



Nobody  
<nobody@uscbgov.ao.  
dcn>

To: Rules\_Support@ao.uscourts.gov  
cc:  
Subject: Submission from <http://www.uscourts.gov/rules/submit.html>

01/29/2004 05:24 PM

RECEIVED  
1/30/04

03-AP-215

Salutation: Mr.  
First: Michael  
MI:  
Last: Bergfeld  
Org:  
MailingAddress1: 230 S. Orchard Drive  
MailingAddress2:  
City: Burbank  
State: California  
ZIP: 91506  
EmailAddress: Barrister88@aol.com  
Phone:  
Fax:  
Appellate: Yes  
Comments:

Ladies and Gentlemen:

I oppose the adoption of proposed Rule 32.1 for the following reasons:

a. Rule 32.1 apparently permits citation of all unpublished opinions, state or federal. Consequently, the proposed rule change affects each appellate court of each state and federal circuit, requiring each justice to fundamentally change the opinion writing process, as discussed below. Moreover, given the large number of cases involving state law applied in the federal courts, state law jurisprudence could be adversely affected by the use of opinions that the state deems non-citable and non-precedential.

b. Proposed Rule 32.1 will be extremely costly, at a time of severe budgetary constraints. The drafting of appellate opinions will become much more time-consuming as justices and their staff spend more time laboring over all opinions to assure that each is suitable for citation. The private sector will likewise be forced to cope with additional costs arising from the added research burden imposed by Rule 32.1.

c. Apart from its tremendous costs, 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 many routine cases that raise only issues that are governed by settled legal principles. Delays in the processing of appeals will become common as courts struggle under the burdens imposed by Rule 32.1. To counter the time constraints, judges and justices may not write opinions at all to the detriment of the parties, the public and, ultimately, the courts themselves.

In many Federal Circuits, the courts are not required to write opinions at all. Rather, a single word "affirmed" or even "reversed" is sufficient. In California, the constitution requires an opinion. However, that opinion can be a short, memorandum decision. The single word or memorandum decision provides no guidance to the parties of the grounds for the decision, leaving the parties with no bases to demonstrate that rehearing or higher review is proper.

In addition, summary dispositions and memorandum decisions do not inspire confidence that justice is done. Speaking of the California constitutional requirement for a written decision, "Undoubtedly [the requirement of a written opinion] will insure a careful examination of the cases, and result in well considered opinions, because they must come before the jurists of the country and be subjected to the severest criticism... . It tends to purity and honesty in the administration of justice."<sup>2</sup> Willis & Stockton, Debates and Proceedings of the Constitutional Convention of the State of California (1880) at p. 951, col. 1, quoted in Chief Justice Lucas' dissent in Powers v. City of Richmond (1995) 10 Cal. 4th 85, 142.

I respectfully urge the Committee on Rules of Practice and Procedure to reject the proposed Rule 32.1.

Michael Bergfeld

submit2: Submit Comment

---

HTTP Referer: <http://www.uscourts.gov/rules/submit.html>  
HTTP User Agent: Mozilla/4.0 (compatible; MSIE 6.0; Windows 98; YPC 3.0.1)  
Remote Host:  
Remote Address: 10.213.201.7

---