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Appellate Practice Corner

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Seventh Circuit Insists on Complete and Correct Statements About its Own Jurisdiction

It should come as no surprise to anyone who practices regularly in the United States Court of Appeals for the Seventh Circuit that the court takes jurisdictional issues very seriously and is rightly attentive to the rules that govern the power of federal appeals courts to adjudicate disputes. Frequent litigants in the Seventh Circuit may be aware of its practice of screening appeals for apparent defects in jurisdiction and demanding explanation or correction of such issues.

While it can be initially frustrating to have to address these demands, it is better to have the opportunity to address them before devoting time and effort to an appeal that the court might determine it has no power to decide. Ordinarily the court issues a short minute order when such concerns arise, directing the party in question to explain why the court has jurisdiction to hear the appeal despite the court's concern. Such orders are typically not published, but Chief Judge Diane Wood recently issued an in-chambers decision addressing these concerns as a published opinion, including by reference to her previously published in-chambers decision on another recurring problem with jurisdictional statements.

This edition of the Appellate Practice Corner discusses both decisions, in which Judge Wood expressed the hope that publicly addressing such issues might help others avoid similar errors and promote compliance with the rules.

Lowrey v. Tilden and *Baez-Sanchez v. Sessions*

Judge Wood's opinion in *Lowrey v. Tilden*, 948 F.3d 759 (7th Cir. 2020) (Wood, C.J., in chambers), concerned a recurring problem in jurisdictional statements contained in appellate briefs. In that opinion, she recalled a prior published in-chambers opinion in which she had addressed a common problem in the jurisdictional statements in briefs filed by appellees who are "dissatisfied" with the jurisdictional statements provided by appellants. *Lowrey*, 948 F.3d at 760 (citing *Baez-Sanchez v. Sessions*, 862 F.3d 638 (7th Cir. 2017) (Wood. C.J., in chambers)). Both decisions concerned jurisdictional statements in briefs, required by Circuit Rule 28, which "flesh[es] out" the requirements of Federal Rule of Civil Procedure 28. *See Baez-Sanchez*, 862 F.3d at 639. But the same requirements apply to the jurisdictional statements required in docketing statements under Circuit Rule 3(c), and the "net effect" of these rules "is to require the same jurisdictional information for both docketing and briefing." *Id.*

The *Lowrey* and *Baez-Sanchez* opinions each concerned a pair of cases that had been consolidated solely for the purpose of addressing slightly different aspects of the same requirement. *Lowrey* addressed the requirements pertaining to an appeal directly from a judgment rendered by a magistrate; *Baez-Sanchez* addressed the specific requirements imposed on an appellee to evaluate the jurisdictional statement supplied by an appellant, including supplying the appellee's own complete jurisdictional statement if the appellee deems the appellant's statement unsatisfactory. In the two cases addressed in *Lowrey*, Judge Wood required counsel to file amended jurisdictional statements that complied with the rules. *Lowrey*, 948 F.3d at 761. In the two cases she addressed in *Baez-Sanchez*, she returned the briefs containing

the deficient jurisdictional statements, instructing the parties who had filed them to file amended briefs containing adequate jurisdictional statements. *Baez-Sanchez*, 862 F.3d at 641-42.

Lowrey: Jurisdictional Statement in Appeal of Magistrate's Decision

Proudly leaning into the court's well-earned "reputation as a jurisdictional hawk" in *Lowrey*, Judge Wood addressed the information an appellant must furnish in a direct appeal to the Seventh Circuit of a judgment issued by a magistrate judge. *Lowrey*, 948 F.3d at 760. Since a magistrate does not have the authority to issue a directly appealable judgment to the appeals court unless all of the parties agree, she observed, it is imperative that the appellant's jurisdictional statement not only mention the magistrate's involvement but also state "the dates on which each party consented in writing to the entry of final judgment by the magistrate judge." *Id.* (quoting Cir. R. 28(a)(2)(v)).

In both of the appeals Judge Wood consolidated for joint treatment in *Lowrey*, a party had failed to meet this requirement. The appellees in *Lowrey* themselves had expressed dissatisfaction with the *pro se* appellant's jurisdictional statement, requiring them to supply a complete jurisdictional statement of their own. *See* Cir. R. 28(b). In their jurisdictional statement, however, they had failed to include the dates on which the parties had consented to the entry of an appealable judgment by the magistrate. *Lowrey*, 948 F.3d at 760.

In the other case, *McCray v. Wilkie*, the jurisdictional statement was inadequate in that it did not even mention that a magistrate judge had rendered the judgment being appealed. *Id.* (The opinion does not say which party had furnished the inadequate jurisdictional statement in that case.) Having failed to mention the magistrate's role at all, that jurisdictional statement presumably also failed to give the dates of the parties' consent to the entry of judgment by the magistrate.

The magistrate's powerlessness to render an appealable judgment without the consent of the parties made these omissions particularly important. *Id.* (citing *Coleman v. Labor & Indus. Rev. Comm'n of the State of Wisconsin*, 860 F.3d 461 (7th Cir. 2017)). According to Judge Wood in *Lowrey*, the failure to supply information about the magistrate's involvement—including the dates of the parties' consent—is a sufficiently "recurring problem" to justify a published opinion publicly highlighting the requirement set forth in Circuit Rule 28(a)(2)(v). "This rule is not a secret," she emphasized; the requirements for jurisdictional statements in such appeals are "clearly spelled out" in the rule itself. *Lowrey*, 948 F.3d at 761.

