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To: "Rules_Comments@ao.uscourts.gov."
<Rules_Comments@ao.uscourts.gov>
cc: "Judge_Browning@ca9.uscourts.gov"
<Judge_Browning@ca9.uscourts.gov>
Subject: Proposed FRAP 32.1



03-AP-331

I am a partner in the law firm Sidley Austin Brown & Wood, LLP in Los Angeles, and a former law clerk to the Honorable James R. Browning of the United States Court of Appeals for the Ninth Circuit. My principal area of specialty is civil appeals and writs in the California state and federal appellate courts. I oppose the adoption of FRAP 32.1. The reasons for my opposition are set forth fully and articulately in the letters already submitted to this Committee by, among others, Ninth Circuit Judges Browning and Kozinski. Without repeating the arguments made in those letters, I wish to emphasize to the Committee based on my recent appellate practice experience that even the prospect of the adoption of proposed FRAP 32.1 already appears to be causing some Circuit Judges to replace unpublished memorandum dispositions that provide the parties brief but clear explanations of the reasons for the Circuit Court's decisions with one-paragraph or one-sentence orders that announce results with no explanation whatsoever of the Court's reasoning. Such result-only orders make it impossible for the parties to evaluate meaningfully whether there is a legitimate basis to seek rehearing from the Circuit Court or file a petition for certiorari in the United States Supreme Court. Moreover, where the result announced by the Circuit Court contemplates or permits additional proceedings in the trial court, result-only orders make it impossible for the parties to determine what impact the Circuit Court's decision should have on such future proceedings and/or on any prospects for settlement. Thus, although the proposed rule ostensibly is designed to give parties in future cases the marginal advantage of being able to rely on legal guidance provided by an unpublished memorandum disposition, in fact it would have the opposite and perverse effect of depriving the parties directly affected by the disposition of legal guidance that may be critical to their ultimate ability to resolve their disputes properly and efficiently.

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Sidley Austin Brown & Wood LLP mail server made the following annotations on 02/11/2004,
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