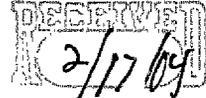


UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Robert C. Byrd U.S. Courthouse
300 Virginia Street, Room 7404
Charleston, West Virginia 25301



03-AP-401

M. BLANE MICHAEL
United States Circuit Judge

(304) 347-3516
Fax (304) 347-3517

February 9, 2004

Mr. Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Washington, DC 20544

Re: Proposed Fed. R. App. P. 32.1

Dear Mr. McCabe:

I am firmly opposed to proposed Fed. R. App. P. 32.1. My circuit, the Fourth, has a local rule that allows only limited use of unpublished opinions. If proposed Rule 32.1 is adopted, it would mean the end of our local rule, which is working very well. Our local rule is fair, and its language, which follows, presents a good argument for allowing us to keep it:

Local Rule 36(c). Citation of Unpublished Dispositions.

In the absence of unusual circumstances, this Court will not cite an unpublished disposition in any of its published opinions or unpublished dispositions. Citation of this Court's unpublished dispositions in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case.

If counsel believes, nevertheless, that an unpublished disposition of this Court has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well,

Mr. McCabe
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such disposition may be cited if counsel serves a copy thereof on all other parties in the case and on the Court. Such service may be accomplished by including a copy of the disposition in an attachment or addendum to the brief pursuant to the procedures set forth in Local Rule 28(b).

Our circuit decides about 2,500 cases on the merits each year. It would be difficult for us to move these cases expeditiously without our Local Rule 36(c). The rule allows us to give adequate attention to all cases and extra attention to writing opinions in cases that are worthy of a precedential disposition. Because it is necessary for us to retain this flexible approach, I urge your committee to table proposed Fed. R. App. P. 32.1.

Sincerely,



M. Blane Michael