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Writer's Information:

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03-AP-483

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 Fed. R. App. P 32.1

Dear Mr. McCabe:

I write to express my opposition to the proposed amendment to Federal Rule of Appellate Procedure 32.1. My experience as a Ninth Circuit clerk (to Judge James R. Browning in 1985) made me recognize the importance of the memorandum disposition as a time-saving device for routine cases involving settled law. Such decisions are written simply to decide the case at hand, to correct error and to apply existing law to those particular facts. They are not designed to contribute to the growth or evolution of the law and contain minimal factual and legal analysis. They give the parties a general understanding of the panel's reason for its decision without requiring the extensive judicial effort involved in preparing published opinions. With the heavy burden on appellate judges today, in my view it is critical to conserve judicial resources for cases raising unsettled legal issues or involving unique facts.

If the proposed rule were enacted, judges would likely choose one of two equally undesirable alternatives. They would spend significantly more time writing lengthier opinions in routine cases, adding to the significant backlog of most circuits. Alternatively, judges would shorten unpublished dispositions to judgment orders, both to save time and to curtail potentially erroneous interpretation of memorandum dispositions. If either development occurred, both the courts and litigants would suffer. I urge the Committee to decline to adopt the proposed amendment.

Sincerely,

Barbara Winters
by TLD

Barbara A. Winters