

# **PRACTITIONER'S HANDBOOK FOR APPEALS**



**TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**2019 EDITION**

out what needs to be corrected. All corrections must be made within seven days. If satisfactorily corrected, the brief will be filed on the date originally tendered.

The clerk's office has prepared a checklist to assist litigants in the preparation of briefs and, if requested, will preview briefs for compliance with court rules. The "Seventh Circuit Brief Filing Checklist" is obtainable from the Seventh Circuit's website.

#### **D. Court's Rejection of Jurisdictional Statements**

Particular attention should be given to the "Jurisdictional Statement" section of the brief. The appellant's (or petitioner's) brief must provide all the information that Fed. R. App. P. 28(a)(4) and Circuit Rule 28(a) require as to the basis for jurisdiction of both the district court (or agency) and the court of appeals. The court should not have to look to other sections of the brief or refer to the record to determine jurisdiction.

The inclusion of the necessary information in the Jurisdictional Statement should be a simple matter when drafting the brief because the appellant (or petitioner) was required to provide the same information in the Circuit Rule 3(c) docketing statement. Still, briefs that contain inadequate, incomplete or incorrect Jurisdictional Statements are not an uncommon occurrence and are no longer tolerated. *See, e.g., Smoot v. Mazda Motors of America, Inc.*, 469 F.3d 675, 677-78 (7th Cir. 2006).

The court screens the Jurisdictional Statement section of all counseled briefs to ensure that all the necessary information about the jurisdiction of both the district court (or agency) and the court of appeals is included. *See Baez-Sanchez v. Sessions*, 862 F.3d 638, 639 (7th Cir. 2017) (Wood, C.J., in chambers). As noted in *Baez-Sanchez*, a "distressing" number of briefs contain Jurisdictional Statements that fail to comply with Cir. R. 28. *Id.* Noncompliant Jurisdictional Statements are rejected, and the litigant is ordered to provide an Amended Jurisdictional Statement.

Counsel typically is given seven days to file an Amended Jurisdictional Statement, correcting the statement's deficiencies.

Carelessness with regard to the required information to establish diversity jurisdiction is particularly troublesome, and may be sanctioned. *See, e.g., Smoot v. Mazda Motors of America, Inc.*, 469 F.3d 675, 677-78 (7th Cir. 2006); *BondPro Corp. v. Siemens Power Generation, Inc.*, 466 F.3d 562 (7th Cir. 2006) (per curiam); *Meyerson v. Harrah's East Chicago Casino*, 299 F.3d 616 (7th Cir. 2002).

Some of the common deficiencies of jurisdictional statements in diversity cases include the following:

- (a) A naked statement that there is diversity of citizenship. Such a statement is never sufficient. *Dalton v. Teva North America*, 891 F.3d 687, 690 (7th Cir. 2018); *Thomas v. Guardsmark, LLC*, 487 F.3d 531, 533-35 (7th Cir. 2007). The Jurisdictional Statement must identify the states of which the parties are citizens and the amount in controversy. *Wise v. Wachovia Securities, LLC*, 450 F.3d 265, 266 (7th Cir. 2006). Also, allegations of citizenship based on “information and belief,” or “the best of my knowledge and belief,” or similar language, are by themselves insufficient to show citizenship in a diversity case; something more is needed. *Medical Assurance Co. v. Hellman*, 610 F.3d 371, 376 (7th Cir. 2010).
- (b) A statement that an individual is a resident of a state. Residency and citizenship are not synonyms, and it is the latter that matters for purposes of diversity jurisdiction. *Meyerson v. Harrah’s East Chicago Casino*, 299 F.3d 616, 617 (7th Cir. 2002); *see also Heinen v. Northrop Grumman Corp.*, 671 F.3d 669, 670 (7th Cir. 2012).
- (c) The failure to recognize that a corporation may be a citizen of more than one state. A corporation has two places of citizenship: where it is incorporated, and where it has its principal place of business, and both must be separately identified. *Smoot v. Mazda Motors of America, Inc.*, 469 F.3d 675, 676 (7th Cir. 2006); *see also Dalton v. Teva North America*, 891 F.3d 687, 690 (7th Cir. 2018) (“what matters for citizenship of a corporation is its state of incorporation and its principal place of business, not its ‘headquarters’”); *Hoagland v. Sandberg, Phoenix & von Gontard, P.C.*, 385 F.3d 737, 739-41 (7th Cir. 2004) (business and non-business corporations treated the same for diversity purposes).
- (d) A limited liability company is not the same as a corporation for diversity purposes. The citizenship of a limited liability company is that of its members. *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 692 (7th Cir. 2003). The court, therefore, needs to know the identity of each member and the member’s citizenship, and if necessary “each member’s members’ citizenships”. *Hicklin Engineering, L.C. v. R. J. Bartell*, 439 F.3d 346, 347-48 (7th Cir. 2006).
- (e) A partnership is neither an individual nor a corporation for diversity purposes. A federal court must look to the citizenship of a partnership’s limited, as well as its general, partners to determine whether there is complete diversity. *Carden v. Arkoma Associates*, 110 S.Ct. 1015, 1019-21 (1990). And, if the partners are themselves partnerships, the inquiry must continue to their partners, and so on. *Hart v. Terminex*

*International*, 336 F.3d 541, 543 (7th Cir. 2003). And while it is a partnership's right to keep its ownership secret, one consequence is lack of access to federal courts if the partnership bears the burden of establishing diversity. *Meyerson v. Showboat Marino Casino Partnership*, 312 F.3d 318, 321, (7th Cir. 2002) (per curiam).

