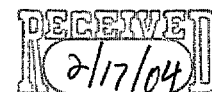


03-AP-459



Via Internet
(Rules Comments mailbox)

**FEDERAL PUBLIC DEFENDER
for
THE DISTRICT OF ALASKA**

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February 17, 2004

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

Re: Proposed FRAP 32.1
Submitted by e-mail to Rules Committee @ ao.uscourts.gov

Dear Mr. McCabe,

I am writing in opposition to proposed Rule 32.1 of the Federal Rules of Appellate Procedure that would allow citation to "unpublished" opinions in briefs filed in all federal appellate courts. After reviewing the arguments for and against the proposed new rule, I must come down against the proposal for the following reasons.

My first concern is that this proposal will create an additional burden for the attorneys in my office and the private attorneys on the CJA panel for our district. As Federal Defender, I not only supervise the attorneys in my office, I am also responsible for the training of panel attorneys in our district. I know these attorneys are extremely busy already. They are also very professional and diligent, and would feel compelled to thoroughly research all relevant opinions, published and unpublished, in their appellate practice if the amendment is passed. I feel the additional burden and expense required would outweigh any advantage of citing unpublished opinions.

My second concern is that the proposed rule might result in a delay in the disposition of criminal cases, and the issuance of "affirmances" without explanation. For criminal clients in custody, it is critically important to receive expeditious review by an appellate court, with an explanation of the reasoning of the decision that reflects that a client's cause was carefully reviewed. These functions of the appellate court could possibly be compromised by the proposed rule.

Thank you for considering my comments.

Sincerely,

Rich Curtner
Federal Defender