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ADMITTED TO PRACTICE IN:
CALIFORNIA
DISTRICT OF COLUMBIA
U.S. SUPREME COURT

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ADMITTED TO PRACTICE IN:
U.S. COURT OF APPEALS
• NINTH CIRCUIT
• ELEVENTH CIRCUIT
• DISTRICT OF COLUMBIA CIRCUIT
U.S. DISTRICT COURT
• CENTRAL DISTRICT OF CALIFORNIA
• EASTERN DISTRICT OF CALIFORNIA
• SOUTHERN DISTRICT OF CALIFORNIA
• DISTRICT OF COLUMBIA

03-AP-270

January 29, 2004

Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544

Dear Sirs:

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

Rule 32.1 apparently permits citation of all unpublished opinions, state or federal.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 judge or justice to change his or her opinion writing process in fundamental ways. 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. 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.

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courts, state law jurisprudence could be adversely affected by the use of opinions that the state deems non-citable and non-precedential.

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.

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

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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 .." 2 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,* 10 Cal.4th 85 142, (1995).

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

Yours truly,

Andrew Rubin

AER:as