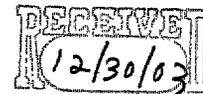


UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT



BARRY G. SILVERMAN  
UNITED STATES CIRCUIT JUDGE

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03-AP-075

December 17, 2003

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 Rule Change to F.R.A.P. 32.1

Dear Mr. McCabe:

I oppose the proposed change to F.R.A.P. 32.1.

Unpublished memorandum dispositions keep our court from grinding to a halt. Opinions can take days and even weeks to produce, while a mem dispo can be knocked out in an hour or less. Given our court's enormous caseload, these mini decisions serve the important purpose of allowing the court to decide routine cases quickly. What matters is the result, not the precise language of the disposition or even its reasoning. Mem dispos reflect the panel's agreement on the outcome of the case, nothing more. For that reason alone, they do not merit citation.

A very large portion of the Ninth Circuit's mem dispos derive from screening panels. Here's how screening panels work: Three judges convene in person, by video or by telephone. The panel hears from 25 or 30 staff attorneys who, in turn, quickly summarize the cases they are presenting. At the outset of each presentation, the staff lawyer furnishes to the panel a pre-drafted proposed mem dispo. Things move quickly – screening panels can decide 100 to 150 cases in a single week. This program works extremely well, thanks to the careful identification of cases selected for this process and the conscientiousness of the staff attorneys. Amazingly, very few mistakes are made. However, the focus is on deciding the cases correctly, not on dotting I's and crossing T's. The resulting mem dispos do the job. They inform the parties of the result and provide a reason, but in no way do they deserve to be cited.

Very truly yours,

Barry G. Silverman