Law Offices
FORGEY & HURRELL LLP
1000 WILSHIRE BOULEVARD • SUITE 1740 • LOS ANGELES, CALIFORNIA 90017-2457
TELEPHONE (213) 426-2000 • FACSIMILE (213) 426-2020

DARRELL A. FORGEY
THOMAS C. HURRELL
LISA MARTINELLI
LISA D. COLLINSON
CHRISTOPHER P. WEND
MELINDA HEDIN
MARK W. LAU
JON M. STEINER
JILL A. BENJAMIN
GUY MIZRAHI
KAREN M. FIRSTENBERG
MAI-ANH NGUYEN
TRACY COSTANTINO
SEANA B. THOMAS

OF COUNSEL
WALLACE C. REED

January 16, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice
and Procedure
Administrative Office of the U.S. Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

RE: Proposed Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

The potential adoption of proposed Rule 32.1 has recently been brought to my attention and I write to oppose such action. As a practicing California attorney and former extern to the Honorable Kim M. Wardlaw of the United States Court of Appeals for the Ninth Circuit, I am able to evaluate the rule from both the perspective of an advocate attempting to persuade the Court, and from that of a member of chambers who helped the Court render its final decision. From both viewpoints, I see no benefit to the adoption of Rule 32.1.

During my externship in the Ninth Circuit, I assisted a team of clerks who took part in facilitating the elaborate decision making process for Judge Wardlaw. My experience in Judge Wardlaw's chambers exposed me to the extensive Ninth Circuit caseload and I witnessed how much hard work, effort, and dedication is required to expeditiously resolve each matter. Because of the limited judicial resources, judges and their clerks literally work around the clock to successfully manage their caseload.

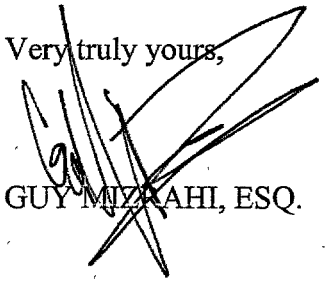
Matters for publication require special attention involving countless hours of research, drafting, editing, and revising as they often address issues of first impression and contribute to the development of the law. Other matters, however, consist of routine appeals where the law is clear and the judges are able to forego the unavailable hours of debate, scrutinization, and review knowing that they can deliver a quick, unciteable, and meaningful decision to the litigants of a particular case. There is simply not enough time and resources for the judges to invest in analyzing non-precedential decisions and render meaningful dispositions.

From the litigants' perspective, the unciteable dispositions are also beneficial. First, the memoranda dispositions do not regurgitate the facts and procedural posture which the parties are

familiar with. The judges are therefore able to spend their time on providing the parties with the reasoning behind their decision as the memoranda dispositions are often several pages long. If the unpublished dispositions become citeable, given their tremendous caseload, judges will be forced to issue one line decisions that leave the litigants oblivious to the Court's rationale. Furthermore, the published one line dispositions will eventually cloud the law as both attorneys and lower courts will inevitably cite them out of context. Finally, since the judges will be forced to spend more time preparing their decisions, the publication of all dispositions would substantially delay the resolution of each case resulting in an even longer waiting period for litigants.

While Rule 32.1 may be intended to facilitate federal practice, its effect will impose an additional burden on the already overloaded federal judiciary, force lawyers and lower courts to rely on misleading dispositions, and delay the resolution of matters. Please reconsider the adoption of proposed Rule 32.1.

Very truly yours,



GUY MIZRAHI, ESQ.