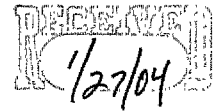


03-AP-188



"W. Dea Montague"
<wdmontague@mbma
z.com>

To: "Rules_Comments@ao.uscourts.gov"
<Rules_Comments@ao.uscourts.gov>
cc: "gsf@jaburgwilk.com" <gsf@jaburgwilk.com>
Subject: FRAP 32.1 - Opposition

01/27/2004 12:16 PM
Please respond to
"wdmontague@mbmaz.
com"

Dear Mr. McCabe,

I understand there is a proposal to add a new rule, FRAP 32.1, which would permit unrestricted citation of unpublished decisions.

Please note my strenuous objection to such a rule.

As a solo-practitioner, I find it very expensive and time-consuming to keep up with the published cases. On every brief I prepare, I spend several hundred dollars researching to validate my references. To add responsibility for knowledge of unpublished opinions would be a burden too great. If having knowledge of all unpublished opinions becomes the standard of practice, can you imagine the professional liability that would follow? There will be such an increase in malpractice claims that insurance coverage would be prohibitive. The cost of hiring a lawyer would then be beyond the reach of the average citizen.

Appellate Judges make decisions on whether or not a decision is to be published. If they believe a case has precedential value that they want followed, let them "publish" the opinion. If it does not have that value, let them continue to have the decision hidden.

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