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January 29, 2004

Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Proposed Amendments to the Federal Rules of Appellate Procedure

Dear Secretary:

I am writing to voice my support as an appellate practitioner for proposed Rule 32.1, which requires courts to permit the citation of unpublished opinions. This is a sensible rule, for both the reasons set forth in the Committee Note as well as the following reasons:

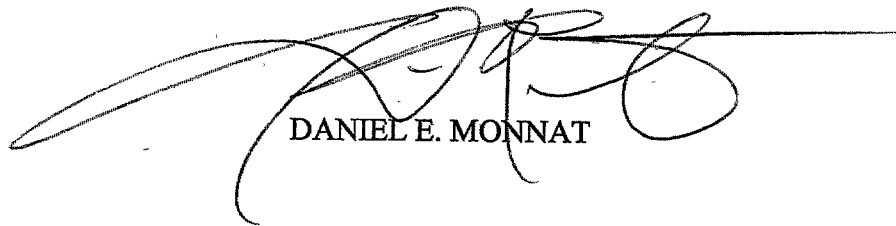
- The rule clarifies that parties must be allowed to cite unpublished opinions from any jurisdiction, thus eliminating some confusion in existing local rules. For instance, Tenth Circuit Rule 36.3 currently only restricts the citation of “[u]npublished orders and judgments of this court” (emphasis supplied), thus leaving practitioners to guess about the propriety of and requirements in the Tenth Circuit for citing unpublished opinions of state courts and other federal jurisdictions.
- Any rule that increases uniformity among the circuits allows lawyers to focus more on the merits of their cases and worry less about being sanctioned for overlooking a change in the labyrinth of rules from one circuit to the next.
- The Committee Note points out that the proposed rule will limit satellite litigation over whether a party’s citation of an unpublished opinion was appropriate. The rule may also reduce the perceived need for motions for publication, likewise reducing the burden of the appellate courts.
- The portion of the rule requiring that only those unpublished cases that are not publicly available in an electronic database need be attached to a party’s brief or motion not only acknowledges the widespread availability of unpublished opinions, but also is ecologically sound.

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Finally, I recommend that the rule be extended to dictate that unpublished opinions be deemed binding to the same extent that published opinions are binding. The Committee Note reports that some have argued such a rule would "lead judges to spend more time" on unpublished opinions. If judges must spend more time on unpublished opinions in order to treat all litigants alike, then so be it. Giving unpublished opinions the same precedential value of published opinions would increase fairness and uniformity in the application of the rule of law. Unpublished opinions will still have the advantage of saving on costs of publication.

Thank you for this opportunity to comment on this proposed rule.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Monnat", is written over a horizontal line. The signature is fluid and cursive.

DANIEL E. MONNAT

DEM:pan