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REED C. AMOS

03-AP-488

February 17, 2004

SENT BY FEDERAL EXPRESS
Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 25044

Re: Opposition to Proposed Change to F.R.App.P. 32.1

Dear Mr. McCabe:

I am writing with respect to the proposed change to Rule 32.1, F.R.App.P., which would provide for the ability to cite as precedent unpublished decisions of the United States Courts of Appeals.

I oppose such a Rule for the following reasons. First, memoranda dispositions ordinarily do not contain extensive, reasoned analysis of the issues presented as do opinion dispositions. Publishing memoranda decisions would result in less than fully reasoned discussions of the law becoming citable law. Or, judges would have to do an extraordinary amount of work with respect to the thousands of appeals heard each year to get them up to opinion quality. This could also result in decisions which simply state "affirmed" or "reversed," which disadvantages the parties and lawyers involved in such instances who would have no idea of the reasons for the disposition.
Further, memoranda dispositions are currently available on Westlaw as well as the Federal Appendix, and are accessible to attorneys if necessary.

Moreover, federal judges are already overburdened. The proposed Rule would in all likelihood have the unintended effect of forcing conscientious judges to spend considerably more time on memoranda dispositions, which are intended to simply provide counsel and parties to an appeal with some brief explanation as to how the court reached its decision. If these decisions were all published, this would slow down the disposition

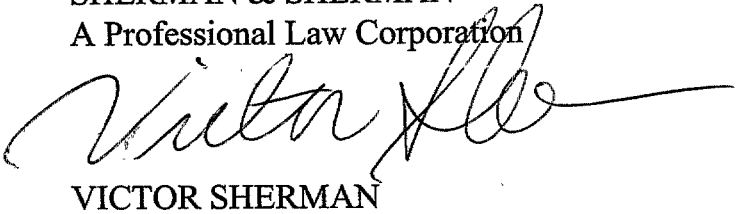
process, which would be a disservice to the parties and counsel.

It is also my belief that a significant number of currently uncitable memoranda dispositions involve criminal cases that do not make new law. If the government were to be able to cite them, this would give an unfair and unnecessary perceived and perhaps real advantage to the government, which could use the memoranda decisions to create an unwarranted impression that there is more law in favor of the government. The government's potential use of string citations including memoranda dispositions would create significantly more work for appellate judges and their law clerks, who would need to read all of the cases cited. This is unnecessary, as, if there is a citable opinion on point, this is sufficient.

In sum, the proposed change will create a enormous and unnecessary burden for both the judiciary and federal practitioners. Therefore, I strongly oppose the proposed change to Rule 32-1.

Very truly yours,

SHERMAN & SHERMAN
A Professional Law Corporation



VICTOR SHERMAN

VS:clm