

RECEIVED
1/16/04

FEDERAL DEFENDERS OF EASTERN WASHINGTON AND IDAHO

ROGER J. PEVEN
EXECUTIVE DIRECTOR

BOISE OFFICE
350 NORTH NINTH STREET, SUITE 301
BOISE, IDAHO 83702
(208) 388-1600
FAX (208) 388-1757

S. RICHARD RUBIN
BRANCH CHIEF

03-AP-124

January 6, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
1 Columbus Circle, N.E.
Washington, D.C. 20544

RE: FRAP 32.1

Dear Mr. McCabe:

I am the supervising attorney of the Boise office of the Federal Defenders of Eastern Washington and Idaho. The views that I express in this letter are personal and are not the views of organization.

I have been in practice for close to 35 years now, the last ten of which has been with this Community Defender program. I have not at any time felt that the Ninth Circuit rule against allowing citation to unpublished opinions has in any way effected the rights of the individuals whom we represent. My understanding has always been that all cases that are decided by the appellate courts do not receive the same equal level of judicial scrutiny and that the opinions that are published are generally scrutinized more carefully. Appellate judges, like everyone else, are limited somewhat by the amount of time that they can spend on each and every case. Handling cases as being published or unpublished simply allows them to spend more time on those that are published and thus have a greater impact on the evolution of the law.

I think that the attorneys' time is also a factor. In many appointed cases it is difficult for attorneys that do not have the same resources as the Federal Defender programs to be able to allocate the time and resources to examine more cases than they already do. As an all too common consequence, if the rule is changed clients who are better able to afford longer hours for attorneys to research the unpublished citations will receive a different level of service from their lawyer. As of now, we are all similarly situated. There is barely adequate time and resources for us to examine all of the published cases but all of us recognize that the decision in the case will rest upon the important and published cases for the principles of law that will decide a particular case. If there is a rule change the unintended consequence would be that only those with superior resources would be able to find unknown and unfamiliar holdings of those cases that are not published.

SPOKANE OFFICE
10 North Post, Suite 700
Spokane, Washington 99201
(509) 624-7606
Fax (509) 747-3539

YAKIMA BRANCH
306 East Chestnut Avenue
Yakima, WA 98901
(509) 248-8920
Fax (509) 248-9118

MOSCOW BRANCH
201 North Main Street
Moscow, Idaho 83843
(208) 883-0180
Fax (208) 883-1472

POCATELLO BRANCH
801 East Sherman, Suite 177
Pocatello, Idaho 83201
(208) 478-4155
Fax (208) 478-1255

FEDERAL DEFENDERS OF EASTERN WASHINGTON AND IDAHO
LAW OFFICES

Frankly, I believe that the end result of allowing the unpublished cases to be cited would be that the court would give shorter shrift to those unpublished cases, giving little or no reason for the decision or the logic behind the reasoning. At present the respective attorney can certainly search out the reasoning in the unpublished cases but simply not cite that reasoning as support for his or her position. Realistically these unpublished cases are not the cases that are going to provide the cogent thought process which will be decisive of a legal principle anyway.

As I indicated this is not necessarily the opinion of my organization as I am sure that all of the lawyers would have differing views. However, my views are based upon the years that I have spent in practice, both in private practice and as a federal public defender.

Thank you for your kind consideration.

Cordially,



Samuel Richard Rubin

\kab

SPOKANE OFFICE
10 North Post, Suite 700
Spokane, Washington 99201
(509) 624-7606
Fax (509) 747-3539

YAKIMA BRANCH
306 East Chestnut Avenue
Yakima, WA 98901
(509) 248-8920
Fax (509) 248-9118

MOSCOW BRANCH
201 North Main Street
Moscow, Idaho 83843
(208) 883-0180
Fax (208) 883-1472

POCATELLO BRANCH
801 East Sherman, Suite 177
Pocatello, Idaho 83201
(208) 478-4155
Fax (208) 478-1255