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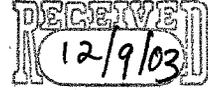
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November 30, 2003

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



03-AP-029

Re: FRAP 32.1

Dear Mr. McCabe:

I write in opposition to proposed FRAP 32.1. This proposed rule, which would compel all the circuits to permit the citation of unpublished memorandum dispositions, would if adopted prove detrimental to the efficient functioning of the courts of appeals. The current rule permits a panel to expeditiously dispose of hundreds of decisions without concern that the language is artful or the decision is well-crafted. Under the new rule, the backlog of opinions in certain circuits (created mainly by the refusal of the Republican Senate to fill numerous judgeships during the Clinton presidency and then intensified by the subsequent logjam caused by President Bush's attempt to fill those billets with right-wing zealots) will worsen substantially. Judges who are already staggering under heavy workloads would have to treat every case, no matter how simple the legal issues might be, with the same degree of care and amount of time now reserved for those few cases which blaze new trails in the law. Because it would be impossible to increase the number of judges sufficiently to compensate for the increase in the judicial workload that would be caused by this rule, the end result would undoubtedly be a marked decrease in the quality of all appellate judicial opinions. Less carefully written opinions would, in turn, lead to increased litigation as parties, lawyers, and lower court judges attempted to fill in the gaps left by hastily drafted appellate decisions. Inevitably, putting the judges of the courts of appeals under increased time pressure will increase the number of intra- and inter-circuit splits and decrease coherence and predictability in the law.

This proposed rule would have deleterious consequences but would deliver no benefits whatsoever. I therefore urge the Committee to decline to adopt it.

Very truly yours,

Michele Landis Dauber