
HOUSE JOINT MEMORIAL 4038

State of Washington 54th Legislature 1996 Regular Session

By Representative Buck

Read first time 01/24/96. Referred to Committee on Law & Justice.

1 TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE WASHINGTON STATE
2 SUPREME COURT:

3 We, your Memorialists, the Senate and House of Representatives of
4 the State of Washington, in legislative session assembled, respectfully
5 represent and petition as follows:

6 WHEREAS, The appellate courts of this state issue opinions which do
7 not merit official publication because they have little if any
8 precedential value to the development of the law in this state; and

9 WHEREAS, A court's determination that certain opinions should not
10 be published should be honored by not allowing subsequent litigants to
11 use unpublished opinions in arguing for interpretations of the law; and

12 WHEREAS, Law firms with large numbers of attorneys are more likely
13 than small firms and individual citizens to have the resources and
14 capacity to become aware of and to access particular unpublished court
15 decisions; and

16 WHEREAS, Lay people and attorneys in firms with small numbers of
17 attorneys are disadvantaged because of their inability to locate and
18 use unpublished court opinions; and

19 WHEREAS, Citizens have a fundamental right to have a reasonable
20 opportunity to find the law applicable to them, including court
21 decisions which will be used in interpreting the law; and

1 WHEREAS, Other states have successfully dealt with the inequity
2 inherent in allowing unpublished decisions to be used as precedent by
3 limiting the use of such decisions;

4 NOW, THEREFORE, Your Memorialists respectfully pray that the
5 Supreme Court pursuant to General Rule 9 on Supreme Court Rulemaking
6 Procedure proceed speedily with the adoption of a court rule applicable
7 to all the courts in this state substantially similar to the following:

8 (a) An opinion that is not ordered published shall not be cited or
9 relied on by a court or a party in any other action or proceeding
10 except as provided in subsection (b).

11 (b) An opinion that is not ordered published may be cited or relied
12 on when:

13 (1) The opinion is relevant under the doctrines of law of the case,
14 res judicata, or collateral estoppel; or

15 (2) The opinion is relevant to a criminal or disciplinary action or
16 proceeding because it states reasons for a decision affecting the same
17 defendant in another such action or proceeding.

18 (c) A copy of any opinion which is cited under subsection (b) shall
19 be furnished to the court and all parties by attaching it to the
20 document in which it is cited, or, if the citation is to be made
21 orally, within a reasonable time in advance of citation.

22 BE IT RESOLVED, That certified copies of this Memorial be
23 immediately transmitted by the Chief Clerk of the House of
24 Representatives to the Chief Justice and Associate Justices of the
25 Washington State Supreme Court.

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