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Comments:

I am an appellate lawyer, licensed to practice in the Supreme Court and in all thirteen circuits of the U.S. Court of Appeals. I have written briefs and presented oral argument in civil appeals, criminal appeals, and administrative agency review proceedings.

I request that you reject Proposed Rule 32.1 of the Federal Rules of Appellate Procedure, a rule that would bar prohibitions on citing unpublished opinions. Rarely, if ever, have I seen an unpublished opinion that didn't contain a citation to a published opinion that could be cited, instead, for the same proposition for which one would cite the unpublished opinion.

Beyond that, in the vast majority of cases, the courts of appeals serve a straightforward, error-correcting function. A simple disposition of the case, explaining to the parties who won, who lost, and why, is all that I believe is necessary. This frees the judges to finely craft the published opinions that serve the functions of setting precedent and keeping uniformity in the law of the particular circuit.

If the currently unpublished decisions are going to be citable and treated as precedent, a likely result is that the judges will be required to devote much more time to them and correspondingly less time to the important cases, diminishing their quality (or, at the very least, delaying considerably the time between hearing the case and issuing an opinion). Another conceivable result is that the unpublished cases will be resolved with a one-word judgment/disposition, which I think is wholly unsatisfactory to the litigants (even those on the winning side).

I have the greatest respect for those who support the new rule. Nonetheless, I strongly urge that you reject proposed Rule 32.1 and let the individual circuits decide how they want to handle unpublished opinions.

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