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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I write in opposition to proposed Federal Rule of Appellate Procedure 32.1, which would let unpublished appellate court opinions be cited. Subject to general guidelines established by the different federal circuit courts, it would be best to let individual appellate panels decide which of their opinions may be cited in future litigations.

I enjoyed the privilege of serving as a law clerk to a federal district court judge, a federal appellate court judge, and a federal Supreme Court Justice. I have practiced appellate and trial litigation for several years with the Washington, D.C. law firm of Covington & Burling. I now have my own appellate litigation practice.

One of the main purposes of appellate court opinions is of course to enable lawyers advising clients and judges at all levels of the federal system to discern the law of the circuit on particular issues. Allowing unpublished opinions to be cited would greatly increase the number and the variability of opinions that would be understood by lawyers and judges as relevant to any particular issue, even if the unpublished opinions are not strictly precedential. This would in turn lead to a lot greater cost to review all of the relevant opinions, disadvantaging litigants with less money or time to devote to having a lawyer digest these opinions, and greater uncertainty about how particular issues would or should be resolved. This would undermine the advantages of our system of precedent.

The best judges of whether any given appellate opinion should be allowed to be cited in future litigations, I suggest, are the members of the panel that issues the opinion, subject to general guidelines established by the different federal circuit courts. The panel knows best how much time and effort it has been able, given its many other cases, to invest in producing this opinion and whether the prose in the opinion should be considered sound as a criterion for deciding future cases. Moreover, the panel should, at the time that it issues the opinion, know the current state of the law of its circuit on the issues

involved and therefore be better able to assess the contribution, or lack of one, that the opinion would make to the body of citable opinions.

If all opinions are allowed to be cited, judges may simply eschew writing any opinion at all in cases that are perceived not to justify a published opinion. Yet receiving a simple judgment without reasoning would undermine litigants' confidence in the objectivity and rationality of the judicial process to which they have been subject.

In circuits where the judges have the time to write in every case an opinion they consider reliable enough to let be cited in future cases, the circuit court can realistically adopt its own rule letting unpublished opinions be cited. In other circuits, however, such a rule would be unrealistic in my experience. So for the Rules Committee to adopt a nationwide rule letting unpublished opinions be cited, is a mistake in my opinion.

I hope the Rules Committee will find the above comments helpful and will ultimately reject the proposed Rule.

Yours sincerely,

Anthony Vlatas

Anthony J. Vlatas, Esq.