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03-AP-304

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Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544.
(also sent electronically to www.uscourts.gov/rules/submit.html)

Ladies and Gentlemen:

I am a senior judicial research attorney with the California Court of Appeal, Second District. I write this letter personally, as an attorney involved in appellate law, and not for the court.

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

a. Rule 32.1 is ambiguous. It does not clearly articulate how unpublished opinions from state courts may be treated in the federal court by attorneys or the court.

b. Rule 32.1 apparently permits citation of all unpublished opinions, state or federal. Consequently, the proposed rule affects all appellate courts, federal and state. Given the number of federal cases that involve the application of state law, state law jurisprudence will be adversely affected by the use of opinions the state court deems non-citable and non-precedential.

c. Proposed Rule 32.1 will be extremely costly. Justices and their staff will spend more time crafting all opinions for fear of use by a federal court or those practicing before a federal court. Private practitioners will also be forced to cope with additional costs arising from the added research burden imposed by Rule 32.1.

d. 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 routine cases. Delays in the processing of appeals will become common as courts struggle under the added burdens imposed by Rule 32.1. To counter these time constraints, jurists may decide to write fewer opinions, all to the detriment of the parties, the public and, ultimately, the courts.

e. The California Constitution requires written opinions. However, that opinion can be a short, memorandum decision. The brevity of memorandum decisions provide little guidance to the parties. In addition, memorandum decisions do not inspire confidence that justice is done. More memorandum opinions may be issued if California courts become concerned that all opinions may be used by the federal court or those practicing before the federal court.

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

Very truly,

Marilyn Weiss Alper