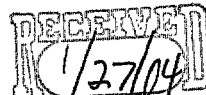


MINTZ LEVIN  
COHN FERRIS  
GLOVSKY AND  
POPEO PC

*Boston*  
*New York*  
*Reston*  
*Washington*  
*New Haven*  
*Los Angeles*

03-AP-186



1620 26<sup>th</sup> Street, Suite 2068N  
Santa Monica, California 90404  
310 586 3200  
310 586 3202 fax  
[www.mintz.com](http://www.mintz.com)

*Harvey I. Saferstein*

*Direct dial 310 586 3203*

January 26, 2004

**VIA FEDERAL EXPRESS**

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 Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

I am writing to oppose proposed Federal Rule of Appellate Procedure 32.1. As an experienced lawyer in the Ninth Circuit, and as the former President of the State Bar of California and a member of the Ninth Circuit Judicial Conference, I have seen our Court and its lawyers debate this question many times. I continue to believe that the current Ninth Circuit Rule is adequate and that the Ninth Circuit is the decision-making body best suited to determine the conduct of business in the Ninth Circuit.

Proposed Federal Rule of Appellate Procedure 32.1 could be harmful in practice—as pointed out by Ninth Circuit Judges Alex Kozinski and Stephan Reinhardt in “Please Don’t Cite This!” (published in the June 2003 edition of California Lawyer). As these two distinguished jurists point out, proposed Rule 32.1 could severely increase the workload of an already overtaxed judiciary.

Sincerely,

Harvey I. Saferstein

HIS/nis