

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**NOTICE OF PROPOSED AMENDMENT & RENUMBERING OF LOCAL RULE 36(c) &
PROPOSED AMENDMENT OF LOCAL RULE 28(b)**

PLEASE TAKE NOTICE that the Court intends to amend and renumber Local Rule 36(c) and amend Local Rule 28(b) in order to conform the Court's local rules to new Federal Rule of Appellate Procedure 32.1, which is scheduled to take effect December 1, 2006, and which provides as follows:

Federal Rule of Appellate Procedure 32.1. Citing Judicial Dispositions

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments or other written dispositions that have been:

- (i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and
- (ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

Federal Rule of Appellate Procedure 32.1 permits unrestricted citation of unpublished federal judicial opinions, orders, judgments or other written dispositions issued on or after January 1, 2007. Per the Committee Note to FRAP 32.1, the federal rule does not address whether unpublished dispositions issued before January 1, 2007, may be cited, and this determination is left to each court.

This Court's established practice, stated in existing Local Rule 36(c), disfavors the citation of unpublished opinions except for the purpose of establishing *res judicata*, estoppel, or the law of the case. For pre-2007 unpublished dispositions, the proposed amendments continue this practice in effect. Local Rule 36(c) is amended and renumbered as Local Rule 32.1 to be consistent with the federal numbering scheme. Local Rule 28(b), governing attachments to briefs, is amended to provide a cross-reference to FRAP 32.1 and Local Rule 32.1 rather than to Local Rule 36(c).

The proposed amendments will take effect on December 1, 2006. Interested parties may submit comments on or before August 31, 2006, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219

June 1, 2006
Date

/s/ Patricia S. Connor
Clerk

Local Rule 32.1. Citation of Unpublished Dispositions.

Citation of this Court's unpublished dispositions issued prior to January 1, 2007, in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case.

If a party believes, nevertheless, that an unpublished disposition of this Court issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if the requirements of FRAP 32.1(b) are met.

Local Rule 36(c). Citation of Unpublished Dispositions

In the absence of unusual circumstances, this Court will not cite an unpublished disposition in any of its published opinions or unpublished dispositions. Citation of this Court's unpublished dispositions in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case.

If counsel believes, nevertheless, that an unpublished disposition of this Court has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if counsel serves a copy thereof on all other parties in the case and on the Court. Such service may be accomplished by including a copy of the disposition in an attachment or addendum to the brief pursuant to the procedures set forth in Local Rule 28(b).

Local Rule 28(b). Attachments to Briefs.

Each party shall include, in the body of the brief or in an addendum thereto, the verbatim text of the relevant portion of any constitutional provision, treaty, statute, ordinance, rule or regulation cited in the brief, if its construction is sought, there is controversy among the parties concerning its proper application to the case, or it is otherwise pertinent to the substantive issues on appeal. Each party shall also include in the addendum any unpublished opinion cited pursuant to ~~Local Rule 36(c)~~ **FRAP 32.1(a) or Local Rule 32.1 when such inclusion is required by FRAP 32.1(b)**. Should a party wish to supplement the brief with matters other than those enumerated above, the additional material shall be presented to the Court under separate cover, accompanied by a motion for leave to file that specifically identifies the proposed material, indicates whether it is a matter of record, and sets forth good cause for deviating from the general prohibition of attachments to briefs.