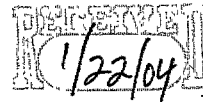


03-AP-165



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Comments:

I am a public defender of 25 years. I specialize in writs and appeals; I am currently the supervising attorney in charge of writs and appeals for the Office of the Federal Public Defender for the Central District of California. I am writing to voice opposition to the proposed rule which would allow citation for precedential value to unpublished opinions.

There are many significant disadvantages to the proposed rule, including the fact that judges' caseloads do not allow them to give full and thorough consideration to all the issues in all the cases before them and thus many unpublished opinions are drafted by law clerks and simply signed off by the judges; cases decided in such ways should not be given precedential value. But I would like to discuss a less obvious disadvantage to the proposed rule: the difficulty of explaining opinions to clients.

A rule that allows unpublished opinions to be cited as precedent will result in unpublished opinions saying little more than "affirmed." Judges, wary of an opinion given less than full and thorough consideration, thought and reflection being used later as precedent, will seek to keep those opinions to the bare minimum. It falls on the shoulders of attorneys to explain to their clients why they lost in the Court of Appeals. While that task can be difficult with a brief unpublished memorandum disposition, it will be virtually impossible if the unpublished opinions contain no analysis, citations or other evidence of consideration by the court. Clients will not feel that they got their day in court, it will be harder for them to accept the outcome, and

often they will want to continue fighting. The result will be unsatisfactory to everyone: the courts (which will have to endure further litigation), the attorneys (who will be frustrated by the lack of tools to do their job in a professional way), the parties (who will not know the legal reasons for the outcome) and the public (who will fund, with tax dollars, all this).

Precedential value should be reserved to those cases in which the court has given full and thorough consideration, thought and reflection. Those opinions get published and fill the federal reporters sufficiently for parties, attorneys and judges to have some precedent to look for regarding most issues raised.

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