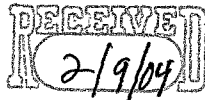


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DEPARTMENT OF JUSTICE



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February 4, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

RE: Proposed Fed. R. App. P. 32.1
Proposed Fed. R. Civ. P. 5.1

Dear Mr. McCabe:

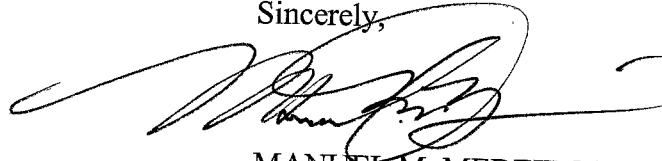
The Attorney General of California would like to note his objection to proposed Fed. R. App. P. 32.1. The present practice of allowing appellate courts to prohibit citation of unpublished opinions permits those courts who choose to do so the freedom summarily to dispose of cases that are significant only to the parties, without need for precisely crafted language. The proposed rule would likely result in an increase in summary affirmances, depriving even the parties of the benefit of the court's analysis. Adoption of the proposed rule also threatens to increase enormously the volume of cases available for citation, an eventuality that will necessarily increase the cost and burden of appellate advocacy to litigants.

However, the Attorney General strongly supports adoption of Fed. R. Civ. P. 5.1. It is this office's experience that the clerk's-notice requirements of current Rule 24(c) often go unsatisfied. As a result, we are frequently ignorant of pending litigation in district court that involves the constitutionality of a state statute. Proposed Rule 5.1 increases the likelihood that an Attorney General will be notified of such litigation in two ways. First, the new rule would add to the existing clerk's notification (as provided under present Rule 24(c)), a mandatory duty in the party challenging the statute to directly notify the state Attorney General of the challenge. Second, the new rule, and amended Rule 24(c), would delete the qualification that notice be given to an Attorney General only with respect to challenges to a state statute "affecting the public interest." This deletion will eliminate confusion caused by the present limiting language, ensuring greater notification to state Attorneys General.

Peter G. McCabe, Secretary
February 4, 2004
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Thank you for affording us this opportunity to comment on the proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Manuel M. Medeiros', written over a horizontal line.

MANUEL M. MEDEIROS
State Solicitor General

For BILL LOCKYER
Attorney General