United States Court of Appeals
For the Ninth Circuit
312 North Spring Street
Los Angeles, California 90012

RECEIVED
2/17/04

03-AP-402

Stephen Reinhardt
United States Circuit Judge

February 9, 2004

Mr. 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 Rule 32.1 Amending
Federal Rules of Appellate Procedure

Dear Mr. McCabe:

Having seen many of my colleagues' letters in opposition to the proposed new Rule 32.1 of the Federal Rules of Appellate Procedure, there is no need for me to reiterate their arguments, with almost all of which I am in complete agreement. I do want to add, however, in response to Judge Tashima's letter to you, that by my count, approximately thirty of our active and senior judges have written in opposition to the rule, which clearly demonstrates that a majority of our judges strongly oppose its adoption. In fact, contrary to Judge Tashima's statement, there is "overwhelming" opposition among our judges. (Although we have twenty-two senior judges and twenty-six active judges, some of the seniors are not as interested in this type of issue before us as others). Moreover, it is my understanding that, in addition to the thirty or so judges who have already written in opposition, there are another five or ten who plan on doing so. I am aware of no judges other than Judge Tashima who have written in support or intend to do so, although it is always possible that there are a few of whom I am unaware who have so written or intend to so write. I would also suggest to you that Judge Tashima's estimate as to the sentiment among the lawyers is as incorrect as his information regarding the views of the judges. Judge Tashima's vigorous

advocacy of a similar rule in his role as a member of our Local Rules Committee may be responsible for his failure to understand the extent to which both our judges and our lawyers oppose the present controversy. The court has, incidentally, voted a number of times on the question of retaining our non-citation rule, and has consistently rejected Judge Tashima's position as well as any effort to make significant changes to our rule, although we did adopt an experiment permitting lawyers to cite conflicts in petitions for rehearing (an experiment which has, incidentally, demonstrated that conflicts rarely, if ever, exist).

In view of the above, I trust that the committee will understand that if it decides against the right of individual circuits to establish their own rules regarding how their dispositions are to be treated, it will be imposing its new rule over the vigorous opposition of the overwhelming majority of Ninth Circuit judges – the judges most familiar with the practical problems we face as a result of the near-impossible caseload that confronts us. The problems we face are unique, by the way, in part because we hear over half of the immigration cases brought in this country, and there is currently an absolute flood of such proceedings as a result of drastic changes recently made in the administrative processing of such matters. It is for this as well as other reasons that we believe that a uniform national rule compelling us to allow citations to all of our dispositions published or otherwise makes little sense.

Sincerely,

Stephen Reinhardt

SR:kbk