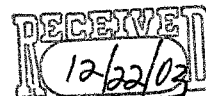


UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

P.O. BOX 193939

SAN FRANCISCO, CALIFORNIA 94119-3939



December 16, 2003

03-AP-
052

CHAMBERS OF
JOHN T. NOONAN, JR.
UNITED STATES CIRCUIT JUDGE
(415) 556-9636
FAX (415) 556-9626

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

Re: Proposed FRAP 32.1

Dear Mr. McCabe:

The Committee on Rules of Practice and Procedure has proposed a new rule on the citation of judicial dispositions. The rule is clear. The Committee's arguments for adopting it are thoughtfully marshaled and cogently expressed. Nonetheless, in my opinion the rule is a classic case of fixing what is not broken.

Here are my reasons:

1. The increase in citable dispositions will be enormous, given that 80% of all dispositions are now not citable. Lawyers in federal practice have available far more authorities to cite than lawyers in any other country or in any other time in history. We don't need to add to the authorities in which we are awash.
2. Facts drive cases. It doesn't help to add authorities. It's a waste of time and paper for a litigator in the Ninth Circuit to add a "persuasive" cite from the Southern District of Florida or the Middle District of Pennsylvania. The same would be true of nonbinding cites from the circuit itself.
3. The judges don't have the time to convert memdispos into opinions. The rule will not encourage better-drafted memdispos.
4. The new rule will encourage one-line affirmances or reversals. Such dispositions are helpful to no one.

5. The paradoxical truth is that most all dispositions are only “persuasive.” A good lawyer can always find a distinction. Once cited, a memdispo has the potential of affecting the result, so, if citable, it will be cited, glossed, expanded – and distinguished by opposing counsel. More work will be created for lawyers, judges, and law clerks. Little benefit will be bestowed on the clients.

With best regards,

A handwritten signature in cursive script that reads "John T. Noonan, Jr." The signature is written in dark ink and is centered on the page.

John T. Noonan, Jr.
United States Circuit Judge