

United States Court of Appeals
for the Seventh Circuit
219 South Dearborn
Chicago, Illinois 60604

Gino J. Agnello, Clerk of Court

(312) 435-5850

December 27, 2006

Notice of Circuit Rule Change
And Opportunity for Comment before Permanent Adoption

Notice is hereby given that the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 2071, rescinds Circuit Rule 53 and adopts the new Circuit Rule 32.1. An explanation of the revisions is set out below. The proposed amendments are made to conform to changes in the Federal Rules of Appellate Procedure approved by the Supreme Court. Circuit Rule 32.1 will be effective January 1, 2007.

Opportunity for Comment

Comments on the permanent adoption of this rule may be submitted to the Court's Advisory Committee by March 1, 2007. Written comments should be sent to:

Advisory Committee
c/o Clerk of Court
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, IL 60604

Comments can also be made via e-mail at: USCA7_Clerk@ca7.uscourts.gov

RULE	TITLE	Status	PURPOSE OF AMENDMENT
Circuit Rule 32.1	Publication of Opinions	New	To effectuate the local options set forth in Fed. R. App. P. 32.1 regarding citation of unpublished dispositions and orders.
Circuit Rule 53	Plan for Publication of Opinions of the Seventh Circuit Promulgated Pursuant to Resolution of the Judicial Conference of the United States	Rescinded	See Fed. R. App. P. 32.1

(New) Circuit Rule 32.1. Publication of Opinions

(a) *Policy*. It is the policy of the circuit to avoid issuing unnecessary opinions.

(b) *Publication.* The court may dispose of an appeal by an opinion or an order. Opinions, which may be signed or per curiam, are released in printed form, are published in the Federal Reporter, and constitute the law of the circuit. Orders, which are unsigned, are released in photocopied form, are not published in the Federal Reporter, and are not treated as precedents. Every order bears the legend: "Nonprecedential disposition. To be cited only in accordance with Fed. R. App. P. 32.1."

(c) *Motion to change status.* Any person may request by motion that an order be reissued as an opinion. The motion should state why this change would be appropriate.

(d) *Citation of older orders.* No order of this court issued before January 1, 2007, may be cited except to support a claim of preclusion (res judicata or collateral estoppel) or to establish the law of the case from an earlier appeal in the same proceeding.

(Rescinded) CIRCUIT RULE 53. Plan for Publication of Opinions of the Seventh Circuit Promulgated Pursuant to Resolution of the Judicial Conference of the United States

(a) *Policy.* It is the policy of the circuit to reduce the proliferation of published opinions.

(b) *Publication.* The court may dispose of an appeal by an order or by an opinion, which may be signed or per curiam. Orders shall not be published and opinions shall be published.

(1) "Published" or "publication" means:

(i) Printing the opinion as a slip opinion;

(ii) Distributing the printed slip opinion to all federal judges within the circuit, legal publishing companies, libraries and other regular subscribers, interested United States attorneys, departments and agencies, and the news media; and

(iii) Unlimited citation as precedent.

(2) Unpublished orders:

(i) Shall be typewritten and reproduced by copying machine;

(ii) Shall be distributed only to the circuit judges, counsel for the parties in the case, the lower court judge or agency in the case, and the news media, and shall be available to the public on the same basis as any other pleading in the case;

(iii) Shall be available for listing periodically in the Federal Reporter showing only title, docket number, date, district or agency appealed from with citation of prior opinion (if reported), and the judgment or operative words of the order, such as "affirmed," "enforced," "reversed," "reversed and remanded," and so forth;

(iv) Except to support a claim of res judicata, collateral estoppel or law of the case, shall not be cited or used as precedent

(A) in any federal court within the circuit in any written document or in oral argument; or

(B) by any such court for any purpose.

(c) *Guidelines for Method of Disposition.*

(1) *Published opinions.*

A published opinion will be filed when the decision

(i) establishes a new, or changes an existing rule of law;

(ii) involves an issue of continuing public interest;

(iii) criticizes or questions existing law;

(iv) constitutes a significant and non-duplicative contribution to legal literature

(A) by a historical review of law,

(B) by describing legislative history, or

(C) by resolving or creating a conflict in the law;

(v) reverses a judgment or denies enforcement of an order when the lower court or agency has published an opinion supporting the judgment or order; or

(vi) is pursuant to an order of remand from the Supreme Court and is not rendered merely in ministerial obedience to specific directions of that Court.

(2) *Unpublished orders.*

When the decision does not satisfy the criteria for publication, as stated above, it will be filed as an unpublished order. The order will ordinarily contain reasons for the judgment, but may not do so if the court has announced its decision and reasons from the bench. A statement of facts may be omitted from the order or may not be complete or detailed.

(d) *Determination of Whether Disposition is to be by Order or Opinion.*

(1) The determination to dispose of an appeal by unpublished order shall be made by a majority of the panel rendering the decision.

(2) The requirement of a majority represents the policy of this circuit. Notwithstanding the right of a single federal judge to make an opinion available for publication, it is expected that a single judge will ordinarily respect and abide by the opinion of the majority in determining whether to publish.

(3) Any person may request by motion that a decision by unpublished order be issued as a published opinion. The request should state the reasons why the publication would be consistent with the guidelines for method of disposition set forth in this rule.

(e) Except to the purposes set forth in Circuit Rule 53(b)(2)(iv), no unpublished opinion or order of any court may be cited in the Seventh Circuit if citation is prohibited in the rendering court.