of many honorary degrees from universities and colleges, including: the Claremont University Center, Columbia University, Georgetown University, Gonzaga University, Hood College, Mount Holyoke College, University of Michigan, University of New Mexico, Occidental College, University of the Pacific, University of Pennsylvania, Rutgers University, University of Southern California, Smith College, Syracuse University, Tufts University, Tulane University, University of Wyoming, and Yale University.

Among her other awards and honors are the Order of the Coif; the Marshall-Wythe Medal (College of William and Mary); St. Thomas More Medal (Loyola Law School); Golden Plate Award (American Academy of Achievement); Woman of the Year Award (Los Angeles Times); Woman of the Year Award (Ladies Home Journal); University of California at Los Angeles Medal; Herbert O. Harley Award (American Judicature Society); Earl Warren Medal (University of Judaism); Louis D. Brandeis Medal (University of Louisville); Shattuck-Price Memorial Award (Los Angeles County Bar Association), Stanford Law School Award of Merit; the American Bar Association's 1995 gold medal; the Margaret Brent Award (the Women's Division of the American Bar Association); The American Inns of Court award; the Lewis F. Powell, Jr. award and the American Bar Foundation 50-Year award.

Among her memberships are the American Bar Association, American Law Institute, American Judicature Society, Association of the Bar of the City of New York (honorary), Pacific Council on International Policy, International Association of Women Lawyers, Institute for Judicial Administration, Los Angeles Bar Association, National

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Association of Women Lawyers, State Bar of California, Town Hall, Federal Bar Association and Women Lawyers Association. She is a Fellow of the American Academy of Arts and Sciences.

She is an enthusiastic grandmother, gardener, cook, and mountaineer. She also takes an active interest in international affairs, politics, music, books, the performing arts and world travel.