

Just Follow *the* Rules and No One Gets Hurt:

THE IMPORTANCE OF JURISDICTIONAL STATEMENTS IN
THE SEVENTH CIRCUIT

By Sopen B. Shah*

Nothing spoils the moment of post-filing relief like a notification from the Seventh Circuit Clerk's Office telling you that the court cannot accept your brief. Unfortunately, the clerk says, your jurisdictional statement does not comply with the appellate and circuit rules. It is easy to treat that section as an afterthought — to write it hurriedly at the end of the process along with other parts of the brief's front matter. But counsel should not let the apparently rote nature of the jurisdictional statement fool them.

Chief Judge Diane P. Wood recently bemoaned the “distressing number of briefs filed” in the court that do not comply with the “straightforward” requirements about jurisdictional statements in “F[ederal] R[ule] [of] A[ppellate] P[rocedure] 28, as fleshed out in Circuit Rule 28.”¹ The court strikes almost “two dozen” briefs every month because of jurisdictional-statement deficiencies.² Such “obvious flaws” “impose[] needless costs on everyone involved.”³ Thus, Chief Judge Wood issued an opinion, *Baez-Sanchez v. Sessions*, “in the hope that attorneys practicing in the Seventh Circuit, as well as [] *pro se* litigants, will take heed and avoid [] errors in the future.”⁴

In *Baez-Sanchez*, the court struck the United States Department of Justice's response brief because of a problem with the jurisdictional statement.⁵ Under Federal Rule of Appellate Procedure 28, an appellant's jurisdictional statement must include, among other things, the basis for the district court's subject-matter jurisdiction and for appellate jurisdiction, the filing dates “establishing the timeliness of the appeal or petition for review,” and an “assertion that the appeal is from a final order or judgment that disposes of

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all parties' claims."⁶ Circuit Rule 28(a) adds further "details" that the appellant must include. An appellee must thoroughly review an appellant's jurisdictional statement and then "state explicitly *whether or not* the jurisdictional summary in the appellant's brief is complete *and* correct."⁷ If the appellant's statement is either incomplete or incorrect, an appellee must state that the statement is not complete and correct and produce, *in full*, a complete and correct jurisdictional statement. It is insufficient for appellee to merely point out and rectify opposing counsel's mistake or omission.⁸ The United States' *Baez-Sanchez* brief stated only that the appellant's jurisdictional statement was "correct," leaving the court to wonder about the statement's completeness.⁹ Another appellee in that case stated that the appellant's jurisdictional statement was "complete" but said nothing about correctness.¹⁰ The court ordered both appellees to file new briefs within seven days.¹¹



Problems persist even after *Baez-Sanchez*. Over a year later, the Seventh Circuit chided a counseled party for failing to file a complete jurisdictional statement after a pro se appellant did not plead appellees' citizenship.¹² Federal Rule of Appellate Procedure 28(a) requires appellants to not only include the basis for the district court's subject-matter jurisdiction but also to "stat[e] relevant facts establishing jurisdiction." Circuit Rule 28(a)(1) further clarifies that, in diversity cases, "the statement shall identify . . . the citizenship of each party to the litigation."¹³ The court once again "remind[ed] . . . attorneys practicing in this court [] that [judges] rely on them to provide accurate jurisdictional statements when [the court] must decide whether subject-matter jurisdiction exists."¹⁴

The Seventh Circuit has long paid careful attention to jurisdiction

and jurisdictional statements and frequently admonishes counsel for not doing the same. If lawyers violate the jurisdictional-statement rules, the court will ask them to file a supplemental or amended jurisdictional statement. Sometimes, the court asks counsel to show cause why the court should not impose sanctions for the error.

