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January 28, 2004

Peter G. McCabe
Secretary Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
One Columbus Circle Northeast
Washington, DC 20544
Via Facsimile: 202-502-2755

Re: Proposed Amendment to FRAP 32.1

Dear Mr. McCabe:

I write in opposition to the proposed amendment to Federal Rule of Appellate Procedure 32.1. As someone with an extensive civil trial practice, the ability to efficiently research and accurately determine the state of precedent in a particular area is critical. My practice is to rely only on published opinions with settled precedential value. In recent years, though, there has been a creeping trend towards litigants attempting to influence courts with unpublished decisions that seem similar to the case presented. Such unpublished decisions pose a pernicious problem for the advocate opposing a motion or brief citing such an opinion. Does one object and thereby draw more attention to the unpublished opinion, or try and find our own countervailing unpublished opinion?

There are good reasons why many trial court and appellate opinions are not published, generally relating to the specific facts of those cases. The law has always developed through precedential citation to published opinions. This evolution assures the ability to have confidence in one's citations to the Court.

In summary, I would encourage the Committee to reject the proposed amendment. Adoption of this amendment will open the floodgates to citation of unpublished appellate decisions and likely even trial court rulings, and greatly complicate the work of zealous advocates while adding little to the development of the law.

Sincerely,

C. BROOKS CUTTER

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