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**Notice and Opportunity for Comment  
Circuit Rule 36-3  
Citation of Unpublished Dispositions or Orders**

Circuit Rule 36-3(b)(iii) is scheduled to expire at the end of this calendar year unless the Court votes to extend it. The Rule permits citation to unpublished dispositions in requests for publication, or in a petition for rehearing, to demonstrate the existence of a conflict among opinions, dispositions or orders. Please submit your comments on the rule to the address noted above or by e-mail to: [cathy\\_catterson@ca9.uscourts.gov](mailto:cathy_catterson@ca9.uscourts.gov) no later than October 25, 2002.

The Rule and it accompanying note read as follows:

**CIRCUIT RULE 36-3**

**CITATION OF UNPUBLISHED DISPOSITIONS OR ORDERS**

- (a) Not Precedent: Unpublished dispositions and orders of this Court are not binding precedent, except when relevant under the doctrine of law of the case, res judicata, and collateral estoppel.
- (b) Citation: Unpublished dispositions and order of this Court may not be cited to or by the courts of this circuit, except in the following circumstances.
  - (i) They may be cited to this Court or to or by any other court in this circuit when relevant under the doctrine of law of the case, res judicata, or collateral estoppel.
  - (ii) They may be cited to this Court or by any other courts in this circuit for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or the existence of a related case.

- (iii) They may be cited to this Court in a request to publish a disposition or order made pursuant to Circuit Rule 36-4, or in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders.
- (c) Attach Copy: A copy of any cited unpublished disposition or order must be attached to the document in which it is cited, as an appendix. *(New Rule 7/1/2000)*

***CIRCUIT ADVISORY COMMITTEE  
NOTE TO RULE 36-3***

*Circuit Rule 36-3 has been adopted for a limited 30-month period, beginning July 1, 2000 and ending December 31, 2002. Litigants are invited to submit comments regarding the rule to the Clerk during the first 24 months of the trial period. After the rule has been in effect for 24 months, the Advisory Committee on Rules will study and report to the Court on the frequency with which unpublished dispositions are cited to the Court and on any problems or concerns associated with the rule. The Advisory Committee will also issue a recommendation on whether the rule should be made permanent. Unless, by December 31, 2002, the Court votes affirmatively to extend the rule, it will automatically expire on December 31, 2002, and the former version of Circuit Rule 36-3 will be reinstated.* *(New Rule 7/1/2000)*