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March 2, 2004

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

Re: Proposed Change to FRAP 32.1

Dear Mr. McCabe:

I oppose the proposal to amend the Federal Rules of Appellate Procedure to permit citation to unpublished decisions of the appellate courts.

I am an attorney in private practice in Oregon. I handle exclusively state and federal criminal cases. I have been in practice for 20 years. I am the CJA panel representative for the District of Oregon and the Ninth Circuit representative to the Defender Services Advisory Group.

I oppose the proposal for the following reasons:

(1) Courts choose to publish or not publish opinions for a reason. Opinions are published because a particular case presents new twists on the law, application of the law to new sets of facts, developments in the law, or is a case of public importance. Most cases that are not published tend to present nothing new or of precedential value. Permitting citation to unpublished decisions would not enhance the quality of our judicial system because they tend to have little value.

(2) More cases to cite does not mean better law to cite. Just because an unpublished case can be relied on does not mean it is a good decision.

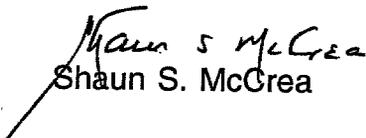
(3) In state court the appellate courts routinely issue orders Affirming a Case Without Opinion (AWOP). This saves court time, but provides the attorney no guidance to the court's thinking and deprives the defendant of the necessary belief that he or she received due consideration from the court. If unpublished

opinions are allowed to be cited, I submit that federal courts will be likely to turn to AWOPs to avoid issuing opinions for citation in questionable cases. This practice in turn, would deprive the litigants of a full and fair analysis of the issues.

In sum, there is much to be lost but little to be gained by citation to unpublished opinions. Please do not adopt the amendment.

Sincerely,

McCREA, P.C.


Shaun S. McGrea