"Williams, Stephanie" <stephanie.williams@sdma.com>
02/09/2004 06:33 PM

To: "'Rules_Comments@ao.uscourts.gov'" <Rules_Comments@ao.uscourts.gov>
cc:
Subject: Comment Opposing Proposed FRAP 32.1

03-AP-316

COMMENT OPPOSING PROPOSED FRAP 32.1

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544.

Dear Committee:

We are members of the appellate department of Sedgwick, Detert, Moran and Arnold in Los Angeles. Our department includes several certified appellate specialists, and we have clerked for and practiced in many of the federal courts, including the Ninth Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and the United States District Court for many districts.

We oppose the adoption of proposed Rule 32.1 for numerous reasons. We outline the key reasons below.

1. We know from our experience as judicial law clerks and from our many years of appellate practice that judges simply do not have the time necessary to make every opinion a publishable one. When the law is settled and when justice dictates, our judiciary in the federal and state systems should have the option of issuing a memorandum that tells the parties the decision, but does not add to the ever-expanding body of citable jurisprudence. In order to make every opinion issued by every appellate court in the country of publishable quality, our judges will need greatly increased staffs and more jurists on their courts.

2. Proposed Rule 32.1 permits citation of all unpublished opinions, state or federal. Consequently, this proposed rule change affects each appellate court of each state and federal circuit, requiring every appellate justice to fundamentally change the opinion writing process, as discussed above and below. This is true even though the people and legislatures of many states have passed state constitutions or other guidelines allowing unpublished opinions.

3. Given the large number of federal cases involving questions of state law, state law jurisprudence could be adversely affected by the use of opinions that the people of the state properly deemed non-citable and non-precedential.

4. Proposed Rule 32.1 will be extremely costly, at a time of severe budgetary constraints. The drafting of state and federal appellate opinions will become much more time-consuming as judges and their staffs spend more time laboring over all opinions to assure that each is suitable for citation.

5. The private sector will also be forced to cope with additional costs arising from the added research burden imposed by Rule 32.1, as online and book research will involve wading through many repetitive opinions on settled topics.

6. Proposed Rule 32.1 will have many other adverse consequences. The quality of opinions discussing important issues of law will suffer because more time must be spent drafting opinions in the routine cases that raise issues governed by settled legal principles. Delays in the processing of appeals will become more common as courts struggle under the burdens imposed by Rule 32.1.

7. Due to the press of business and the other reasons for not publishing every opinion, judges and

justices may not write opinions at all--to the detriment of the parties, the public and, ultimately, the courts themselves. In many states and federal circuits, the courts are not required to write opinions at all. Rather, a single word "affirmed" or even "reversed" is sufficient. In Illinois, for example, where unpublished opinions were not allowed, the state Supreme Court added a rule under its supervisory authority allowing one-word or one-paragraph opinions to deal with the pressing caseload of the appellate court as well as the huge body of decisions filling the casebooks. Florida has a similar procedure, as do many other states. Thus, history tells us the threat of allowing citation of all opinions and written decisions has already greatly limited the guidance given to parties in many jurisdictions. There is no reason to expand that limit.

For these reasons, we respectfully urge the Committee to reject the Proposed Rule 32.1.

Douglas J. Collodel
Christina J. Imre
Hall Marston
Stephanie Rae Williams

sent by:
Stephanie Rae Williams
Sedgwick, Detert, Moran & Arnold LLP
801 South Figueroa Street, 18th Floor
Los Angeles, California 90017-5556
Direct Dial: 213-615-8023
Facsimile Transmission: 213-426-6921
Email: stephanie.williams@sdma.com