

# The Ins and Outs of Appellate Statements of Jurisdiction: How to Avoid Common Mistakes

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Though Statements of Jurisdiction may seem like a simple part of an appellate brief, parties often make mistakes in drafting jurisdictional statements. In fact, the U.S. Court of Appeals for the Seventh Circuit recently wrote: “There is no reason why, month after month, year after year, the court should encounter jurisdictional statements with such obvious flaws.” *Baez-Sanchez v. Sessions*, 2017 WL 2927632, at \*3 (7th Cir. July 10, 2017). Here’s how to avoid common pitfalls. **Tips:** Federal Rule of Appellate Procedure 28(a)(4) sets out the four critical points that must be included in all jurisdictional statements in an appellant’s brief:

1. The basis for the district court or agency’s jurisdiction;
2. The basis of the appellate court’s jurisdiction;
3. The relevant dates demonstrating that the appeal or petition is timely; and
4. Information establishing either finality of the existence of a relevant exception to the final judgment rule.

*Id.* at \*1. Federal Rule of Appellate Procedure 28(b) provides that the appellee’s brief does not need to include this information “unless the appellee is dissatisfied with the appellant’s statement.” Fed. R. App. P. 28(b). This makes it incumbent on the appellee to detect and point out mistakes in the appellant’s jurisdictional statement. As set forth in *Baez-Sanchez*, common mistakes include:

- In federal question cases where jurisdiction depends on 28 U.S.C. § 1331, failing to specify the particular statute or constitutional provision at issue;

- In diversity cases, failing to distinguish between citizenship (required by 28 U.S.C. § 1332) and residency (irrelevant); and
- In diversity cases, for organizations such as partnerships, LLPs, and LLCs, failing to work back through the ownership structure until one reaches either individual human beings or a formal corporation with a state of incorporation and a principal place of business.

*Id.* at \*2. If the appellee does not properly state that a jurisdictional statement is adequate, its own brief may be stricken. For instance, in *Baez-Sanchez*, the court explained that pursuant to 7th Cir. R. 28(b), the “appellee’s brief shall state explicitly whether or not the jurisdictional summary in the appellant’s brief is *complete and correct*.” *Id.* at \*3. The court consolidated two cases with inadequate jurisdictional statements, and struck both briefs for failing to comply with Fed. R. App. P. 28(b) and 7th Cir. R. 28(b). Specifically, in *Baez-Sanchez v. Sessions*, No. 16-3784, the respondent Attorney General of the United States submitted a Statement of Jurisdiction stating: “Mr. Baez-Sanchez’s jurisdictional statement is correct.” *Id.* at \*3. This was inadequate because it failed to address whether the appellant’s jurisdictional statement was complete. *Id.* In the other case, *Bishop v. Air Line Pilots Association, Int’l*, No. 17-1438, the statement said: “Appellants’ jurisdictional statement provides a complete jurisdictional summary.” *Id.* The court similarly found this to be incomplete because it failed to address the correctness. *Id.* Not all Circuits require the appellee to state explicitly whether the appellant’s jurisdictional statement is both complete and correct. For instance, in the Eleventh Circuit, the rule merely states that an appellee’s brief need not contain a jurisdictional statement “if the appellee is satisfied with the appellant’s statement.” 11th Cir. R. 28-2. Nevertheless, to avoid problems with Statements of Jurisdiction, “[t]he appellee cannot simply assume that the appellant has provided a jurisdictional statement that complies with the rules.” 2017 WL 2927632 at \*2. Instead, appellees should ensure that the appellant’s Statement of Jurisdiction contains all required information, and state explicitly what it is missing if it does not.

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