

**FEDERAL PUBLIC DEFENDER**  
District of Hawaii

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03-AP-377

**By Fax: (202) 502-1755**

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 Revision to FRAP 32.1**

To the Committee:

I am writing to oppose the adoption of proposed new Rule 32.1, Federal Rules of Appellate Procedure. As I understand it, Rule 32.1 would require all of the Circuit Courts of Appeal, including the Ninth Circuit, to permit citation to unpublished decisions. I am the Federal Public Defender for the District of Hawaii. Prior to my appointment as Federal Public Defender in 1996, I was a partner in a private law firm for 18 years.

A significant objection to the new rule is that it will burden and disadvantage CJA appointed counsel, who are often sole practitioners. Over the years, the Ninth Circuit alone has issued thousands of unpublished opinions. Competent counsel would be expected to research and analyze those opinions in order to provide effective representation to their clients. This would necessarily require CJA appointed counsel to outlay the costs of electronic research and to expend significantly increased time in carrying out their duties. In turn, the CJA fund would be required to reimburse appointed counsel for those fees and costs. Defense counsel would not have an option to engage in this additional research because there is no doubt that Assistant United States Attorneys would be citing to unpublished opinions.

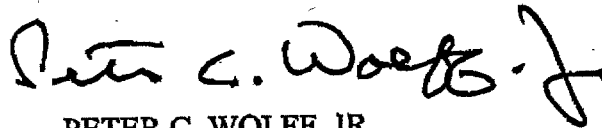
There is another reason, though, why the proposed rule is a bad idea. Any experienced lawyer knows that there are reasons why particular opinions are not designated for publication. Such decisions are generally not as comprehensive in their review of the salient facts nor as exacting in their analysis of the applicable precedents. These unpublished decisions, however, do give the parties a reasoned explanation of the outcome of the appeal. If these decisions are suddenly elevated to precedential status, one possibility is that the Courts of Appeal will respond by reducing the scope of such dispositions even further. This which would be a disservice to the parties. Another possibility is that the Judges of the Courts of Appeal will have to dilute their efforts in order to give such cases more time. This would be a disservice to work of the Courts of Appeal.

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I urge you to reject the new rule. Each of the Courts of Appeal should be allowed to adopt the rule for itself which it finds to be most appropriate.

Very truly yours,



PETER C. WOLFF, JR.  
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