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Albany Law School | UNION UNIVERSITY

Gregory N. Mandel  
Assistant Professor of Law

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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

Dear Mr. McCabe,

I am writing concerning the ABA's consideration of endorsing a rule that would permit citation of both published and unpublished decisions.

To place my comments in context, I have served as a law clerk (with the Hon. Jerome Farris on the Ninth Circuit), in private practice at Skadden, Arps, Slate, Meagher, and Flom LLP, and am currently a professor at Albany Law School. I have thus had the opportunity to view the functioning of our legal system from a variety of perspectives. Based on this experience, I strongly recommend against a rule permitting citation to unpublished decisions.

The judiciary faces an almost overwhelming caseload. Use of unpublished decisions allows judges to devote less of their time to exactly ensuring the precise accuracy of decisions that are not believed to entail new legal precedent, but still provide the instant litigants with a well-reasoned explanation for their decision. Judges, in turn, have more time to devote to deciding all cases and handling myriad other matters. Should a rule permitting citation to unpublished decisions be adopted, one of two scenarios would unfold. Either the pace of litigation would slow even further as judges devote more time to each decision, or litigants who formerly received unpublished decisions would now receive one sentence decisions (as judges would be unable to issue all decisions in precedential form). Neither result would benefit the judiciary, litigants, or the legal system as a whole.

Thank you for your time and attention to this matter.

Sincerely,

  
Gregory N. Mandel