- (f) Do not stop at the first layer of citizenship if left with something other than individuals or corporate entities. The citizenship of partnerships and unincorporated business entities must be traced through however many layers of partners or members there may be. *Meyerson v. Harrah's East Chicago Casino*, 299 F.3d 616, 617 (7th Cir. 2002); see also *Americold Realty Trust v. Conagra Foods, Inc.*, 136 S.Ct. 1012, 1014 (2016) ("While humans and corporations can assert their own citizenship, other entities take the citizenship of their members.").
- (g) Parties cannot assume that foreign business entities enjoy the same corporate status as the United States understands it. Diversity cases involving foreign business entities pose unique problems. Litigants should provide detail in their jurisdictional statements as to the business structure of foreign entities. *White Pearl Inversiones S.A. (Uruguay) v. Cemusa, Inc.*, 647 F.3d 684 (7th Cir. 2011).
- (h) An allegation that a party is "not a citizen" of the state of the opposing party is not sufficient to establish diversity. *Myerson v. Showboat Marina Casino Partnership*, 312 F.3d 318, 320 (7th Cir. 2002) (per curiam). All parties to the action must be listed by name and the state(s) of their citizenship identified.

Other problems that the court sees on a recurring basis include the following:

- (a) Section 2201 of Title 28 United States Code (declaratory judgments) is not a basis for subject matter jurisdiction. The substantive claims of the case determine whether federal jurisdiction exists. *New Page Wisconsin System Inc. v. United Steel*, 651 F.3d 775, 776 (7th Cir. 2011).
- (b) An appellee does not explicitly state whether an appellant's jurisdictional statement is "complete and correct". A statement that appellee "agrees" or "concurs" with an appellant's statement (or use of similar language) is insufficient.

If an appellee determines that an appellant's statement does not fully comply with the requirements of Fed. R. App. P. 28(a)(4) and Cir. R. 28(a), the appellee must provide a complete jurisdictional summary as to the jurisdictional basis of both the district court and the court of appeals. Cir. R. 28(b); see *Dalton v. Teva North America*, 891 F.3d 687,

690 (7th Cir. 2018) (Circuit Rule 28 “obligates an appellee to provide a complete and correct jurisdictional statement when the appellant’s statement falls short”); *Pastor v. State Farm Mutual Automobile Inc. Co.*, 487 F.3d 1042, 1048 (7th Cir. 2007); *Professional Service Network, Inc. v. American Alliance Holding Company*, 238 F.3d 897, 902-03 (7th Cir. 2001).

An appellee that mistakenly states an appellant’s jurisdictional statement is “complete and correct”, when it is not, compounds the problem. *Pastor v. State Farm Mutual Automobile Ins. Co.*, 487 F.3d at 1048; *BondPro Corp. v. Siemens Power Generation, Inc.*, 466 F.3d 562 (7th Cir. 2006) (per curiam).

- (c) The statement neglects to include information of a magistrate judge’s involvement. If a magistrate judge issues the final decision in a case, the jurisdictional statement must so state and provide the dates that the parties consented. Cir. R. 28(a)(2)(v).
- (d) The failure 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. A statement that the appeal (or petition to review) was “timely filed” is not sufficient. Cir. R. 28(a)(2)(i), (iv).
- (e) A typographical error as to any of the required dates may suggest that an appeal is untimely (or premature). Counsel should proofread the statement to make certain that the correct dates are provided.
- (f) Not enough information is included if the appeal is from an order other than a final judgment. The statement must provide additional information, so the court can determine whether the order is immediately appealable. Check Cir. R. 28(a)(3) which provides an illustrative list.
- (g) Necessary post-judgment information is not included. If any post-judgment motion is claimed to toll the time to appeal the judgment, the statement must provide both the date of the motion’s filing and the date of entry of its disposition. Cir. R. 28(a)(2)(ii), (iii).

Nearly two dozen Jurisdictional Statements are rejected each month because of these and other deficiencies. “There is no reason why, month after month, year after year, the court should encounter jurisdictional statements with such obvious flaws. This imposes needless costs on everyone.” *Baez-Sanchez v. Sessions*, 862 F.3d at 642. The lesson to be learned from these examples — counsel could have been spared the necessity to revise the Jurisdictional Statement had counsel just carefully read the rules and proofread the statement.