



LAWYERS



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03-AP-107

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January 7, 2004

Mr. Peter G McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Re: Opposition to Proposed FRAP 32.1

Dear Mr. McCabe:

I have practised in all three levels of the federal courts for forty years. My emphasis has been on First Amendment issues.

I am strongly opposed to the proposed rule cited above. Indeed, if we are to have a new national rule, a more appropriate approach would be to prohibit the publication of all dispositions that are not designated for publication by the issuing court -- which would be fully aware whether adequate time and attention have been directed by the court to make the written opinion safe as precedent.

Given present caseloads, our hardworking federal judges are unable to give adequate scrutiny to every decision. Often, the decisions marked for nonpublication have been largely written by law clerks. If the prohibition rule I suggest above were to be adopted, I believe the courts would simply say "affirmed" in nonpublishable cases -- an entirely appropriate outcome.

The incredibly important business of our federal courts would not be served by proposed FRAP 32.1. Instead, such a rule would create a happy hunting ground for sloppy practitioners looking for snippets to justify their arguments to their clients.

January 7, 2004  
Page 2



If I can provide further comments, please advise.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Cameron DeVore". The signature is fluid and cursive.

P. Cameron DeVore

PCD/ml