

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Jeremy Lowrey v. Andrew Tilden

No. 19-1365, 19-3145, United States Court of Appeals for the Seventh Circuit (February 3, 2020)

SUMMARY

Appellate jurisdiction; requirement to include dates of consent in jurisdictional statement when appealing from a magistrate judge's final judgment (28 U.S.C. § 636(c); 7th Cir. R. 28(a)(2)(v)). The court reminds counsel that failure to provide the dates on which each party consented in writing to entry of final judgment by a magistrate judge is a recurring, readily avoidable flaw. Counsel ordered to file amended jurisdictional statements within seven days.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Diane Wood
JURISDICTION	Federal
DECIDED	February 3, 2020
DOCKET	19-1365, 19-3145
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from final judgment entered by magistrate judge after consent of parties.
PRECEDENTIAL VALUE	Published
PARTIES	Jeremy Lowrey v. Andrew Tilden, Wexford Health Sources, Inc.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the appellant's jurisdictional statement complied with Circuit Rule 28(a)(2)(v) by providing the dates of consent of each party to the magistrate judge's jurisdiction.

HOLDINGS

1. The court held that the jurisdictional statements failed to comply with Circuit Rule 28(a)(2)(v) because they did not provide the dates on which each party consented in writing to the entry of final judgment by the magistrate judge.

FACTUAL BACKGROUND

In both cases, the appeals were from final judgments entered by magistrate judges. The appellant's jurisdictional statements failed to comply with Circuit Rule 28(a)(2)(v) by not providing the dates of consent by each party to the magistrate judge's jurisdiction. In McCray, counsel also failed to note that the decision was by a magistrate judge.

PROCEDURAL HISTORY

Plaintiffs appealed from final judgments entered by magistrate judges. The court identified deficiencies in the jurisdictional statements regarding consent dates.

DISPOSITION

other

CASES CITED

- Baez-Sanchez v. Sessions, 826 F.3d 638 (7th Cir. 2017)
- Coleman v. Labor & Indus. Rev. Comm'n of the State of Wis., 860 F.3d 461 (7th Cir. 2017)

OPINION

PER CURIAM.

In the United States Court of Appeals For the Seventh Circuit _____ No. 19-1365 JEREMY LOWREY, Plaintiff-Appellant, v. ANDREW TILDEN and WEXFORD HEALTH SOURCES, INC., Defendants-Appellees. _____ Appeal from the United States District Court for the Central District of Illinois. No. 16-cv-1170 — Jonathan E. Hawley, Magistrate Judge. _____ No. 19-3145 SCOTT MCCRAY, Plaintiff-Appellant, v. ROBERT WILKIE, Secretary of Veterans Affairs, Defendant-Appellee. _____ 2 Nos. 19-1365 & 19-3145 Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 18-cv-1637 — David E. Jones, Magistrate Judge. _____ SUBMITTED DECEMBER 12 & 9, 2019 — DECIDED FEBRUARY 3, 2020 _____ Before WOOD, Chief Judge, in chambers. WOOD, Chief Judge. This court takes jurisdictional issues seriously—indeed, it is proud to have a reputation as a jurisdictional hawk.

As 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. Many such problems can easily be corrected, and when they are, the judges of the court can proceed in confidence to decide the case. Our routine jurisdictional screening sometimes reveals recurrent problems that would benefit from a published opinion.

A few years ago, I addressed such an issue, when in *Baez- Sanchez v. Sessions*, 826 F.3d 638 (7th Cir. 2017) (Wood, C.J., in chambers), I reminded attorneys practicing before this court that we rely on accurate jurisdictional statements.

In *Baez- Sanchez*, the problem was the failure on the part of many appellees to specify precisely whether, in counsel's view, the appellant's jurisdictional statement was complete and correct. I emphasized that these are different requirements, and that this is not the place for creative writing. Either the jurisdictional statement is both complete and correct, or appellee must furnish a comprehensive jurisdictional statement of its own.

Nos. 19-1365 & 19-3145³ Another recurring problem justifies the same approach. In the two cases I have consolidated only for purposes of this opinion, a magistrate judge issued the final judgment from which the appeal has been taken. Circuit Rule 28(a)(2)(v) requires an appellant in such a case to include in its jurisdictional statement not only information about the magistrate judge's involvement, but also "the dates on which each party consented in writing to the entry of final judgment by the magistrate judge." See also 28 U.S.C. § 636(c).

The information provided in each of these appeals fell short of the requirements of Circuit Rule 28. In *Lowrey v. Tilden*, No. 19-1365, the appellees informed the court in their jurisdictional statement that the parties had consented to have a magistrate judge hear the case; they did so after observing that the pro se appellant's jurisdictional statement was not complete and correct and appropriately moving on to provide their own complete jurisdictional summary.

See Circuit Rule 28(b). But counsel failed to provide the dates of consent of each party to the magistrate judge's jurisdiction. In *McCray v. Wilkie*, No. 19-3145, counsel not only failed to provide the dates of consent, but he also neglected to mention that the decision from which the appeal was being taken had been rendered by a magistrate judge.

The significance of the information about the magistrate judge's involvement and the consent of all parties to that judge's resolution of the merits cannot be overstated. See *Coleman v. Labor & Indus. Rev. Comm'n of the State of Wis.*, 860 F.3d 461 (7th Cir. 2017) (a magistrate judge has no authority to issue a final decision that is directly appealable to the court of appeals unless all parties consent).

4 Nos. 19-1365 & 19-3145 This rule is not a secret. It is clearly spelled out in Circuit Rule 28(a)(2)(v), and this court's Practitioner's Handbook for Appeals (2019 ed.) is readily available on the

court's public web- site, as the second item under the tab "Rules and Procedures." See <http://www.ca7.uscourts.gov/rules-procedures//Hand- book.pdf>.

The Handbook explicitly refers to the failure to pro- vide dates of consent to proceed before a magistrate judge as one of the recurring problems that the court encounters when performing jurisdictional screening. See Handbook at 145.

We once again encourage counsel to consult the Handbook. It is a useful guide, regularly updated by the court and its staff, for both experienced and novice practitioners. It can help counsel avoid the common pitfalls in drafting a jurisdic- tional statement. See Handbook at 142–45.

We expect attorneys who practice before this court to give close attention to all of the rules, including Circuit Rule 28. I hope that this reminder will serve its intended purpose and that such readily avoided flaws will cease.

In each of these cases, counsel shall have seven days in which to file an amended jurisdictional statement that com- plies in all respect with the rules. So ordered.