

Hon. Carmine Cornelio  
Arizona Superior Court  
Pima County  
110 W. Congress Street  
Tucson, AZ 85701  
Phone: (520) 724-8301

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:	)	Supreme Court No. R-14-0004
	)	
PETITION TO AMEND RULE 111, ARIZ.	)	Citation of Unpublished Opinions
R. SUP. CT., RULE 28, ARIZ. R. CIV.	)	
APP. P., AND RULE 31.24, ARIZ. R.	)	
CRIM. P.	)	

**Observations of a Trial Judge on the Proposed Rule Change and Comments**

I have been in a rather complex civil trial so this will be short, sweet, and non academic.<sup>1</sup>

The root cause of the issue/problem raised any real need for the proposed rule change is not the ephemeral distinction between precedent; persuasiveness or prohibition as to published and unpublished Opinions. The real problem is that not enough Opinions are published. In my view (and I believe the view of many others), the Court of Appeals should have fewer “unpublished” Opinions and more “published” ones.

In the absence of “published” opinions, memorandum or “unpublished” opinions are sometimes helpful. Frankly, their citation at the trial court level would not create “over burdening.” Instead, they may lend some assistance in analysis, viewpoints, et cetera.

In the helter skelter of time sensitive decision making and workload at the trial level, judges are rarely presented with motions in which CLEAR precedent is controlling and on all

---

<sup>1</sup> As luck/timing/serendipity would have it, the central issue in the trial is whether A.R.S. §20-259.01 creates a “safe harbor” from a malpractice claim for insurance agents. There is an unpublished opinion *Chalabi v. Hobbs*, 2010 Az. App. Unpub Lexis 147 directly on point. The lawyers (properly under the current rule) did not cite the case to me in dispositive motion practice. I became aware of it in Motions in Limine on whether the experts could refer to it in their opinions on standard of care. Why the decision was not published is unclear as there was a full record, quality law firms and there is no existing precedent interpreting the statute.

fours with the unique and distinguishable fact pattern we are frequently presented with. If some judge (particularly three panel Court of Appeals groups) has faced an issue that a trial judge is facing their thoughts on the issue could be helpful. We at the trial court level can distinguish between helpful, not helpful, persuasive or not, binding, non-binding, et cetera. Frankly, when confronted with what appear to be unique facts and an underdeveloped area of the law . . . anything helps. This includes citations to unpublished opinions.

That said, I support the idea (proposed in the comments by Judges Miller, Harrington, and Kelly) of delay of rule approval and a referral to a committee<sup>2</sup> for further analysis and input of potential rule changes. I would also recommend, however, that the committee mandate be expanded from that suggested in their comment. The mandate of committee review and recommendation should include revisiting the rule setting forth the guidelines for the important decision regarding whether or not to publish and whether or not a change would foster and promote more published opinions.

As with any change, there is a potential for the prospect of unintended consequences is certain. Further study, comment, review, et cetera, may be helpful in limiting these consequences. I agree that there is no rush in adopting the rule and that further study, inquiry, and perhaps crafting could be useful. It can't hurt; there is no real or apparent need for rushing.

### **Conclusion**

I support a rule change allowing citations to unpublished opinions. I also support and recommend that before acting on the proposed change, a committee study the issues associated with published and unpublished opinions.

Finally, I would support a rule change that would cause more opinions to be published.

Respectfully,

Hon. Carmine Cornelio

---

<sup>2</sup> No, I am not volunteering.

CC/djs