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January 22, 2004

03-AP-195

Peter G. McCabe
Secretary of Committee on Rules & Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
fax: (202) 502-1755

Re: Proposed Rule Change To Allow Citation of Unpublished Memorandum
Dispositions

Dear Secretary McCabe:

I am a Deputy Federal Public Defender in the Central District of California and have been with this office for over ten years. I handle matters in the district court and on appeal, I've had the Ninth Circuit issue decisions published and unpublished in my cases, and I've read many unpublished memorandum decisions over the years in doing research. I oppose the idea of allowing the citation of unpublished memorandum opinions.

Unpublished memorandum decisions are not written with the thought that they might be used as precedent. They usually involve routine matters, not novel issues. My guess is that they are generally subject to less comprehensive review and editing by appellate courts. This shows in the finished product. These opinions generally contain fewer facts, which means less material to compare, and less analysis of the issues, which have often already been comprehensively discussed in published opinions. On some occasions, I'm afraid, the conclusions reached in memorandum opinions even seem inconsistent with those in published decisions, or ignore them altogether. More than once, I've felt this frustration in reviewing a decision in a case of mine. I can see considerable confusion arising from a rule change of this kind. Limiting the rule change to citation of unpublished memorandum decisions after a given date would add to the time and cost of doing legal research. At our office, where budgets have been squeezed recently, that

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matters a lot. And, as I've said, the quality and subject matter of unpublished opinions isn't worth the additional time and money that would have to be spent to review them.

Please do not adopt a rule change that would permit the citation of unpublished judicial appellate decisions.

Sincerely,

A handwritten signature in cursive script that reads "Myra Sun". The signature is written in black ink and is positioned above the printed name and title.

Myra Sun
Deputy Federal Public Defender