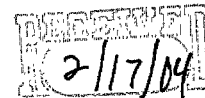


UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439



TIMOTHY B. DYK
UNITED STATES CIRCUIT JUDGE

(202) 633-8200

February 12, 2004

03-AP-397

Mr. Peter G. McCabe
Secretary to the Rules Committee
Rules Committee Support Office (OJP-RCSO)
Administrative Office of the U.S. Courts
Washington, D.C. 20544-0001

Re: Proposed Amendments to Federal Rules of Appellate Procedure

Dear Mr. McCabe:

On January 6, 2004, Chief Judge Mayer sent you a letter concerning several proposed changes in the Federal Rules of Appellate Procedure. I share and strongly support the views expressed in that letter. I write only to add a further perspective on the proposal to permit the citation of nonprecedential opinions.

Before my appointment to the Federal Circuit, approximately four years ago, I spent more than 35 years in private practice with two firms here in Washington. My practice was largely, though not exclusively, appellate. Based on that experience, as well as my four years on the bench, I think that the proposal to allow the citation of nonprecedential opinions is most ill advised. It will likely lead to a decline in the quality of appellate briefing.

Today much appellate brief-writing is concerned exclusively with finding a case in point for each pertinent proposition, fueled in part by the availability of electronic search engines. The parties then argue that each relevant proposition has been authoritatively resolved. Sometimes this is true, but, if the case has merit, some of the issues will be questions of first impression – at least in the particular court. In meritorious cases the court would be better served if the parties viewed the issues more broadly, reasoning from decisions in other circuits or decisions in analogous areas of the law. I am convinced that allowing citation of nonprecedential opinions will further encourage the case-in-point approach, because lawyers will prefer a nonprecedential opinion as the answer to a troublesome question over a more useful and thoughtful approach. I offer this as one additional reason why the committee proposal is a very bad idea, and should be rejected.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy B. Dyk".

Timothy B. Dyk
Circuit Judge