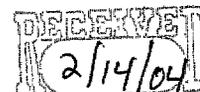


FEDERAL PUBLIC DEFENDER
Western District of Washington

Thomas W. Hillier, II
Federal Public Defender



February 13, 2004

03-AP-384

BY FACSIMILE - 202/502-1755

Peter G. McCabe
Secretary, Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
1 Columbus Circle
Washington DC 20544

Re: Proposed Revision to FRAP 32.1

Dear Secretary McCabe:

I am writing in opposition to proposed FRAP 32.1, which, if adopted, would prohibit circuits from preventing citation to unpublished opinions. I am the Federal Public Defender for the Western District of Washington, a position I have held since 1982. I am writing in my personal capacity but drawing from my years of experience as the Federal Public Defender and regular practitioner in federal court.

To begin, I believe the question of citation to unpublished opinions is a matter that should be decided by each circuit. Currently, different circuits have different views and different rules. These differences reflect appropriate consideration of the styles, customs and efficiencies of each circuit. Necessarily, adopting a rule that would change the current practice of a particular circuit would be disruptive and costly.

I am struck by the weakness of the arguments in support of the proposal. Perceived difficulty in sorting out the differences among the rules in the various circuits is not a good reason for a change of this magnitude. It is a lawyer's job to research circuit rules to assure compliance. This is not a difficult task.

On the other hand, there are strong arguments against the proposal beyond circuit independence. Unpublished dispositions typically are summary in nature with little factual and legal exposition. They are usually case-specific and utilized to promote efficiency. This efficiency is important to the litigants, who are looking for resolution. Because the unpublished opinions are case-specific and generally without significant discussion of the law, the opinions offer little value as cited authority.

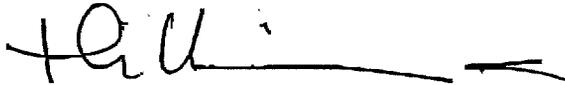
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Even though unpublished opinions are frequently summary dispositions with little analysis, the proposal would compel investigation of this mass of material. Good lawyers try to be thorough. Costs associated with research of unpublished opinions would grow. Criminal Justice Act resources would be stretched without benefit. Seemingly, the proposal would slow the appellate process while making it more expensive.

In sum, the proposal offers little if any benefit to lawyers and litigants alike. On the other hand, its enactment would be disruptive and costly. These considerations weigh against its passage.

I appreciate your consideration of these thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read 'THU', followed by a horizontal line extending to the right.

Thomas W. Hillier II
Federal Public Defender

:ph