United States Court of Appeals
Ninth Circuit



03-AP-167

CHAMBERS OF
WARREN J. FERGUSON
UNITED STATES SENIOR CIRCUIT JUDGE

UNITED STATES COURTHOUSE
411 W. FOURTH STREET, SUITE 10080
SANTA ANA, CALIFORNIA 92701

January 13, 2004

Dear Mr. McCabe:

This is written in opposition to proposed FRAP 32.1.

It is clear that circuit courts have the authority to determine that routine cases in which the law is clear and certain not be published. It then makes little sense to require the circuits to permit unpublished cases which have no precedent value to be cited in briefs in other cases.

In fact, a mandate that requires the acceptance of citations will bring into the legal process the doctrine of unintended consequences. We are now in the position where the disparity in the number of caseloads to the number of judges is at a critical stage. To require that we must now absorb, interpret, analyze and digest unpublished opinions which were not written for the purpose of having significance in developing the law but solely to advise the parties

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why their case was decided the way that it was, will do nothing to strengthen the administration of justice. Instead, it will impede our efforts to do that. To have to spend time and energy on cases which were not intended to, and do not, have precedent value is not judicial.

With respect,

Warren J. Ferguson

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