



United States Court of Appeals  
for the Ninth Circuit  
U.S. COURTHOUSE  
501 I STREET, 13<sup>TH</sup> FLOOR  
SACRAMENTO, CALIFORNIA 95814

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03-AP-318

Chambers of  
**CONSUELO M. CALLAHAN**  
UNITED STATES CIRCUIT JUDGE

(916) 930-4160

February 10, 2004

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

Re: Proposed FRAP 32.1

Dear Mr. McCabe:

As a judge on the Ninth Circuit, I wish to comment on the proposed revision of FRAP 32.1. Because many of my colleagues have eloquently stated views in opposition which I share, I will be brief in my comments. The comments I make derive from my experience on both the state and federal appellate courts.

The intermediate courts of appeal must process a back-breaking caseload. To effectively administer justice, cases must be processed in a timely fashion. Enough time must be spent on each case to ensure that bottom line is correct. Accuracy and correctness can never be sacrificed. That being said, many cases are fact specific and make no real contribution to the law. In order to appropriately manage our caseload, we must be able to dispose of these cases in memdispos. Memdispos resolve a particular case and are not written with the same attention as published opinions.

Judges are very conscientious about publishing cases that will be useful to the legal community. This often involves selecting a case with appropriate facts. There are also mechanisms in both the state and federal systems that allow attorneys to

Peter G. McCabe, President

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request publication on issues that would be helpful to the legal community. This procedure has worked well in the past, and I see no reason to alter the way we do business.

As pointed out by my colleagues, the proposed rule change would greatly expand the number of cases that both judges and lawyers would be required to research. The present task of proper researching is overwhelming; expanding the research field will only increase the difficulty level.

In conclusion, on balance, I am convinced that any benefits of the rule change would be outweighed by the detriments to both judges and lawyers. Thank you for considering my views.

Sincerely,



Consuelo M. Callahan  
United States Circuit Judge