Moreover, she observed, the court's *Practitioner's Handbook for Appeals*—which is readily available and easily located on the Seventh Circuit's public website—"explicitly refers to the failure to provide dates of consent to proceed before a magistrate judge as one of the recurring problems that the court encounters when performing jurisdictional screening." *Id.* (citing *Practitioner's Handbook* at 145, http://www.ca7.uscourts.gov/rules-procedures//Hand-book.pdf).

Baez-Sanchez: Appellee's Obligations as to Jurisdictional Statements

While an appellee might initially appear have less to do in its jurisdictional statement, in some ways it has more: not just to determine the basis for federal and appellate jurisdiction, but also to evaluate and critique the appellant's jurisdictional statement—and further still, to supply a full and accurate jurisdictional statement if the appellant's is unsatisfactory. Circuit Rule 28(b) requires an appellee to state "explicitly" whether the appellant's jurisdictional statement is "complete and correct," and if not, to supply one that is.

Judge Wood's opinion in *Lowrey* cites her in-chambers opinion in *Baez-Sanchez*, in which she highlighted a recurring problem in jurisdictional statements provided by appellees: Many did not expressly state that the appellant's jurisdictional statement was *both* complete *and* correct, leaving room for ambiguity as to whether the statement was satisfactory in both respects.

In *Baez-Sanchez* itself, the brief filed by the Department of Justice contained a jurisdictional statement pronouncing its adversary's jurisdictional statement "correct," without saying whether it was also complete. *Baez-Sanchez*, 862 F.3d at 641-42. In the other case, *Bishop v. Air Line Pilots Association International*, the appellee's jurisdictional statement had what Judge Wood called "the mirror-image problem": It described the appellant's jurisdictional statement as complete without saying if it was correct, a flaw that required his brief to be returned as well. *Id.* at 642.

Judge Wood would later write in *Lowrey* that her opinion in *Baez-Sanchez* had "emphasized that these are different requirements, and that this is not the place for creative writing." *Lowrey*, 948 F.3d at 760. In both *Baez-Sanchez* and *Bishop*, the failure to adhere to these requirements also meant that the jurisdictional statements presumably also failed to identify what was potentially incorrect or incomplete about the statements they were describing. More importantly, without a statement agreeing that the appellant's jurisdictional statement was both complete and correct, and without any jurisdictional statement in response, the possibility remained in each case that no party had provided an adequate jurisdictional statement—giving the court inadequate assurance that it had the authority to decide the appeals.

In both *Baez-Sanchez* and *Bishop*, Judge Wood ordered the briefs returned to the parties who had filed them, with directions to file amended briefs containing jurisdictional statements declaring their opponents' statements either "complete and correct" or not—and if not, supplying complete and correct jurisdictional statements themselves. *Baez-Sanchez*, 862 F.3d at 642.

The Importance of Jurisdiction to a Federal Appeals Court

The Seventh Circuit's attention to these details, as manifested in Judge Wood's opinions, reflects the court's deep respect for the rules that govern and limit its power. As a federal appeals court, the Seventh Circuit has to be concerned with two distinct limitations on that power: whether the case belongs in a federal court in the first place, and whether the case has properly been appealed. Indeed, the second concern implicates two components of its own, either or both of which may be at issue in any given appeal: whether the order being appealed is one that *can* be appealed, at least at the time the appeal is being attempted; and if so, whether the appellant has done what is necessary to invoke the court's appellate jurisdiction.

While the court evinces its concern for these rules and the jurisdictional requirements they represent by insisting that parties comply with them, its concern for these rules is more vividly illustrated by the ample resources it provides to assist in that compliance. In both *Lowrey* and *Baez-Sanchez*, Judge Wood underscored the value of the *Practitioner's Handbook*—calling it, in *Lowrey*, "a useful guide, regularly updated by the court and its staff, for both experienced and novice practitioners." *Lowrey*, 948 F.3d at 761; *Baez-Sanchez*, 862 F.3d at 641.

In *Baez-Sanchez*, Judge Wood additionally pointed to the checklist prepared by the clerk's office for the use of litigants in preparing appellate briefs (available on the court's public website at http://www.ca7.uscourts.gov/forms/check.pdf). *Baez-Sanchez*, 862 F.3d at 641.

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Conclusion

To those resources, add Judge Wood's opinions in *Lowrey* and *Baez-Sanchez*, demonstrating the court's interest not in penalizing litigants who have fallen short of the rules but in helping them live up to those rules in the first place. By requiring the parties to assist it in staying within the limits of its constitutional and statutory power, the court sets a good example of the importance of those limits and justifies its hawkishness in enforcing the rules governing federal appellate procedure. While it can be frustrating to be challenged by the court to prove that it has jurisdiction over the appeal, many practitioners find themselves grudgingly thankful for the chance to explain or fix potential jurisdictional defects before devoting time and effort to an appeal that the court is procedurally powerless to decide.

About the Author

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