

## **OPINION AND JUDGMENT**

### **Opinion Assignments**

The hearing panel confers regarding the merits of the cases immediately following oral arguments. Although a tentative decision may be reached at this conference, additional conferences are sometimes necessary. IOP 36.1. After consultation with the presiding judge of each panel following court week, the chief judge assigns authors for the opinions with the objective of as even a distribution of the workload as can be achieved.

### **Unpublished Opinions**

The panel may decide the case by unpublished opinion pursuant to Local Rule 36(b). Unpublished opinions give counsel, the parties, and the lower court a statement of the reasons for the decision. They may not recite all of the facts or background of the case and may simply adopt the reasoning of the lower court. All opinions, published and unpublished, are available electronically on the court's web site - [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov). Counsel may move for publication of an unpublished opinion, citing reasons. If such motion is granted, the unpublished opinion will be published without change in result. Loc. R. 36(b).

### **Citation of Unpublished Opinions**

Fed. R. App. P. 32.1 permits unrestricted citation of unpublished federal judicial opinions, orders, judgments, or other written dispositions issued on or after January 1, 2007. Citation of this court's unpublished dispositions issued prior to January 1, 2007, in briefs and oral argument in this court and in the district courts within this circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or law of the case. Loc. R. 32.1. If counsel believes, nevertheless, that an unpublished disposition of this court issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published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.

### **Published Opinions**

An opinion is not published unless it meets one or more of the standards set out for publication in Local Rule 36(a).

- It establishes, alters, modifies, clarifies, or explains a rule of law within this circuit; or
- It involves a legal issue of continuing public interest; or
- It criticizes existing law; or
- It contains an historical review of a legal rule that is not duplicative; or
- It resolves a conflict between panels of this court or creates a conflict with a decision in another circuit.

The court will publish opinions only in cases that have been formally briefed and argued. Opinions in such cases will be published if the author or a majority of the

joining judges believe the opinion satisfies one or more of the standards of publication, and all members of the court have acknowledged in writing their receipt of the proposed opinion. A judge may file a published opinion without obtaining all acknowledgments only if the opinion has been in circulation with all members of the court for 10 days. Loc. R. 36(a). When the author of a dissenting opinion designates it for publication, the majority opinion will also be published.

### **Circulation of Opinions**

When a proposed opinion in an argued case is prepared and submitted to other panel members, copies are provided to the non-sitting judges, including the senior judges, and their comments are solicited. The opinion is then finalized. The clerk's office never receives advance notice of when a decision will be rendered. IOP 36.2.

### **Issuance of Opinions**

Opinions are sent to counsel on the day judgment is entered. All issued opinions and selected orders are posted on the court's internet site beginning at 2:30 p.m. on the day of issuance. The public may subscribe to the daily opinions list through an email notice or RSS feed. Opinions designated for immediate release are posted as soon as they have been filed in the clerk's office and served on the parties and the district court.

### **Notice of Judgment**

Pursuant to Fed. R. App. P. 36(a), the clerk prepares, signs, and enters judgment on the day the opinion is filed unless the opinion directs settlement of the form of the judgment, in which event the clerk prepares, signs, and enters the judgment following final settlement by the court (see Fed. R. App. P. 19). If a judgment is rendered without an opinion, the clerk prepares, signs, and enters the judgment following instruction from the court. On the date judgment is entered, the clerk sends to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of judgment. Fed. R. App. P. 36(b).

This court's notice of judgment advises the parties of the time limits applicable to petitions for rehearing and petitions for certiorari, and the procedures for fixing costs and issuing the mandate.

### **Related Links**

- [Opinions](#)
- [Rule 32.1, Citing Judicial Disposition \(with Local Rule\)](#)
- [Rule 36, Entry of Judgment; Notice \(with Local Rules\)](#)