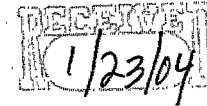


03-AP-168



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dcn>

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Comments:

FRAP32.1 should not be adopted. Unpublished memorandum dispositions do not reflect a change in the law, a novel decision, and usually, the ruling is peculiar to the facts of the specific case. These decisions are very brief and do not set forth the reasoning typical in a published opinion that has precedential authority. These decisions should not be given precedential value or persuasive weight precisely because they are not reasoned (although they must, of course, rely on precedent). The Ninth Circuit local rules provide an avenue for anyone who thinks an unpublished decision should be published, and other circuits have similar. Anyone - not just a party - may request that a nonpublished decision be published. In fact, our office has availed itself of this procedure in the past, as has the defense bar in Los Angeles. There simply is no just reason for this proposed rule and it will impact negatively the poor in our nation.

The non published decision has a res judicata effect/collateral estoppel/law of the case effect for the litigants. Noncitation rules for unpublished decisions make the judicial system efficient, protect the value of reasoned decision making that has a stare decisis effect, and serve individual rights, especially the rights of poor litigants. The Appellate Court is the court of last resort for most criminal defendants since so few cases are granted certiorari by the Supreme Court. The tremendous backlog that will result from a system that essentially renders all opinions of equal precedential weight will impact the criminal justice system more severely than the civil system. Essentially, FRAP32.1 creates two kinds of precedent, but leaves open whether all opinions will have the same precedential weight. Conscientious judges will devote more days to memo dispos, which may slow the system to a near halt. "Justice delayed is justice denied." Moreover, only those litigants with access to Westlaw or who are prosecutors who have had prior "memo

dispos" cases will possess the knowledge that a particular memo dispo is available to be cited. Pro se and poor litigants will be adversely impacted because they lack access to this type of precedent. Westlaw only publishes these decisions online; there is no published text containing these decisions that a pro se or poor litigant can access at a county law library. In sum, the noncitation rule for memo dispos makes the judicial system more efficient and accessible to all. Please do not adopt Rule 32.1; it will create two classes of precedent and deny equal justice to the poor.

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