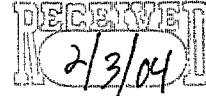




Nobody
<nobody@uscbgov.ao.
dcn>

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

02/03/2004 02:58 PM



Salutation:
First: James
MI:
Last: Stern
Org:
MailingAddress1:
MailingAddress2:
City:
State: default
ZIP:
EmailAddress: Jim@jsternesq.com
Phone:
Fax:
CivilRules: Yes
CriminalRule: Yes
Comments:

03-AP-260

I am writing in opposition to an amendment to FRAP 32.1 allowing the citation of unpublished dispositions in all federal courts. Aside from the problems of confusion regarding the precedent and persuasive value, unpublished decisions tilt the balance of justice far toward the resourced advocates' side. Many a time I have had counsel from the largest law firms and the most organized and zealous prosecutors' offices reach into their secret vaults and add unpublished decisions to memorandums of law. What chance does a small plaintiff or criminal defendant have when the large and powerful can reach into a professionally managed library of unpublished decision from which only the large and the powerful may reap? How would the unresourced guy be able to show that even though the resourced guy has 1 unpublished decision which sort of fits his position, the other 98% are against his position? The answer will always be - "he can't". The big and powerful can create the false impression of precedent and gravitas out of the thin air of unpublished decisions when they serve his purpose without fear of much opposition from those without large archives to draw from rebutting the illusion. Furthermore, though judges might catch every time that a clerk hired for a year or two after law school made the error of over-relying on an unpublished decision, the potential for overworked judges and clerks being falsely led astray by seeming precedent is evident.

I assert that allowing the citation of unpublished dispositions in federal courts is a mistake and adversely affect justice. Amending FRAP 32.1 allowing the citation of unpublished dispositions in all federal courts will adversely affect justice in ALL federal courts.

Thank you for the opportunity to contribute.