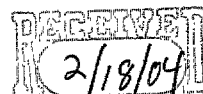




LAURENCE D. KAY
PRESIDING JUSTICE

STATE OF CALIFORNIA
Court of Appeal

FIRST APPELLATE DISTRICT
DIVISION FOUR
350 McALLISTER STREET
SAN FRANCISCO, CA 94102-4712



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February 18, 2004

03-AP-404

Mr. Peter McCabe
Advisory Committee on Federal Appellate Rules
Federal Judiciary Building
Washington, DC 20544
(Via Facsimile (202) 502-1755)

Re: FRAP 32.1

Dear Mr. McCabe,

I am a member of the California Judicial Council. The Council has on more than one occasion successfully opposed the adoption in California of a rule or statute that would permit the citation of cases unpublished and unintended as precedent. The fact is that such cases necessarily get less attention than those intended to establish legal principles for posterity. One mining the thousands of unpublished opinions could probably find support for nearly any position. The adoption of a conflicting citation rule for federal appellate courts could, it seems to me, lead to confusion in the many cases in which the Ninth Circuit is called upon to interpret state law. If those cases were decided, even in part, on precedent that is not citable in state court, then is it not more likely that state and federal courts might more frequently come to disparate conclusions?

Very truly yours,

A handwritten signature in cursive script that reads "Laurence D. Kay".

Laurence D. Kay
Presiding Justice
First District Court of Appeal, Division Four