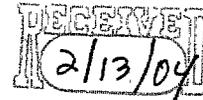


03-AP-360



2250 Clarendon Blvd. #1309

Arlington, VA 22201

February 5, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544-0001

Re: Proposed Change to the Federal Rules of Appellate Procedure

Dear Mr. McCabe:

I am writing to express my opposition to the proposed change to Rule 32.1 of Appellate Procedure. I approach this issue both as a litigator and as a former law clerk to the United States Court of Appeals for the Ninth Circuit.

As a practitioner, I am often frustrated when I have located a lengthy and thorough opinion that has been designated as not for citation, and I accordingly understand the concerns that have driven the proposed change. However, as a former law clerk, I can attest that the severe consequences of permitting citations to unpublished opinions far outweigh any potential benefit to practitioners. Inevitably, such a rule would require the courts of appeal to devote significantly more time to unpublished dispositions. Since the courts are already heavily burdened by their caseloads, this could only result in a reduction in time spent on other matters of greater importance or in the routine issuance of one-sentence summary affirmances or reversals. Neither result is desirable. The ability to issue unpublished opinions that may not be cited is, in my opinion, essential to the smooth functioning of the Ninth Circuit.

Since the circuits vary dramatically in the size and composition of their caseloads, the issue of citation of unpublished opinions should be left to the individual circuits to decide. On the Ninth Circuit, unpublished opinions tersely apply only existing law. Other circuits, it appears, often issue lengthier unpublished opinions, and it may be appropriate for those circuits to have a different citation rule. One size does not fit all, however, and the proposed rule change, creating a nationwide mandatory rule, should be rejected.

Sincerely,

A handwritten signature in cursive script that reads "Carlton F.W. Larson".

Carlton F.W. Larson