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To: Rules\_Comments@ao.uscourts.gov  
cc:  
Subject: Opposing Proposed FRAP 32.1

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03-AP-187

Dear Mr. McCabe:

I write to oppose proposed new Rule 32.1, which would require courts to permit the citation of "unpublished Memorandum Dispositions." As a former Ninth Circuit law clerk, I strongly feel that this would pose a significant burden on clerks and judges to spend scarce judicial resources on actual drafting and negotiation of memorandum dispositions. Memorandum dispositions are designed to concisely and quickly deliver a decision to litigants in a particular case. In many instances, the discussion of the facts and procedural posture is omitted from the disposition because the Court presumes that the parties and their counsel are familiar with this background information.

Furthermore, as a practitioner, I believe that it may be more burdensome to conduct extra legal research and to make sense of often ambiguous and often misleading dispositions. Furthermore, practitioners could not, based on their ethical duties as a lawyer, ignore these decisions and lawyers would still be obliged to afford them significant weight in practicing before circuit courts.

Finally, it is my understanding that memorandum dispositions are often written by staff with little editorial control from the judges over the actual wording. Allowing a citation to such a disposition may lead to misleading and bad precedent.

I hope you will reconsider the adoption of proposed new rule 32.1.

Sincerely,

Justin Farar

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