Sanctions are possible if counsel fails to correct the mistake in any supplemental or amended statement or to give a good reason for the error. (I have yet to find an example of a reason that the court found to be good.) In one case, the appellee incorrectly stated that

the appellant's jurisdictional statement was "complete and correct" when the appellant's statement failed to disclose the corporation's principal place of business in a diversity case.¹⁵ The court stressed that it "ha[d] warned litigants about th[is] precise pattern[:] a patently erroneous jurisdictional statement by the appellant, and a patently erroneous statement by the appellee that the [] statement is complete and correct."¹⁶ The court directed the parties to file supplemental statements of jurisdiction.¹⁷ Although the supplements were complete and correct, the court took issue with the "feeble excuse"

counsel provided for the "erroneous allegations of jurisdiction": namely, that the "complaint had alleged jurisdiction so."¹⁸ The court reprimanded both counsel.¹⁹

A few years later, the court imposed monetary sanctions for a similar problem. In *BondPro Corp. v. Siemens Power Generation, Inc.*, both parties made jurisdictional-statement mistakes when the appellant failed to indicate the citizenship of the parties and the appellee's brief "erroneously stated that the [appellant]'s jurisdictional statement was complete and correct."²⁰ The court asked the parties to show cause why they should not be sanctioned for violating the rule. After the parties merely apologized and "suggested no excuse, let alone justification" for the violation, the court ordered counsel to pay \$1,000 each, an "exemplary" step to "deter[] future violations."²¹

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In *Smoot v. Mazda Motors of America, Inc.*, the appellants' jurisdictional statement failed to state Mazda's principal place of business and did not even mention the second appellee, an insurance company.²² The appellees stated that the appellants' jurisdictional statement was "neither complete nor correct" but provided an incomplete and incorrect one themselves.²³ They stated that the appellees were "citizens of a different state" than the appellants without naming the particular states.²⁴ They also failed to cite the relevant provision of the diversity statute because the insurance company was a "citizen of a foreign country."²⁵ The court "asked the parties to submit supplemental jurisdictional statements."²⁶ After counsel, including "the major Chicago law firm representing the appellees," failed to correct the original "blunder[s]," the court ordered the parties to show cause why "counsel should not be sanctioned" and "to consider specifically the appropriateness, as a sanction," of "being compelled to attend a continuing legal education class in federal jurisdiction."²⁷

In some cases, the Clerk's Office and senior court staff provide a layer of screening before an appeal reaches the merits panel. For instance, the Clerk's Office will not accept the brief for filing if there are obvious problems with the jurisdictional statement. Counsel typically has seven days to file a brief with a corrected jurisdictional statement.²⁸ The docketing statement provides yet another chance for litigants to catch jurisdictional issues before a Seventh-Circuit judge sees their filings. Appellants must file "a docketing statement" around the same time as the notice of appeal, and the docketing statement must comply with Circuit Rule 28.²⁹ (If the appellant's statement is not complete and correct, an appellee must provide a complete and correct docketing statement to the clerk within 14 days.³⁰) "[S]enior court staff" reviews each new appeal "shortly after it is docketed to determine whether potential appellate jurisdiction problems exist."³¹

That said, ultimate responsibility for proper jurisdictional summaries lies with the litigants, and the Seventh Circuit does not hesitate

to hold parties accountable. As an initial matter, the court can examine or reexamine jurisdiction at any time, even if counsel does not raise the issue. The panel once raised questions about jurisdiction for the first time at oral argument, a nightmare scenario for many oral advocates.³² And, as illustrated above, many cases reach a panel for decision with jurisdictional flaws.

Moreover, some jurisdictional-statement mistakes are unfixable. Specifically, a pair of 2018 decisions held that counsel can waive or forfeit rights under nonjurisdictional rules in jurisdictional and docketing statements.³³ In *Walker v. Weatherspoon*, the plaintiff-appellant filed her appeal "many months too late under Fed. R. App. P. 4(a)(7)(A)(ii), which says that a judgment is deemed to be entered on the earlier of the Rule 58 judgment or 150 days after a dispositive order is entered on the civil docket."³⁴ The jurisdictional statement in the appellees' brief, however, treated the appeal as "premature" rather than late.³⁵ The "court alerted the parties to a problem with the appeal's timing" after the appellees filed their brief. The appellees then asserted in their supplemental statement that the appeal was late.³⁶ The court agreed that the appeal was untimely, but held that the appellees "relinquished the benefit" of Rule 4 in their original jurisdictional statement.³⁷ "Enforcing waivers and forfeitures gives litigants incentives to explore issues themselves rather than wait for the court to do the work."³⁸

