skearns@kirkland.com
02/16/2004 10:48 PM

To: Rules_Comments@ao.uscourts.gov
cc:
Subject: Rule 32.1 Comment

03-AP-460

I attach a comment to proposed Rule 32.1. Thank you for your consideration.

Sincerely,

Susan Kearns
Associate
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655 15th Street, NW
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KearnsRule32[1].1letter.dc

Susan E. Kearns
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February 16, 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 Federal Rule of Appellate Procedure 32.1*

Dear Mr. McCabe:

I write in opposition to the proposed Federal Rule of Appellate Procedure 32.1. I am an attorney in private practice in Washington, DC, and I specialize in appellate work. I have read several of the letters that have been written, including those by the Chief Judges of the Federal Circuit and the Second Circuit, in opposition to the rule, and I have found them to be quite persuasive.

Let me just add a quick word from the perspective of a young lawyer in private practice. I am opposed to Rule 32.1 because it will indisputably increase the burdens of conducting legal research. The Advisory Committee has stated in the note accompanying the proposed rule that approximately 80% of the opinions issued by the Courts of Appeals are unpublished dispositions. A change in the rule that permits those opinions to be cited therefore will instantly ***quintuple*** the universe of precedent that must be consulted on any given point of law. Most, if not all of these cases, will be duplicative of what already exists in published dispositions. Little of what appears to be new will ultimately prove useful. Those "new" statements will likely prove to be nothing more than the imprecise phrases typical of unpublished dispositions. And even if a proposition appeared on point, its relevance will be extremely difficult to assess given that the unpublished disposition rarely provides a complete statement of the facts relevant to the decision. The new rule will therefore seriously increase the time and resources necessary to research a legal proposition without providing any significant benefits to that endeavor.

The Office of Management and Budget does not require the Advisory Committee to engage in a formal cost-benefit analysis, but it seems pretty clear that practitioners would believe Rule 32.1 flunks that test. The new rule should not be approved.

Sincerely,

Susan Kearns