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FEDERAL DEFENDERS OF EASTERN WASHINGTON AND IDAHO

ROGER J. FEVEN
EXECUTIVE DIRECTOR

YAKIMA OFFICE
306 EAST CHESTNUT AVENUE
YAKIMA, WASHINGTON 98901
(509) 248-8920
FAX (509) 248-9118

BEN HERNANDEZ
BRANCH CHIEF

03-AP-443

February 17, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, N.E. Washington, D.C. 20544

SENT BY FACSIMILE

Re: Proposed Rule of Appellate Procedure 32.1

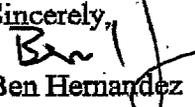
Dear Mr. McCabe:

This letter is written in opposition to Proposed Rule of Appellate Procedure 32.1. I am currently the Branch Chief of the Yakima Office for the Federal Defenders of Eastern Washington and Idaho. I have been with the office for a little more than a year. My experience in appellate work has been mainly in the Washington State court system. However, Washington does employ the same system of unpublished opinions that cannot be cited as authority in future cases.

From my experience, it seems to me that the proposed amendment to Federal Rule of Appellate Procedure 32.1, permitting citation to unpublished opinions, will have a negative impact on federal appellate work. Unpublished opinions really have little precedential value as they are written for the benefit of the parties involved in the case. This is reflected in how the opinions are written - generally, with very little facts and very little legal analysis. Thus, the use of unpublished opinions would not be helpful at all.

In addition, the use of unpublished of opinions would create additional burdens in terms of time, money, and other resources for those who practice in federal appellate courts. I would certainly anticipate that the use of unpublished opinions would significantly impact those who do not have the resources to be able to conduct the research necessitated by use of unpublished opinions.

Therefore, I strongly oppose the proposed amendment to the rule.

Sincerely,

Ben Hernandez
Trial Attorney

SPOKANE OFFICE
10 North Post, Suite 700
Spokane, Washington 99201
(509) 624-7606
Fax (509) 747-3539

BOISE BRANCH
350 North 9th Street, Suite 301
Boise, Idaho 83702
(208) 388-1600
Fax (208) 388-1757

MOSCOW BRANCH
201 North Main Street
Moscow, Idaho 83843
(208) 883-0180
Fax (208) 883-1472

POCATELLO BRANCH
801 East Sherman, Suite 177
Pocatello, Idaho 83201
(208) 478-4155
Fax (208) 478-1255