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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 FRAP 32.1

Dear Mr. McCabe:

I write this letter to express my opposition to proposed Federal Rule of Appellate Procedure 32.1 and to discourage the Committee from submitting the proposed amendment for approval by the Standing Committee.

My background is as follows. I am the president of a small business based in California and Arizona with customers and vendors throughout North America. Previously, I practiced labor and employment law for a medium sized law firm in Southern California. During this time I worked on litigation matters in both state and federal court, including matters on appeal to the Ninth Circuit Court of Appeals. My California State Bar number is 167251.

I believe proposed FRAP 32.1 would not do a bit of good. The section of your website (uscourts.gov) entitled Federal Rulemaking sets forth the Authority and purpose for making rules and changes to those rules. According to this, changes and additions to the rules are to promote: (1) simplicity in procedure; (2) fairness in administration; (3) just determination of litigation; and (4) elimination of unjustifiable expense and delay. The proposed rule would accomplish none of these.

First, allowing litigants to cite unpublished opinions and memorandums of disposition does nothing to make the appellate procedure more simple. How could it? To the contrary, it would seem to me it would only complicate matters and make it more burdensome if attorneys (which businesses like mine have to pay when faced with litigation) have to research every word ever written by judges and their law clerks.

Second, fairness in administration would be diminished not enhanced. Likely only those who could afford to pay for hours and costly hours of legal work would benefit from such a rule that expands the horizon of citable material in legal briefs.

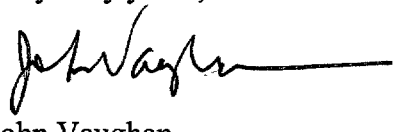
Third, the just determination of litigation is not fostered by the rule. Just determination should be based on application of the facts to the codified laws and the published case law which has interpreted the laws. Published cases put us all on notice as to the state of

the law, while unpublished opinions are for the benefit of the specific parties involved in that litigation. This rule, if imposed, would likely drive the courts of appeal to simply "Affirm" or "Reverse" which makes it hard to explain the outcome to a client that has just paid you more than they think they should have.

Fourth, unjustifiable expense and delay would not be eliminated or lessened by this proposed rule. Paying attorneys to research and argue the thousands of unpublished opinions would increase the expense of litigation. And for those Judges who decide to write unpublished opinions (rather than simply affirming or reversing in a word), they would certainly spend more time on what they write. More time means more delay, more congestion, more dissatisfaction with our courts and lawyers.

Based on my experience as a litigator and my perspective as a client of attorneys, I strongly urge the Committee to do away with proposed FRAP 32.1. Like the saying goes, "less is more, and more is less."

Very truly yours,



John Vaughan
President & CEO