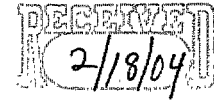


03-AP-461



Katina_Whalen@fd.org

02/18/2004 11:25 AM

To: Rules_Comments@ao.uscourts.gov

cc: Dennis_Waks@fd.org

Subject: Re: Proposed Federal Rules of Appellate Procedure 32.1

I would like to express my opposition to a new Federal Rule of Appellate Procedure, Rule 32.1, which would allow parties to cite the unpublished decisions of Courts of Appeal. The proposed Rule 32.1 would significantly burden practitioners in many Circuits that currently prohibit the citation of unpublished dispositions as precedent. Far from easing practice, the proposed rule would make legal research substantially more burdensome, force lower courts and attorneys to rely on ambiguous and often misleading dispositions and delay the ultimate disposition of cases. Furthermore, this rule would inevitably require unpublished dispositions to be treated as a significant source of authority. District Courts within the same Circuit would likely treat unpublished opinions as controlling. Unpublished dispositions would also muddy the law and burden it's practice. By expanding the universe of what can be cited would significantly expand the expensive legal research. As most people know, little if any of these unpublished cases would provide any relevant source of new authority because courts do not rely upon unpublished opinions to articulate new legal principles.

Finally, proposed Rule 32.1 would either delay the resolution of cases or increase the prevalence of summary affirmances. The use of local rules, as is the current practice, is less burdensome and more justified in this context; this matter should be decided locally. See Fairness and Precedent 110 Yale Law Review 1295 (2001).

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