The *Weatherspoon* court relied on *Hamer v. Neighborhood Housing Services of Chicago*, where the Seventh Circuit held in a matter of first impression that declarations in docketing statements waived "[r]ights under nonjurisdictional rules."³⁹ The *Hamer* plaintiff filed pro se her notice of appeal "outside the maximum" allowable deadline under Federal Rule of Appellate Procedure 4(a)(5)(C).⁴⁰ The defendants, however, stated in their docketing statement that the "Plaintiff-Appellant timely filed a Notice of Appeal."⁴¹ The plaintiff argued that the defendants' statement "waived any challenge to the timeliness" of her appeal.⁴² The court, after citing *Baez-Sanchez* and emphasizing the importance of representations to the court, agreed.⁴³

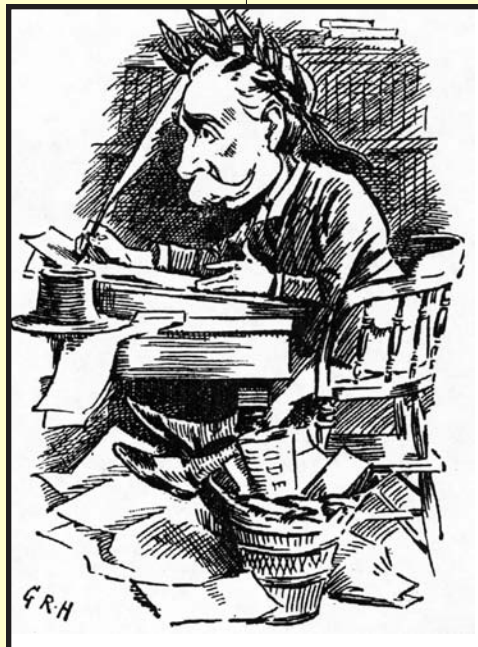
The cases discussed above illustrate some of the most widespread mistakes in jurisdictional statements. A more exhaustive list is below, sourced largely from the Practioner's Handbook for the Seventh Circuit.⁴⁴

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- Appellee fails to state explicitly that appellant’s jurisdictional statement is “complete and correct” using exactly those words (*e.g.*, “agrees” or “concur[s] with” is insufficient);
- Appellee mistakenly states that appellant’s jurisdictional statement is “complete and correct”;
- The party relies on 28 U.S.C. § 2201 (declaratory judgments) as the basis for subject-matter jurisdiction;
- The statement fails to provide both the date of entry of the judgment or order appealed and the date that the notice of appeal (or petition to review) was filed (merely calling the appeal “timely” is insufficient);⁴⁵
- If the appeal is of an order other than a final judgment, the statement fails to provide additional information sufficient for the court to determine whether the order is immediately appealable;⁴⁶ and/or
- The statement fails to include the requisite details of the magistrate judge’s involvement if the magistrate judge issued the final decision in a case.⁴⁷



- Parties must separately identify a corporation’s principal place of business and state of incorporation.⁵¹
- In general, parties should not “stop at the first layer of citizenship if left with something other than individuals or corporate entities.”⁵²
 - Parties must list the citizenship of all of the members of an LLC, and, if necessary, each member’s members’ citizenships.
 - A party must disclose the citizenship of a partnership’s limited and general partners to determine whether there is complete diversity.

Every Seventh Circuit practitioner should read the Handbook, which contains a wealth of helpful practice pointers about jurisdiction and other topics. (There is also a helpful Seventh Circuit Brief Filing Checklist on the court’s website.⁵³) For example, the Handbook states that the Seventh Circuit Clerk’s Office will, upon request, “preview briefs,” including the jurisdictional statement, “for compliance with court rules.”⁵⁴ Another tip: if counsel notices an error in opposing counsel’s jurisdictional statement, he should not move to strike the brief. Rather, counsel should point out the error in the responsive or reply brief.⁵⁵

In sum, lawyers should spend substantial time writing, checking, and double-checking jurisdictional statements for compliance with Federal Rule of Appellate Procedure 28 and Circuit Rule 28. With proper attention to these rules, members of the Seventh Circuit bar can enjoy, uninterrupted, their post-filing moments.

