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03-AP-180

Sent via facsimile - 202-502-1755

Mr. Peter G. McCabe, Secretary  
Committee on Rules of Practice & Procedure  
Administrative Office of the U.S. Courts  
One Columbus Circle, NE  
Washington DC 20544

Re: Proposed Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

I write to express my opposition to a proposed rule change allowing for citation to unpublished dispositions. Sometime ago, the federal courts determined that it was a useful tool to allow for unpublished dispositions in managing the ever-burgeoning caseload. The policy for the rule seemed obvious, that publication would add nothing to the existing body of the common law. However, this policy would be eviscerated by allowing citation to unpublished dispositions.


Moreover, promulgation of such a rule would surely mandate utilization of fee based computer services in order to research unpublished opinions in addition to the extra time devoted to research by the attorney. This would increase the cost to litigants and further alienate the less affluent in the country from access to the court system. If the rule is passed, it would be malpractice not to conduct such research and the benefit to litigants would be negligible.

In my experience, less care is placed in the drafting of opinions that will not be published, and as a result there is a dilution in the precedential value of such opinions. I hope you agree that the erosion of the principle of *stare decisis* would have long term chaotic consequences.

In short, so long as there is a rule permitting unpublished dispositions, there should be attendant to that rule a requirement that unpublished opinions should not and cannot be used as authority.

Sincerely,

HOLLAND & THIEL P.C.



W. John Thiel