

In Chambers
JUDGE A. WALLACE TASHIMA
UNITED STATES COURT OF APPEALS
NINTH CIRCUIT
P.O. BOX 91510
PASADENA, CA 91109-1510

2/9/04
03-AP-288

TEL: (626) 229-7373
Fax: (626) 229-7457

February 6, 2004

Mr. Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Washington, DC 20544

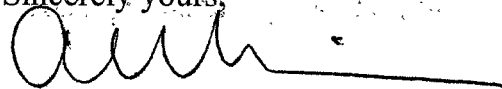
Re: Proposed Appellate Rule 32.1

Dear Mr. McCabe:

I write concerning proposed new Rule 32.1 of the Federal Rules of Appellate Procedure. My views on Rule 32.1 are known to the Standing Committee because, as a member of the Committee during the earlier stages of consideration of the rule, I supported Rule 32.1. I adhere to those views and continue to support the proposed rule and don't intend to reargue the merits here. I write now only to counterbalance a letter-writing campaign by opponents of the rule.

Earlier, as the Committee is probably aware, a letter-writing campaign was mounted among the lawyers in the Ninth Circuit to oppose the new rule. Now, apparently, that campaign has shifted to the judges of the Ninth Circuit and several—perhaps as many as a half-dozen—have written in opposition to the rule. I ask the Committee not to be misled by this into believing that there is overwhelming, or even majority, opposition to the new rule in the Ninth Circuit. (Remember that our Circuit has 26 active and 22 senior judges.) From my experience and observation both as a judge of the Ninth Circuit and as a member of the Circuit's Local Rules Committee for the past six years (ending in Oct. 2003), it is my opinion that the great majority of lawyers who engage in federal practice favor the new rule and that the judges of the Ninth Circuit are closely split on the issue. Although it cannot be definitively determined without a vote (and there has been none), my guess is that a slight majority favor proposed new Rule 32.1.

Sincerely yours,



A. Wallace Tashima

cc: All Ninth Circuit Judges