



03-AP-120



5775 Morehouse Drive, San Diego, California 92121-2779

James R. Edwards  
Senior Legal Counsel  
Corporate Legal Department  
858-845-7339 direct  
858-845-1249 fax  
jedwards@qualcomm.com

January 6, 2004

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the U.S. Courts  
One Columbus Circle, N. E.  
Washington, D.C 20544

Re: Proposed FRAP 32.1

Dear Mr. McCabe,

I believe it is a mistake to permit the citation of unpublished dispositions as precedent. This proposed rule will add significantly to the burdens and costs of appellate practice and in effect require the reliance on ambiguous and sometimes misleading dispositions.

Litigation is complex and costly enough without adding to the time and effort of searching for, citing and defending unpublished dispositions. Litigation and appellate counsel will have an obligation to seek out, review and, if necessary cite, all relevant unpublished dispositions if they are to fully represent their clients. Over time, this additional effort could add significantly to the time, effort and cost of pursuing, defending and appealing a lawsuit. Such costs and barriers to the efficient use of our legal system need to be reduced rather than expanded.

It would seem obvious that if a case and the relevant decision is important enough or touched on significant legal issues whereby it should be cited as precedent, the circuit court in question would publish the opinion. By not publishing the decision, the court obviously does not think it deserves to be cited as precedent. This system has served us well to date and there does not appear to be a good reason to change it.

If some believe that changes to our current method of treating unpublished dispositions need to be made, it would be more advisable to leave the matter up to the individual circuits as to whether they adopt this approach. The advantage of this more local approach is that if it is tried in one or two circuits and it turns out to be an unsustainable costly burden, the balance of the circuits can avoid going down the wrong path.

Please reconsider the implementation of FRAP 32.1.

Best Regards,

James R. Edwards