

arrived RECEIVED 2/17/04
03-AP-427

97 Kenmare St.
New York, NY 10012

December 20, 2003

Mr. 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 members of the Committee on Rules of Practice and Procedure:

I'm writing to express my opposition to proposed FRAP 32.1, which would establish a national rule binding on all circuit courts that would permit lawyers to cite "unpublished" or "non-precedential" memorandum dispositions. If passed, the proposed rule would needlessly increase the circuit courts' workload, and therefore have a substantial negative impact on the speed and quality of the courts' published opinions.

As you know, the large majority of appeals that reach the federal circuit courts end in rulings issued in the form of memorandum dispositions. If they were allowed to be cited as precedent, conscientious judges would have to pay much closer attention to how such dispositions were written. It is one thing to explain a ruling to the parties to a case, who are already familiar with the facts and issues under consideration; it is something quite different -- something much more difficult and time-consuming -- to prepare an opinion that will have precedential effect. If memorandum dispositions could be cited, therefore, judges' workloads would increase substantially.

To make a national rule on this subject would be a mistake. At most, each circuit should be able to decide for itself whether to permit the citation of memorandum dispositions.

Sincerely yours,


Joanne Mariner, Esq.