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03-AP-330

February 9, 2004

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

Re: Comment on Proposed Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

My name is Robert K. Hur. I served last year as a law clerk to the Honorable William Rehnquist, Chief Justice of the United States, and now serve in the Criminal Division of the Department of Justice as Special Assistant to Assistant Attorney General Christopher Wray. I submit this comment on Proposed FRAP 32.1 on my own behalf. It does not represent the opinion of the Department of Justice or any component thereof.

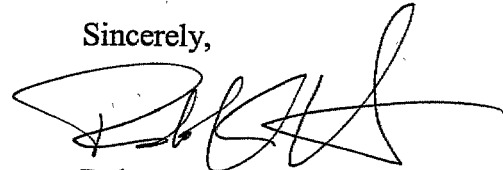
Simply put, the proposed rule is exactly wrong. Any national rule on this topic should prohibit the citation of unpublished dispositions, not allow it. When attorneys are not fettered by noncitation rules, many cannot resist the temptation to mine unpublished dispositions for the makings of novel arguments that are unsupported by good circuit law.

The result is to no one's liking. Attorneys fear the consequences of neglecting to address every argument raised by opposing counsel and fatten their briefs with unnecessary counterarguments. Clients pay higher legal fees as their lawyers spend more time wading through unpublished dispositions or responding to the weak arguments based on them. District courts and courts of appeals, already overtaxed by increasing caseloads, are confronted with even more chaff to separate from the wheat. Judges must spend more valuable time distilling key issues and identifying relevant caselaw, which causes court backlogs to grow more quickly.

I understand that the circuits currently have different rules as to the citation of unpublished dispositions. Because each circuit faces its own set of circumstances, perhaps the current model of local control should be continued. But if the Committee decides to adopt a national rule, I strongly urge the Members to adopt a noncitation rule

similar to those adopted in the Second, Seventh, and Ninth Circuits. Proposed FRAP 32.1 is ill-advised, and its effects on federal litigation will benefit no one.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. K. Hur', written in a cursive style.

Robert K. Hur