ADKT 580

Dear Justice Pickering:

I regret that I will be unable to attend or observe the NRAP hearing. At the risk of weighing in too late on the Rule 36 amendment, I do want to give you my thoughts about it. Frankly, I am surprised there is any dispute.

I am completely happy with the rule the Commission has proposed. And if the Court wants to tinker with our proposal, I don't object to retaining the prohibition regarding pre-2016 decisions. I do, however, feel very strongly that the Court should eliminate the prohibition against citing unpublished COA decisions.

In writing a brief, I can cite something written by a first year law student, or even an article written in a high school newsletter by a student. I can cite a ridiculous editorial or letter to the editor from a local newspaper, or an unvetted article in an obscure magazine, or virtually anything off the internet—regardless of the accuracy of the source material. Importantly, I can cite an unpublished decision by a Nevada district judge, a municipal judge, or a justice of the peace. And I can even cite unpublished decisions by individual lower court judges from other states. These sources would not have much persuasive value, but I can nevertheless cite them freely.

Yet I am flatly prohibited from citing an unpublished decision by highly educated and experienced appellate judges on Nevada's second highest court. It just makes no sense to me. So that's my two cents on this topic.

Thank you for all your time and effort on this project.

Bob Eisenberg

Robert L. Eisenberg
Attorney at Law
Fellow, American Academy of Appellate Lawyers

LEMONS, GRUNDY & EISENBERG

Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor | Reno, NV 89519
t 775.786.6868 | f 775.786.9716 | www.lge.net

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