



# Federal Bar Association Orange County Chapter

2/17/04

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February 13, 2004

03-AP-429

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One Columbus Circle, N.E.  
Washington, D.C. 20544

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**Re: Opposition to Proposed  
Federal Rule of Appellate Procedure 32.1**

Dear Mr. McCabe:

As President of the Orange County Chapter of the Federal Bar Association, I am writing to express our chapter's opposition to proposed new Federal Rule of Appellate Procedure 32.1, which would require federal appellate courts to permit the citation of judicial opinions and other written dispositions that have been designated "non-precedential" or "unpublished." At over 300 members, ours is one of the larger FBA chapters.

Our Board of Directors has studied with great interest the arguments for and against the new rule, and has considered the May 22, 2003 Report of Advisory Committee on Appellate Rules and the Committee Note describing the rationale for the new rule. While we appreciate that there may be a policy justification for the new rule, our group fears that allowing the citation of unpublished decisions will inevitably lead to one of two undesirable results. Either judges will feel compelled to spend more time crafting opinions – even those designated as unpublished – knowing that they are subject to future citation, or to avoid this substantial burden, judges may severely curtail or cease entirely the practice of writing unpublished opinions, in favor of issuing only summary orders addressing the trial court judgments under review. This, of course, would deprive the appellate litigants and counsel any real insight into the rationale behind these decisions.

The Federal Bar Association of Orange County therefore hereby respectfully expresses its opposition to proposed Federal Rule of Appellate Procedure 32.1.

Very truly yours,

  
Phillip R. Kaplan, Esq.

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2/13/04

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