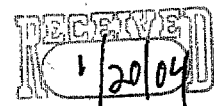


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03-AP-146



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January 13, 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 Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

I am writing to comment on proposed Federal Rule of Appellate Procedure 32.1, which would prevent the Circuit Courts from prohibiting or restricting the citation of "unpublished" opinions. I am a civil litigator in Los Angeles, California, who frequently practices before the United States District and Circuit Courts. I am admitted to practice before both the Ninth and Eleventh Circuits.

I am very concerned that the proposed Rule will have detrimental effects on the efficiency of our federal courts and create undue burdens on litigants. In particular, I am concerned that courts will be forced to spend more time drafting what would otherwise have been unpublished or slip decisions because the judges are cognizant that their opinions might be cited as precedent. Allowing judges to maintain flexibility as to when they need to produce written opinions fit for publication will ease the burden on our overworked judiciary.

Moreover, any Federal Rule of Appellate Procedure that requires every Circuit Court to permit citation to unpublished opinions will likely drive the cost of civil litigation even higher. Litigation counsel would then have an obligation to review and cite, if necessary, all relevant unpublished dispositions with respect to matters they are handling. This additional effort could add significantly to the time, effort and cost of litigation.

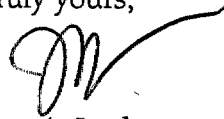
Accordingly, I respectfully request that the Committee on Rules of Practice and Procedure leave the decision to the individual Circuit Courts whether or not to allow the citation of their unpublished opinions.

*[Faint, illegible text, likely bleed-through from the reverse side of the page]*

Peter G. McCabe, Secretary  
January 13, 2004  
Page 2

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JAL', with a long, sweeping horizontal line extending to the right.

Jonathan A. Loeb

JAL:daf