The issues with jurisdictional statements in diversity cases deserve their own list.⁴⁸

- Parties cannot rely on a naked statement that there is diversity of citizenship. The rules require supporting facts.⁴⁹
- Parties should not confuse residency with citizenship.⁵⁰

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Notes:

- ¹ *Baez-Sanchez v. Sessions*, 862 F.3d 638, 639 (7th Cir. 2017) (Wood, C.J., in chambers).
- ² See Practitioner’s Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit 138 (2017 ed.), available at <http://www.ca7.uscourts.gov/forms/handbook.pdf> (hereinafter “Handbook”).
- ³ *Baez-Sanchez*, 862 F.3d at 642.
- ⁴ *Id.* at 639, 642.
- ⁵ See *id.* at 641-42.
- ⁶ Fed. R. App. P. 28(a)(4).
- ⁷ Cir. R. 28(b) (emphasis added).
- ⁸ See *United States v. Naud*, 830 F.2d 768, 769 (7th Cir. 1987).
- ⁹ 862 F.3d at 641-42.
- ¹⁰ *Id.* at 642.
- ¹¹ *Id.*
- ¹² *Slotke v. Wisconsin Dep’t of Workforce Dev.*, 734 F. App’x 354, 2018 WL 3854842 (7th Cir. 2018) (unpublished).
- ¹³ See *id.* at 356.
- ¹⁴ *Id.*
- ¹⁵ *Cincinnati Ins. Co. v. E. Atl. Ins. Co.*, 260 F.3d 742, 747-48 (7th Cir. 2001).
- ¹⁶ *Id.* at 747.
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *Id.* at 748.
- ²⁰ 466 F. 3d 562, 563 (7th Cir. 2006) (per curiam).
- ²¹ *Id.*; see also *Slotke*, 734 F. App’x at 356 (counsel failed to correct the mistake in a supplemental statement but court did not engage in its typical practice of ordering a counseled party to show cause for violating Circuit Rule 28).
- ²² 469 F.3d 675, 676 (7th Cir. 2006).
- ²³ *Id.*
- ²⁴ *Id.* at 676-77.
- ²⁵ *Id.*
- ²⁶ *Id.* at 677.
- ²⁷ *Smoot v. Mazda Motors of Am., Inc.*, 469 F.3d 675, 678 (7th Cir. 2006). But see *id.* at 682-83 (Evans, J., concurring) (calling the “jurisdictional statement hiccups” “minor flaws,” not “felonies”).
- ²⁸ See *Naud*, 830 F.2d at 769; Handbook at 134.
- ²⁹ See Cir. R. 3(c)(1).
- ³⁰ *Id.*
- ³¹ Handbook at 19-20.
- ³² *Yassan v. J.P. Morgan Chase & Co.*, 708 F.3d 963, 968 (7th Cir. 2013).

³³ *Walker v. Weatherspoon*, 900 F.3d 354, 357 (7th Cir. 2018) (jurisdictional statement), *cert. denied*, 139 S. Ct. 832 (2019); *Hamer v. Neighborhood Hous. Servs. of Chicago*, 897 F.3d 835, 839 (7th Cir. 2018) (docketing statement); see also *Kontrick v. Ryan*, 540 U.S. 443 (2004); *United States v. Neff*, 598 F.3d 320, 323 (7th Cir. 2010).

³⁴ *Weatherspoon*, 900 F.3d at 356.

³⁵ *Id.* at 357.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Hamer*; 897 F.3d at 839-40.

⁴⁰ *Id.* at 837.

⁴¹ *Id.* at 838.

⁴² *Id.*

⁴³ *Id.* at 839-40.

⁴⁴ See Handbook at 135-37.

⁴⁵ See Cir. R. 28(a)(2)(i) & (iv).

⁴⁶ See Cir. R. 28(a)(3) (illustrative list).

⁴⁷ See Cir. R. 28(a)(2)(v).

⁴⁸ See *Smoot*, 469 F.3d at 677-78 (the court is “plagued by the carelessness of a number of the lawyers practicing before” the Seventh Circuit “with regard to the required contents of jurisdictional statements in diversity cases”).

⁴⁹ See, e.g., *Slotke*, 734 F. App’x at 356.

⁵⁰ See, e.g., *Heinen v. Northrop Grumman Corp.*, 671 F.3d 669, 670 (7th Cir. 2012) (“counsel for both sides were surprised” to learn at “oral argument” that residence is not citizenship).

⁵¹ See, e.g., *Smoot*, 469 F.3d at 676.

⁵² Handbook at 136.

⁵³ Seventh Circuit Brief Filing Checklist (Jan. 2019), available at <http://www.ca7.uscourts.gov/forms/check.pdf>.

⁵⁴ Handbook at 134.

⁵⁵ Handbook at 138.

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