

**SOCIAL SECURITY**

Office of the General Counsel

February 18, 2004

2/18/04
03-AP-491

David Sellers
Assistant Director
Office of Public Affairs
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Comments on Proposed Fed. R. App. R. 32.1

Dear Mr. Sellers,

The Social Security Administration (SSA), a major national participant in federal court litigation, supports the adoption of proposed Fed. R. App. P. 32.1, which would allow parties to cite to "unpublished" judicial opinions in their briefs and other documents filed with the courts of appeals. As we understand it, this rule has no effect on the general rule that unpublished decisions are not precedents. SSA believes that this proposed rule will promote national uniformity among the circuits and will remove the hardship created for practitioners who have to deal with conflicting practices amongst the various circuit courts. SSA also agrees with the Advisory Committee on Appellate Rules, which stated in its May 22, 2003 report, "It is difficult to justify a system under which the 'unpublished' opinions of the D.C. Circuit can be cited to the Seventh Circuit, but the 'unpublished' opinions of the Seventh Circuit cannot be cited to the Seventh Circuit."

SSA suggests that as a way to address some concerns raised by the opposition to this rule, the Standing Committee on Rules of Practice and Procedure may want to consider applying proposed Fed. R. App. P. 32.1 prospectively for those circuits that, at this time, do not allow citation to "unpublished" opinions. Prospective application means that parties may cite only to unpublished decisions filed after the effective date of the rule. Applying the rule prospectively would allow judges in those circuits to make appropriate adjustments in their drafting of "unpublished" opinions that under the proposed rule could be subject to heightened analysis by other judicial panels in future cases.

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SSA's support of this rule, however, is not contingent on the Standing Committee's adopting this suggestion to make the rule prospective. SSA supports the rule as presently drafted. Thank you for considering our comments.

Sincerely yours,


for Lisa de Soto
General Counsel

cc:

William Kanter
Douglas Letter
Department of Justice