"Kevin Boyle" <KBoyle@GBPWLAW.com>
02/26/2004 03:03 AM

To: <rules_comments@ao.uscourts.gov>
cc:
Subject: Proposed FRAP 32.1

Attached please find a letter regarding proposed FRAP 32.1. The original has been sent via mail.
Thank you,
Kevin Boyle

Kevin Boyle

Greene, Broillet, Panish & Wheeler LLP

100 Wilshire Boulevard, 21st Floor

P.O. Box 2131

Santa Monica, CA 90407-2131

Tel: (310) 576-1200

Fax: (310) 576-1220

www.GBPWLAW.com <http://www.gbpwlaw.com/>

32.1.letter.rtf

February 13, 2004

Sent by e-mail — Original by U.S. Mail

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

Re: Proposed Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

I am a former law clerk to Chief Justice Rehnquist and, before that, to Judge Melvin Brunetti of the United States Court of Appeals for the Ninth Circuit. I am now a plaintiffs' trial lawyer with Greene, Broillet, Panish & Wheeler in Los Angeles. I write in opposition to proposed FRAP 32.1.

While clerking at the Ninth Circuit, I participated in the preparation of numerous memorandum dispositions. The Court expressly considered whether each case was appropriate for disposition by memorandum (*i.e.*, whether the disposition would create no new law but merely follow existing Ninth Circuit precedent). When we determined that a case was appropriate for the procedure, we saved copious amounts of the Court's most precious resource (time), while still being able to give the parties the reasons for the Court's decision. The simple fact of the matter is that published opinions take hundreds of hours to complete. Such resources were not necessary to dispose of these relatively simple cases, and the parties deserved more than simply an "Affirm" or Deny."

As a practicing attorney in the Ninth Circuit, I appreciate the memorandum disposition procedure. First, it speeds up the ultimate resolution of cases. Second, the memorandum dispositions are instructive as a research tool and they send me to the seminal published precedent. And third, the procedure prevents the Ninth Circuit from publishing too many opinions. The last thing the bar needs is more precedents to

distinguish. The law is designed to be applied to the facts of each different case; each case does not make new law. I understand that the proposed rule does not intend to speak to the precedential value of memorandum dispositions, but requires only that they can be cited. Unfortunately, the reality of practice is that once these dispositions can be cited, they must be read, considered, dissected, and ultimately distinguished or lauded by attorneys. The additional amount of work and money the proposed rule would cost the bar and its clients cannot be understated.

Thank you for considering my comments.

Sincerely,

Kevin R. Boyle