

**Committee for the Rule of Law**  
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Mr. Clifford Alumno  
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Re: Comments to the Supreme Court Advisory Committee  
On Rules For Publication of Court of Appeal Opinions

The Committee is to be congratulated for proposing language that can bring Rule 976 into substantial compliance with requirements of the Rule of Law. Given the directive to the Committee not to discuss changes to no-citation rule 977 the committee may have done all it could do to rectify problems posed by the current rule.

We offer the following comments.

1. Is the phrase 'should be certified' intended to be ambiguous? Why has not the definitive phrase "is to be certified" been used? Throughout the debate we have noted use of non lawyer-like generalities. Rule 976 should draw a specific line as "rules" are intended to do.
2. When and by whom will the determination that publication standards are met be made? Obviously, a need for the opinion may not occur to anyone for years. Therefore the opportunity for anyone to press for publication should remain open. Perhaps a trial court ought to be allowed at any time to certify an opinion for publication where it finds that the decision offers points not otherwise available from published sources.
3. Any party to litigation resulting in an opinion should be able to compel its publication. That would prove that the authoring court really believes the decision is made according to generally applicable legal principles.

In our view the only pervasive quality control mechanism available to subjects of a common law legal system remains universal citability. So long as any decision can be made uncitable opportunity for carelessness or mischief exists, and the rectifying attention of the vast community of court watchers is sedated. The federal judiciary has determined opposition to universal citability to be unsubstantiated, clearing the way for this correction.

However the citation controversy may be resolved, it is our pleasure to welcome positive change and therefore, subject to our continuing demand for universal citability and our three comments, we support the adoption of the new approach.

Sincerely,

Kenneth J. Schmier  
Chairman,  
Committee for the Rule of Law