BRUCE M. RAMER
132 SOUTH RODEO DRIVE
BEVERLY HILLS, CALIFORNIA 90212-2403

03-AP-365

February 3, 2004

Via First Class Mail

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

Proposed FRAP Rule 32.1

Dear Mr. McCabe:

I am a California attorney and partner in the Beverly Hills law firm of Gang, Tyre, Ramer & Brown. I am admitted to practice before the Court of Appeals for the Ninth Circuit. I write to oppose adoption of proposed Rule 32.1 of the Federal Rules of Appellate Procedure. Briefly stated, not necessarily in order of priority, are my reasons:

1. The workload of the Court of Appeals does not permit, as a practical matter, every determination or decision to be the subject of a full-blown opinion suitable for citation or precedential value.

   Published opinions, which are citable and intended to inform and serve as precedent, require a great deal of time, thought and attention in the decision-making process, the statement of the facts, the drafting of the opinion and the internal review process.

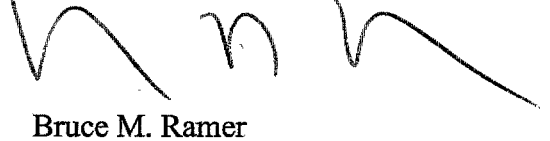
2. In the Ninth Circuit, I think most practitioners would agree that published opinions are thoughtful, detailed and designed to provide guidance beyond the case at hand. That is certainly true in my area of practice, which covers contract and copyright law, entertainment law, publicity/privacy, and defamation. I'm confident that at the present time there are numerous cases on appeal in these areas that are routine, and are suitable for disposition via unpublished opinions. For example, why would the Court write a published opinion to reflect a settled rule of law already well-known to Bench and Bar? The practical advantage of this approach is specific appellate review, a benefit to all parties.

3. If unpublished decisions are citable (or, worse, citable with any precedential value and if none, why cite them at all?), it will also impose a burden on lawyers, who will be required to go through a myriad of cases unnecessarily. Among other things, this will likely increase the cost to many clients who cannot easily afford it. Some lawyers may also dig deeply through unpublished decisions to find cases which could be cited for almost any proposition. Worse yet, it may be subject to abuse, as lawyers take liberties with truncated facts and miscite or misapply unpublished opinions.

4. I know of no reason why this matter needs to be subject to a national rule. Conditions in each circuit are different and local practices differ under local rules. To the extent, if any, differing rules in different circuits make it slightly more difficult for attorneys from a foreign jurisdiction to appear before the courts is not a reason to impose burdens upon the individual circuits. The benefit to the out-of-state lawyer (who will likely have local counsel any way) is far outweighed by the burden imposed upon the Courts of Appeal Surely each circuit can make its own determination here.

My thanks to you and the Committee for considering this letter.

Respectfully,



Bruce M. Ramer