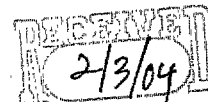


UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA  
RONALD REAGAN COURTHOUSE  
411 WEST FOURTH STREET, ROOM 2030  
SANTA ANA, CA 92701



03-AP-252

January 27, 2004

John E. Ryan  
United States Bankruptcy Judge

Telephone  
(714) 338-5451

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, DC 20544

Re: Fed. R. App. P. ("Rule") 32.1

Dear Mr. McCabe:

I wish to join the chorus of those judges opposing the adoption of Rule 32.1. Rule 32.1 takes away the discretion of a circuit court of appeals to prohibit citation to "unpublished" decisions to courts within that circuit. As a bankruptcy judge and recent Chief Judge of the Ninth Circuit Bankruptcy Appellate Panel (the "BAP"), I am thankfully the beneficiary of such a prohibition.

Many judges from the Ninth Circuit have eloquently written to you in opposition to Rule 32.1, and I do not presume to improve upon their just reasoning. However, I have both the perspective of a trial judge and appellate judge having just finished a seven-year term on the BAP. As a trial judge, I know my law clerk will have to spend additional time researching and reviewing unpublished decisions. Because there are four unpublished decisions for every published decision, this added work will be significant and will likely lessen the overall quality of my work by spreading my resources.

In addition, Rule 32.1 defies any appropriate cost/benefit analysis. Starting from the premise that an unpublished decision was not published because it lacked appropriate precedential value for the bar and the judiciary, the value of citing to an unpublished decision to litigants, the bar, and the judiciary is graciously insignificant. Yet, attorneys will for many reasons,

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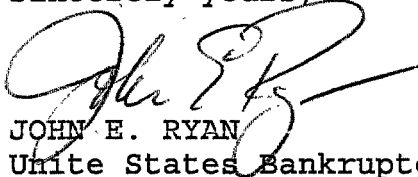
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including fees, caution, and leaving no stone unturned, cite to a multitude of unpublished decisions having some connection to the matter at hand. This will add to the already costly litigation process without any material benefit. Justice will not be served in the end.

I would also urge the Committee not to go down the blind alley of treating all circuits the same. For very good and valid reasons expressed by Judge Kozinski, the Ninth Circuit has decided that unpublished decisions should not be cited. As the largest circuit, the Ninth Circuit can ill afford the negative impacts that Rule 32.1 will have on the administration of justice in this Circuit. Circuit courts should have the discretion to decide this issue without the micro-management restraints of Rule 32.1.

I urge the Committee to terminate this effort. The reasons given for Rule 32.1 have little justification in fact and certainly do not warrant the downside costs to litigants and the judiciary.

Sincerely yours,



JOHN E. RYAN  
United States Bankruptcy Judge