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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

Re: Proposed FRAP 32.1

Dear Mr. McCabe:

I am writing to state my personal opposition to proposed Federal Rule of Appellate Procedure 32.1, which would permit citation of opinions and dispositions that are designated as unpublished and non-precedential by issuing courts. I believe the proposed rule would have a significant negative impact on the administration of justice in the federal courts system.

Unpublished and non-precedential dispositions serve a valuable but distinct function from the purposes of published and precedential opinions. Writing an opinion that is certified for publication in the Federal Reporter, and that will serve as precedent throughout the circuit and beyond, is akin to writing a law review article. It is not uncommon for a published opinion to undergo extensive drafts, edits, and revisions before it is finalized, and this process can take months. On the other hand, an unpublished and non-precedential disposition is characteristically simple and succinct. It is essentially a quick note explaining who won, and why. If unpublished and non-precedential dispositions are to be citable as precedent, then the courts' workloads will swell and either efficiency will suffer or judges may well choose more often to deliver one word rulings with no explanation.

I believe the best way forward is to continue to permit judges of the courts of appeals and the individual circuits, in their wisdom and experience, to decide what cases will have real precedential value and should be designated for publication.

Very truly yours,



Michael Bishop