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January 12, 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 am the General Counsel of Newport Corporation, a NASDAQ-listed technology company headquartered in Irvine, California. In the course of Newport's business, I am periodically involved in litigation in the Federal courts, and was involved in an appeal to the Second Circuit last year. I write this letter to express my opposition to proposed Federal Rule of Appellate Procedure 32.1 and to discourage the Committee from submitting the proposed amendment for approval by the Standing Committee. I believe that the proposed Rule would significantly increase the cost of litigation in Federal court, while simultaneously decreasing the effectiveness of the Federal courts.

The proposed Rule, which would allow litigants to cite unpublished opinions and memorandums of disposition, would effectively require attorneys to research and argue the thousands of unpublished opinions written by judges and their law clerks. At legal fees of hundreds of dollars per hour, this would dramatically increase the already sky-high cost of litigation. For companies like ours that are often targets of frivolous litigation by attorneys under contingency fee arrangements, these increased fees (which are not equally borne by the other side) would further increase the amounts we pay to settle litigation in order to avoid the cost of proceeding. This would increase the cost of insurance and decrease corporate profits.

At the same time, I believe that the proposed Rule would decrease the effectiveness of the Federal courts. I believe that the proposed Rule would lead many Judges to avoid writing unpublished opinions in many cases, thereby making it harder for the litigants to understand the basis for the decision. As for those Judges who decide to write unpublished opinions (rather than simply affirming or reversing), they would certainly spend more time on what they write, which would create further delays in the system.

For all of these reasons, I strongly urge the Committee to reject proposed Federal Rule of Appellate Procedure 32.1.

Regards,

Jeffrey B. Coyne
Vice President & General Counsel