LIKE A HAWK – THE SEVENTH CIRCUIT IS WATCHING ITS APPELLANTS AND WEIGHING IN ON BEST PRACTICES ON APPEAL

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U.S. Appellate Litigation and Complex Commercial Litigation and Disputes Alert

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The Seventh Circuit took the extraordinary measure of circulating by email to all admitted practitioners in the Northern District and Seventh Circuit its decision in two cases from two different lower courts consolidated for purposes of such decision only — *Lowrey v. Tilden* and *McCray v. Wilkie*.[1] That decision pertained to the completeness of the requisite jurisdictional statement in the parties' briefs. The decision was authored by Chief Judge Woods from her chambers.

The court began its discussion by reiterating that it "takes jurisdictional issues seriously" and invoked its "reputation as a jurisdictional hawk."[2] The court explained that, "[a]s part of our routine procedure, we screen all briefs filed before oral argument or submission on the briefs to ensure that our jurisdiction is secure and to catch any potential problems."[3] Chief Judge Woods explained that the court's "routine jurisdictional screening sometimes reveals recurrent problems that would benefit from a published opinion."[4] In this case, the problem was an incomplete jurisdictional statement where a magistrate's opinion from the lower court was the purported basis for jurisdiction.

Fed. R. App. P. 28(a)(4)(D) requires that an appellant's brief contain a jurisdictional statement, including "an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis." The Seventh Circuit's corresponding rule adds the requirement that "[i]f the case is a direct appeal from the decision of a magistrate judge, the dates on which each party consented in writing to the entry of final judgment by the magistrate judge."[5] The court's rules also require that "[t]he appellee's brief shall state explicitly whether or not the jurisdictional summary in the appellant's brief is complete and correct. If it is not, the appellee shall provide a complete jurisdictional summary."[6]

In one of the appeals before it (*Lowrey*), the court noted that the parties had failed to provide the dates upon which the parties had consented to the magistrate's jurisdiction.[7] In the other appeal (*McCray*), the parties in their respective jurisdictional statements neglected to inform the court that the decision from which the appeal was being taken was issued by a magistrate.[8]

The court admonished the parties before it, along with all admitted practitioners, to consult the Practitioner's Handbook for Appeals (found on the court's website), which "can help counsel avoid the common pitfalls in drafting a jurisdictional statement."[9] The parties in the two appeals were given "seven days in which to file an amended jurisdictional statement that complies in all respect with the rules."[10]

This decision provides a cautionary tale against treating the requisite jurisdictional statement as mere boilerplate. Parties submitting briefs to any appellate court should carefully consider the proper bases for appellate

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jurisdiction, ensuring that the jurisdictional statement sets forth fully such bases. Further, as different courts often have different requirements for the constituent parts of briefs, it is imperative that practitioners be familiar with the idiosyncrasies of a court's local rules in that regard. Finally, it is often the case that a court will have a practice guide that supplements its local rules. Such a guide is invaluable — and indeed necessary — in ensuring that a brief complies with the court's requirements and expectations, and such a guide should be regularly consulted when briefs are prepared.

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[1] *Lowrey v. Tilden* App. No. 19-1365 (7th Cir. Feb. 3, 2020) and *McCray v. Wilkie*, App. No. 19-3145 (7th Cir. Feb. 3, 2020) ("Slip Op.").

[2] Slip Op. at 1.

[3] *Id*.

[4] *Id.*

[5] 7th Cir. R. 28(a)(2)(v).

[6] 7th Cir. R. 28(b).

[7] Slip Op. at 3.

[8] *Id.*

[9] *Id.* at 4.

[10] *Id.*

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