

## FEDERAL DEFENDERS OF EASTERN WASHINGTON AND IDAHO

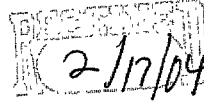
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03-AP-445

February 17, 2004

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE  
Washington DC 20544

Re: Proposed Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

My name is Nick Vieth and I am a Fellowship Attorney at the Federal Defenders of Eastern Washington and Idaho's Capital Habeas Unit. After reviewing FRAP 32.1, and the proposed changes to that rule, it is my opinion that the rule should not be changed and should stay written as is.

My opinion is based primarily on two concerns. First, to allow unpublished opinions to be cited to as precedent will invariably muddy the waters more so than they are currently. Unpublished opinions are short, with very few facts placed within and lack the analytical analysis of their more thought out counterparts, the published opinion. If ambiguity and more litigation is needed, then this makes sense. But I do not believe this is the case and I would think that our judges would be of the same opinion. Second, this change would effectively dispose of the unpublished opinion. Unpublished opinions are meant to answer specific questions quickly, but if citation is freely allowed to these short answers, judges will understandably put more time and consideration into explanation and analysis. Thus disposing of the short and useful unpublished opinion and instead replacing it with something more akin to the published version. Although on the outset this may sound like a good idea, the more time spent upon one opinion will consequently leave others without time or consideration.

I thank you for your time in considering my opinions and hope the Committee realizes the importance of this decision and takes into account the perspective of the practitioners. Because, in short, maintaining a consistent and predictable body of case law is of great value to me as a practicing appellate lawyer.

Sincerely,

Nicolas V. Vieth  
Attorney