

03-AP-183



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01/27/2004 12:00 AM

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Comments:

I am a defense attorney in private practice with a practice that concentrates on federal criminal appeals before the United States Court of Appeals for the Ninth Circuit. I am opposed to the proposed change that would allow the citation of unpublished dispositions as precedent in appellate briefs as I believe that such change render legal research substantially more burdensome. If unpublished opinions become a significant source of authority, appellate counsel would confront a quagmire searching for unpublished cases with possible relevant and persuasive language to buttress their arguments. Such a task may become a mandated futile research exercise because generally unpublished opinions do not include landmark principles and are not exhaustive expressions of either the facts of the case or the rationale of the holding. Moreover, a portion of appellants may be disadvantaged, the degree of which depending on the limitations of their research resources.

Limiting appellate precedent to published opinions allows some level of predictability and fairness with appellants knowing that judges should rely on precedent with reasonably developed facts and similarities to their circumstance.

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