THOMAS M. REAVLEY
SENIOR CIRCUIT JUDGE
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UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
903 SAN JACINTO BOULEVARD, SUITE 434
AUSTIN, TEXAS 78701

January 21, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice & Procedure
Administrative Office of the U.S. Courts
One Columbus Circle, NE
Washington, DC 20544

Re: Proposed F.R.A.P. 32.1

Dear Mr. McCabe:

This proposed rule should not be adopted. There is no reason for it and good reasons against it.

Most appeals are controlled by precedent and require only study of the record. The disposition then requires only a demonstration to counsel that the court has compelling reason for its judgment. That demonstration is composed only for counsel and needs no elaboration of the record or extended citation or discussion of precedent. Three judges agree on the order and on the fact that no new revelation or modification of the law is made. Nothing more than a brief per curiam order is required or justified.

It is a mistake to allow encumbrance of books and briefs with those orders in future appeals. It would be a mistake to put lawyers and judges to study the record and background of such orders to discern the reason for their citation and to search for hidden meaning there. If the proposed rule is adopted, that burden will be added on the participants in appeals where these orders have been cited. Or, it would be likely that writing judges, in order to avoid this potential research for future participants, would write at length so as to make the order fully understandable

for posterity. Don't make this mistake for bench and bar.

Sincerely,

Thomas M. Reavley

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