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Nobody
<nobody@uscbgov.ao.dcn>
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To: Rules_Support@ao.uscourts.gov
cc:
Subject: Submission from http://www.uscourts.gov/rules/submit.html

Salutation: Mr.
First: Andrew
MI: K
Last: Nietor
Org: Federal Defenders of San Diego, Inc.
MailingAddress1: 225 Broadway
MailingAddress2: Suite 900
City: San Diego
State: California
ZIP: 92101
EmailAddress: andrew_nietor@fd.org
Phone: (619) 234-8467
Fax: (619) 687-2666
Appellate: Yes
Comments:

I am a defense attorney in San Diego, and represent, exclusively, indigent clients. It is out of concern for this population that I want to express my opposition to the proposed amendment to Fed. R. App. P 32.1, which would allow citation of unpublished opinions as precedent.

Indigent clients have less access to legal counsel, particularly upon the termination of a case in district court. Limited access to counsel, as well as access to such basic resources as texts, treatises and opinions (particularly those unpublished), often means that defendants, particularly pro se habeas petitioners, already face monumental hurdles to conducting adequate research, meeting deadlines and complying with the myriad other procedural rules required of them. The proposed amendment, requiring even more research and additional service requirements, would only place these marginalized defendants further away from the window that seems to be closing faster and faster these days.

There are other practical reasons to oppose the proposed amendment that are relevant to all who practice law in the Ninth Circuit. For instance, there is undoubtedly an analysis conducted by appellate judges as to which cases require more time, energy and resources. The option of providing published or unpublished opinions allows the circuit judges to dedicate the appropriate amount of judicial scrutiny warranted for each case. It makes little sense to take away that ability, particularly given the overwhelming caseload that we see in this Circuit. Furthermore, the proposed amendment would likely cause even more delays in the issuance of opinions; delays that are already excessive in many cases that truly require expeditious resolution.

I appreciate the opportunity to comment on this proposal.