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03-AP-194

January 22, 2004

PETER G. McCABE, Secretary  
Committee on Rule 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 strongly object to Proposed Federal Rule of Appellate Procedure 32.1. As I understand it, this proposed rule would allow for unpublished decisions to be cited as precedent. Such a rule would be a detriment to the fair and efficient administration of justice in the federal courts.

As a former law clerk on the United States Court of Appeals on the Tenth Circuit, I am aware that federal judges do not provide the same level of reasoning for unpublished decisions as they do for published decisions. A judge's decision to not publish an opinion generally reflects the judge's belief that publication is unnecessary because the opinion does not alter the current state of the law. If an opinion that was never intended as precedent is going to be considered as such, there is a tremendous risk that the opinion will be misconstrued or cited for a proposition for which it was never intended to stand. The proposed rule poses this very real danger to the fair administration of justice.

The proposed rule would delay the administration of justice. Knowing that all decisions in the future would have precedential value, judges would be encouraged to fully address even the most trivial issues and arguments, thereby delaying the release of the

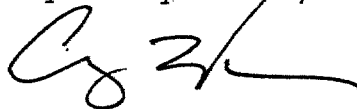
PETER G. McCABE, Secretary  
January 21, 2004  
Page 2

opinion. For the past ten years, I been a Deputy Federal Public Defender representing indigent criminal defendants in federal court. I know from experience the frustration that results from receiving a final decision on the appeal only after the defendant has completed his sentence. If the proposed rule goes into effect, I would expect these types of frustrating situations to occur with even greater frequency.

Finally, in my twelve years of experience as a criminal defense lawyer in federal court, I have never found there to be a shortage of precedent among the published cases. More often than not, I see lawyers relying on cases for legal propositions that were never at issue in the case. Allowing previously unpublished opinions to now be cited as precedent would only exacerbate this problem, creating additional and unnecessary work for all the participants in the process.

Thank you for considering my comments.

Very Truly Yours,



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Deputy Federal Public Defender  
Central District of California  
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cc: MARIA E. STRATTON  
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