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11 December 2003

03-AP-037

Via Facsimile (202) 502-1755  
and First Class Mail

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: Proposal to Change the Federal Rules to  
Allow the Citation of Unpublished Opinions

Dear Mr. McCabe:

I have been informed that there is a proposal under consideration by your office to change the federal rules to allow the citation of unpublished opinions.

I would like to voice my strong opposition to that proposal.

I know that unpublished opinions of the 9th Circuit Court of Appeals, for example, are not given the same careful attention as that given to published opinions. They are called "memdispos" (Memorandum Dispositions) because they arise from cases thought by the Staff to present no novel issues, and are drafted by the Staff alone, usually on one or two pages.

If they are allowed to be cited, their consideration, distinction, and refutation will add immensely to the tasks of attorneys, Clerks, and Judges, who are already burdened by having to review a huge database of authority.

Even worse, while federal Court of Appeals judges can disregard them as "unpublished," the District Courts, Magistrates, and Bankruptcy courts may take a reverential view of them since they are signed by three Circuit Court judges.

Although most of my practice is in California state courts, the California *Rules of Court*, which do not allow the citation of unpublished cases, will be undermined by any such change in the Federal Rules.

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Page 2

In summary, it is my opinion that the adoption of this proposed rule would needlessly and expensively enlarge my work for clients, while not bringing to the attention of the courts any thoughtful precedents.

Yours very truly,



Christopher Hays

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xc: Hon. Carlos T. Bea, 9th Circuit Court of Appeals