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UNITED STATES COURT OF APPEALS  
NINTH CIRCUIT  
7TH AT MISSION STREET  
POST OFFICE BOX 193939  
SAN FRANCISCO, CALIFORNIA 94119-3939

03-AP-076

JAMES R. BROWNING  
CIRCUIT JUDGE

December 18, 2003

Peter G. McCabe, Secretary  
Committees on Rules of Practice and Procedure  
Administrative Office of the U.S. Courts  
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my opposition to the proposed amendment to Federal Rule of Appellate Procedure 32.1, which would permit citation of unpublished dispositions for their persuasive value.

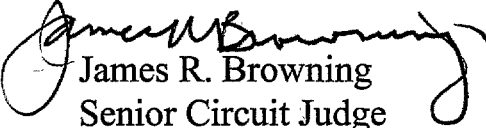
A memorandum disposition is a time-saving device, used for routine cases involving settled law. Such a decision is not written to contribute to the growth or evolution of the law. It is written to decide the case at hand; to correct error; to apply the existing law of the circuit to the facts of a particular case. It contains minimal factual and legal analysis, and is intended to give the parties a general understanding of the panel's reasons for its decision. With the time saved, judges can devote their resources to preparing published opinions for cases raising unique issues of fact or law.

The proposed rule would allow parties to cite to memorandum dispositions. Due to their brevity, memorandum dispositions are ill-suited for citation and are likely to be misconstrued by both courts and practitioners. To avoid such confusion, judges will likely choose one of two equally undesirable alternatives. They will spend significantly more time writing lengthier opinions in routine cases, adding to the significant backlog of most circuits. Alternatively, judges will shorten unpublished dispositions to judgment orders, both to save time and to

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curtail potentially erroneous interpretation of memorandum dispositions. If either development occurs, both the courts and litigants will suffer. For these reasons, I urge the Committee to decline to adopt the proposed amendment.

Sincerely,

  
James R. Browning  
Senior Circuit Judge