

JONES DAY

555 WEST FIFTH STREET • SUITE 4600  
LOS ANGELES, CALIFORNIA 90013-1025  
TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

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WRITER'S DIRECT NUMBER:  
Direct Number: 213-243-2517  
aefriedman@jonesday.com

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VIA FACSIMILE AND MAIL

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 Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

We write in opposition to proposed Federal Rule of Appellate Procedure 32.1, which would eliminate restrictions on the citation of unpublished decisions in federal courts.

Rules limiting citation of unpublished dispositions, such as Ninth Circuit Rule 36-3, are necessary and appropriate. United States Court of Appeals judges have staggering case loads, particularly in the Ninth Circuit where we live and work. The only practical way court of appeals judges can effectively decide all the cases before them is to give less important or difficult cases less personal attention, and to delegate the authorship of opinions not intended to have precedential value to law clerks and staff attorneys. In this way judges can make sure the outcomes of particular cases are correct, without having to invest the time to discuss, craft, and fine-tune opinions intended to serve as precedent.

If FRAP 32.1 were adopted to permit all unpublished opinions to be cited, courts of appeals would be left with unpalatable alternatives: they would either have to issue summary dispositions without specific guidance to the parties and lower courts in many cases, or they would have to spend less time writing opinions in important cases. Not only would this be a disservice to litigants in thousands of individual cases each year in the Ninth Circuit alone, we believe it would lead over time to an overall "dumbing down" of federal case law.

Our views are based on considerable experience. Elwood Lui leads Jones Day's Issues & Appeals practice in California. He is a former associate justice of the California Court of Appeal, Second Appellate District, Division 3, and served as an associate justice, pro tempore, of the California Supreme Court. He is also Partner-in-Charge of Jones Day's San Francisco office. Alan Friedman is a litigation partner in the firm's Los Angeles office, and is president of the

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Association of Business Trial Lawyers, Los Angeles Chapter. Lui and Friedman together have more than sixty years' experience in appellate and trial court practice.<sup>1</sup>

Very truly yours,



Elwood Lui



Alan E. Friedman

AEF/cm

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<sup>1</sup> Our views do not necessarily represent those of our law firm, Jones Day.