



UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII  
300 ALA MOANA BOULEVARD, ROOM C-400  
HONOLULU, HAWAII 96850-0400

RECEIVED  
2/3/04

03-AP-250

CHAMBERS OF  
DAVID ALAN EZRA  
CHIEF UNITED STATES DISTRICT JUDGE

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January 23, 2004

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Washington, DC 20533

RE: Proposed Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

I strongly oppose the adoption of Federal Rule of Appellate Procedure 32.1., which would allow parties to cite judicial orders, opinions, judgments, and other dispositions that the courts have designated as "unpublished" or "non-precedential." I frequently sit by designation on the Ninth Circuit Court of Appeals and am currently the Ninth Circuit Representative to the Judicial Conference. I am also a Past President of the District Judges' Association. And while I write this letter in my individual capacity, I am well aware of the views of many of my colleagues with regard to this proposed rule.

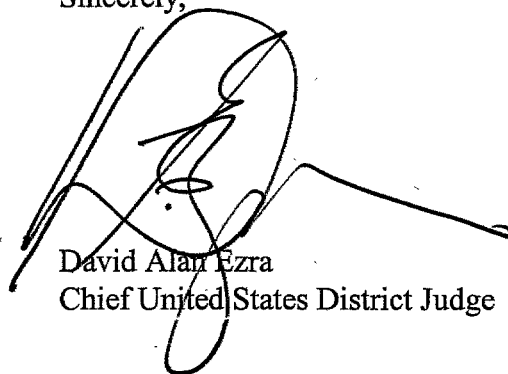
At present the court of appeals is inundated with cases, and consequently, it is incapable of writing thorough, publishable opinions for all of the matters that it reviews. Moreover, the majority of cases before the court of appeals do not require the extensive and meticulously-crafted dispositions that the court typically generates in the form of published opinions. If Proposed Rule 32.1 is adopted and attorneys can cite these opinions as precedent, the court of appeals will have to spend more time handling these routine cases that do not present new or complex issues of law. At first glance, this result may seem a desirable one, but the harsh reality is that in order to spend more time on these routine cases, judges will have to give less attention to analyzing the cases that do present new and difficult legal questions that advance the body of federal law. Even worse, judges may be forced to begin affirming more cases without an opinion.

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Moreover, adopting Proposed Rule 32.1 will create chaos in the district courts. It is highly probable that attorneys will frequently cite these unpublished opinions in situations where their case has a similar factual background to a case in an unpublished opinion. The resulting problem is that since cases dispensed of with unpublished opinions typically deal with routine issues, the court of appeals often does not develop the factual background in full detail. Therefore, the district courts will be left with a great amount of guesswork in trying to apply and distinguishing these cases from the cases currently before them.

The burdens of adopting Proposed Rule 32.1 greatly outweigh any possible benefits. In an effort to promote judicial economy and efficiency, the Committee on Rules of Practice and Procedure should reject the implementation of this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "David Alan Ezra", is written over the typed name. The signature is stylized and somewhat illegible due to overlapping loops and a long horizontal stroke extending to the right.

David Alan Ezra  
Chief United States District Judge

DAE:ch