



"Robert Puglia"
<rpuglia@mhalaw.com
>

To: <Rules_Comments@ao.uscourts.gov>
cc: <Judge_Bea@ca9.uscourts.gov>
Subject: Citation of unpublished appellate opinions

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Dear Mr. McCabe, I am informed there is a proposal to change the Federal Rules on Appellate Practice to allow citation in federal appellate courts of unpublished Federal and State appellate opinions. I believe the proposal is ill advised. My opinion is informed by 25 years experience as an intermediate appellate judge of the State of California. California Rules of Court, Rule 977, has prohibited the citation of unpublished opinions since the advent of the unpublished opinion in California. Proposals to change Rule 977 to remove the citation restraint surface periodically. They have all been rejected. Most recently, a committee appointed by the California Chief Justice to recommend changes to appellate procedures, of which I was a member, rejected the latest such proposal. The proposed amendment to the federal rules should likewise be rejected. Easy electronic access to unpublished opinions has driven these recurrent suggestions for change. If everyone can read them, why can they not be cited if they are helpful to counsel? The reason is that every principle of law contained in an unpublished opinion may be found in a published, citable opinion. That is reason enough not to expand exponentially the relevant data base of legal materials at the cost of confusion and expense to the courts and counsel and other consumers of those materials.

Moreover, unpublished opinions are written for a limited audience, the litigants and counsel. Consequently, apposite authorities are not discussed and distinguished with the same attention to nuance and to detail as is true with published opinions. That does not mean that unpublished opinions are ill considered. It only recognizes the reality that most appellate cases do not require new ground to be ploughed, and in those cases the interests of counsel and the litigants are better served by the speedier resolution of the case that an unpublished opinion permits. Thank you for the opportunity to weigh in on this very important issue.

Robert K. Puglia, Presiding Justice, Court of Appeal, Third Appellate District, retired.