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January 23, 2004

By Fax Only

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 an attorney who represents indigent criminal defendants in the United States Court of Appeals for the Ninth Circuit. I am opposed to proposed FRAP 32.1 for the following two reasons: the proposed rule will adversely affect my clients and will cost the taxpayers more money.

Proposed FRAP 32.1 will allow litigants to cite to unpublished dispositions as precedent. I am concerned that if we are permitted to cite to unpublished decisions as precedent, the court may begin to resolve unpublished cases through summary dispositions. This means that my clients, many of whom are serving life sentences, will not know the reasons why the court affirmed their cases. Every criminal defendant should know the reasons why they lost their case.

Proposed FRAP 32.1 will also adversely affect my clients because the rule will limit my ability to effectively represent them. If my cases are resolved through summary disposition, I may be precluded from the opportunity to file Petitions for Rehearing.

FRAP 35(b) (1) provides that counsel must begin each Petition for Rehearing with a statement that the panel's decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed. If my case is resolved through

summary disposition, I cannot comply with FRAP 35(b)(1) if I do not know basis of the panel's decision.

Proposed FRAP 32.1 will also cost the taxpayers more money. The obvious reason is that each case will take considerable more time. But, I have another reason. I use the unpublished dispositions as a research tool. I begin researching a legal issue by reviewing recent unpublished cases. The unpublished cases are short, easy to read, and they provide me with a "snapshot" of the particular area of law that I am researching. With a picture of the law in mind, I am able to conduct my research of published opinions quicker and in a more efficient manner. If these unpublished dispositions begin to disappear because of Proposed Rule 32.1, I believe my research will take longer, thus costing the taxpayer more money because I am paid by the federal government

Finally, criminal defendants who are representing themselves in prison do not have access to Lexis or Westlaw. As far as I know, unpublished dispositions are only available online. How are these inmates going to be able to defend themselves if they are required to cite to or distinguish cases that they do not have access to? Or what about those attorneys who have not mastered computer skills and rely on old-fashioned research in the library?

Therefore, I do not think the Proposed FRAP 32.1 is a good idea. Thank you for your time and I encourage the Committee on Rules of Practice and Procedure to reject this rule.

Thank you very much for your time.

Very Truly Yours,

  
Karyn H. Bucur