



Nobody
<nobody@uscbgov.ao.
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Salutation: Mr.
First: Arlus
MI: J.
Last: Stephens
Org:
MailingAddress1: 1701 K Street, NW
MailingAddress2: Suite 210
City: Washington
State: District_of_Columbia
ZIP: 20006
EmailAddress: astephens@dcbwash.com
Phone: 202-223-8667
Fax:
Appellate: Yes
Comments:

Please accept this comment opposing proposed FRAP Rule 32.1.

I am a federal practitioner, admitted to practice in most of the circuits, who primarily represents labor unions. Prior to beginning my practice, I served as a law clerk for a judge on the Fifth Circuit.

To avoid repetition, I adopt the comments submitted by Judge Alex Kozinski of the Ninth Circuit and by Professor Eugene Volokh of UCLA Law School. Both wrote in opposition to the proposed change.

In contrast to their more scholarly opposition, I write to state a very plain, but important, practical issue. Simply stated, most litigants and potential litigants lack the financial resources necessary to afford research into the thousands of unpublished opinions of the various circuit courts. If obscure, unpublished decisions suddenly have the same weight as those found in the pages of the Federal Reporter, less well-heeled litigants (and lawyers at small firms) will be put at an extreme disadvantage. On the flip side, wealthy litigants and lawyers at large law firms (who can afford to construct elaborate data bases and indices of these unpublished opinions) will be handed an indescribably gigantic litigation advantage, solely because of their wealth. Further, there is the risk that the development of the law will be skewed in favor of those with these resources.

The proposed Rule 32.1 cannot be deemed "progress." I respectfully urge that it be rejected.

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