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cc:

Subject: Proposed FRAP 32.1

03-AP-357

I wish to add my voice to the growing chorus of opposition to this proposed rule.

I believe that the Ninth Circuit, where I sit as a bankruptcy judge, would either issue summary opinions or more of what are now known as "published opinions" if this proposed rule were adopted. In either event, justice would not be served. Summary opinions would most likely provide either no guidance to trial judges such as myself, or they would not display the level of reasoning currently existing in published opinions. Alternatively, if the Circuit were to effectively issue many more published opinions, I suspect that the extra time involved would have a significant detrimental effect on parties to appeals from bankruptcy court orders and judgments. The reason is that these parties (as well as parties to a proceeding before a magistrate judge) have a right to appeal such orders and judgments to both the District Court or the Bankruptcy Appellate Panel *and* to the Court of Appeals. Where time is of the essence, as it frequently is in a bankruptcy case, waiting for the resolution of an appeal can have disastrous results.

Another consequence of adoption of this proposed rule is the impact it may have on trial judges. If all opinions of the Circuit can be cited, will a federal trial court opinion become citable even though the author never so intended? It would seem that this would have a chilling effect on trial court judges who do not have the resources of Courts of Appeals judges to craft opinions (including the minds of three judges). If I should wind up issuing more one-line decisions in order to avoid this dilemma I certainly would make the task of reviewing courts much more difficult. If instead I should issue more "published opinions," I will invariably contribute to the delay that litigants must endure.

I urge you not to adopt proposed FRAP 32.1. However, if you should do so please include a "grandfather" clause that would restrict citations to unpublished opinions to those decisions that are rendered after the effective date of the rule. This would only be fair to all of the judges who authored unpublished opinions thinking that they could never be cited in another court.

Alan M. Ahart
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