



03-AP-437

February 9, 2004

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

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RE: Proposed F.R.A.P. 32.1

Dear Mr. McCabe,

As a former staff attorney for the Ninth Circuit Court of Appeals, and current law school instructor, I write in strong opposition to your effort to promulgate a national rule regarding what is or is not binding legal authority in each circuit.

During my five years working at the Ninth Circuit, I became very well acquainted with the enormous volume of appeals having little or no factual differentiation, little or no legal merit, and requiring little or no legal research, which accounts for at least 50% of the federal court's caseload. It is only through the use of non-binding, "unpublished" decisions that the Court can possibly keep up with its workload and so, get back to the litigants with a timely, short and reasoned written explanation of the result in each case.

If these "unpublished" memoranda are given precedential status, every practicing attorney will feel compelled to cite them all in briefs. The confusion and redundancy this would cause cannot be overstated. It is likely that overworked and understaffed courts will respond to the resulting citation by affirming more cases without an opinion (AWOP). As of now, we are more or less free of this in the Ninth Circuit.

Moreover, as someone who teaches a legal research and writing course, I have grave concerns that this proposed change would literally wreak havoc with the Ninth Circuit's coherent body of caselaw. Attorneys would be bogged down in a frivolous process of attempting to locate and differentiate between cases with only slight factual distinctions. Attorneys (and law students who work for them!) would be forced to bill clients for this tedious and time-consuming process. This could make the cost of securing legal representation prohibitive. I urge you to let the circuits sort this out for themselves.

Sincerely,


Patricia Plunkett, Esq.