

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Tuesday, January 19, 2016 8:18 AM  
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**Subject:** FW: Comment to Proposed GR 14.1

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**From:** Kessler, Ronald [mailto:Ronald.Kessler@kingcounty.gov]  
**Sent:** Tuesday, January 19, 2016 8:16 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment to Proposed GR 14.1

In 2000, because the feds appeared to be moving to allow use of unpublished Circuit Court opinions) I proposed to the Supreme Court the following:

**RAP 10.4(h) Unpublished Opinions.** A party may not cite as an authority an unpublished opinion of the Court of Appeals. A party may cite an unpublished opinion for guidance, and must include a copy of the unpublished opinion as an appendix to any brief served upon other parties. Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports.

SCJA Board resoundingly voted it down, arguing

- > 1.) Some decisions really have no precedential value; and
- > 2.) Unpublished opinions carry a higher number of reversals of trial court
- > decisions.

The late Division I Chief Judge Agid didn't believe that the reversal argument was correct. She said that she supported the idea, although, she thought, some COA judges write a tad less elegantly in unpublished decisions. The SCJA Board's position prevailed; the Supreme Court rejected the proposal.

Some *published* opinions have no precedential value, merely restating the law as applied to the facts of the new case. The second argument, even if true, was a smidgen selfish. I suspect that the Court of Appeals might disapprove of the idea of having all opinions published; I haven't inquired since the Supreme Court, in its mysterious rule-making process, said nay in 2003 (in an unpublished opinion, of course).

Ronald Kessler