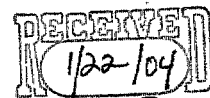


03-AP-162



*via E-mail  
to Rules Comments  
web site*

Davina T. Chen  
2929 Connecticut Avenue NW  
Number 712  
Washington, D.C. 20008

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

Dear Mr. McCabe,

I am writing to express my opposition to the proposed Rule 32.1 to the Federal Rules of Appellate Procedure. I am currently a Deputy Federal Public Defender in the Central District of California. I was previously a judicial law clerk on the Ninth Circuit Court of Appeals. My experience in these capacities leads me to believe that any nationally applicable amendment or addition to the Federal Rules of Appellate Procedure that would allow—or, inevitably, require—citation of unpublished memorandum dispositions would burden federal court practitioners, muddy the law, and delay the appellate process in the Ninth Circuit.

As a federal court practitioner in the Ninth Circuit, I routinely review unpublished memoranda as part of my research. Reviewing these dispositions allow me to get a feel for how different panels of the Ninth Circuit have viewed an issue in the past. But I am always aware that the dispositions are not precedential and cannot be cited. I am glad that they cannot be cited. They are generally sparse on detail either of the facts of the case or the law. Even assuming that the proposed rule would possibly improve the quality of these memorandum dispositions, given the massive appellate case load in this circuit, I cannot believe that these dispositions would ever attain the quality of legal analysis present in a published opinion. Although the current system is not ideal, I do not believe that the proposed rule would improve federal court practice in this circuit. At best, it would allow litigants to cite memoranda that support their argument; at worst, it would require litigants to master another huge nebulous body of law. At best, it would encourage appellate courts to improve the quality of its memoranda; at worst, it would exacerbate the uneven nature of these memoranda. And there is no question that it would delay the appellate process as appellate courts seek to mitigate the effects of the rule.

In short, any rule allowing memoranda to be cited should be promulgated on a circuit-by-circuit basis. I do not have enough experience in other circuits to know whether such a rule would be beneficial in another circuit. I do know that such a rule would cause serious problems in the Ninth Circuit.

Sincerely,

Davina T. Chen