



ILLINOIS STATE BAR ASSOCIATION

# FEDERAL CIVIL PRACTICE

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## Know the answer to federal jurisdiction

By Honorable Iain D. Johnston and Mark Doherty

### Introduction

Like the bridge keeper guarding the Bridge of Death over the Gorge of Eternal Peril in *Monty Python and the Holy Grail*, federal courts determine who shall pass. Unlike the bridge keeper's three questions, federal courts merely ask one question: Does subject-matter jurisdiction exist?

Federal courts' jurisdiction is limited by Congress and the U.S. Constitution. *Badanish v. Chicago*, 895 F. Supp. 201, 203 (N.D. Ill. 1995). A federal court has jurisdiction to determine its jurisdiction. *U.S. v. Ruiz*, 536 U.S. 622, 628 (2002); *Thomas v. Guardsmark LLC*, 487 F.3d 531 (7th Cir. 2007). Indeed, a federal court has an affirmative duty to *sua sponte* determine whether subject-matter jurisdiction exists. See *Local 150 v. Ward*, 563 F.3d 276, 282 (7th Cir. 2009); *Wernsing v. Thompson*, 423 F.3d 732, 743 (7th Cir. 2005). Federal courts take this duty seriously. In fact, federal judges will tell you that as soon as a case is assigned to them, they conduct a screening to determine whether a federal jurisdictional basis exists. See, e.g., *Gammon v. Terex Corp.*, 2014 U.S. Dist. LEXIS 40115, \*1 (S.D. Ill. 2014). Following that screening process, if the court is not fully satisfied, the court will usually order the parties to provide supplemental briefing and information establishing jurisdiction. In doing so, the District Court will warn the parties that the failure to establish subject-matter jurisdiction will result in dismissal. *Id.* at \*3.

Counsel who fail to take the requirements of federal jurisdiction seriously do so at their own peril. In the best case scenario, the case will be dismissed for want of jurisdiction. *Kroll v. Ceva Freight, LLC*, 2014 U.S. Dist. LEXIS 721, \*8 (N.D. Ill. 2014). That is not a good result. The worst case scenario is exemplified

by *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691 (7th Cir. 2003). In that case, the matter proceeded all the way through trial and judgment before the fateful appeal. On appeal, the Seventh Circuit questioned the parties as to the existence of federal jurisdiction. When it became obvious that jurisdiction was lacking, the appellee, who had won its judgment in the District Court after years of litigation, made the following pitch to the Seventh Circuit:

Defendant-Appellee, Champaign Market Place L.L.C., prays that this Court in exercise of its Appellate jurisdiction decide the case on the merits and affirm the judgment entered on the jury's verdict. Surely in the past this Court has decided a case on the merits where an examination of the issue would have shown a lack of subject matter jurisdiction in the District Court. It would be unfortunate in the extreme for [appellee] to lose a judgment where [appellant] misrepresented (albeit unintentionally) its State of incorporation in its Complaint . . . There was no reason for [appellee] to question diversity of citizenship, since it is not, and never has been, a citizen of Missouri.

350 F.3d 693.

This plea sent the Seventh Circuit orbital. In the end, the Seventh Circuit vacated the judgment and ordered that the case proceed in state court or be settled and that the attorneys could not charge the clients for the work. *Id.* at 694. That is a terrible result.

What follows below is an outline to help counsel pass the screening process and avoid unnecessary time, expense and embarrassment.

### Types of Subject-Matter Jurisdiction

Federal courts have subject-matter jurisdiction in a variety of ways. The following are some of the most common.

#### Federal Question Jurisdiction

Federal courts have subject-matter jurisdiction to hear cases arising under federal law. 28 U.S.C. §1331. Frankly, this is the easiest way to establish jurisdiction and the easiest for the District Court to spot. Often, plaintiffs base their claims upon the various civil rights statutes such as Title VII or §1983. See 42 U.S.C. §2000e, 42 U.S.C. §1983, 28 U.S.C. §1343. These claims are common and are easily identifiable. "When it comes to invoking federal question jurisdiction, the bar is low." *McCoy v. Iberdrola Renewables, Inc.*, 2014 U.S. App. LEXIS 14380, \*11 (7th Cir. 2014). Likewise, patent, trademark and other intellectual property claims quickly pass the screening process. 28 U.S.C. §1338.

#### Diversity Jurisdiction: 28 U.S.C. §1332

Although law students spend countless hours learning about diversity jurisdiction in their first year of law school and then re-learn this jurisprudence ad nauseum in bar review courses, this basis for jurisdiction is the most common stumbling block into federal court.

Diversity jurisdiction has two components: the amount in controversy, and citizenship. The amount in controversy must exceed \$75,000. 28 U.S.C. §1332(a). That seems simple enough. But there can be some subtleties. For example, multiple plaintiffs cannot aggregate the amounts of their claims to meet the jurisdictional amount, when none of the plaintiffs independently meet the amount. In *re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599, 607

(7th Cir. 1997); *Turner v. Goodyear Tire & Rubber Co.*, 252 F. Supp. 2d 677, 680-81 (N.D. Ill. 2003). Because the jurisdictional amount is determined by examining either the benefit to the plaintiff or cost to the defendant of the requested relief, the jurisdictional amount can be established by showing, for example, the cost to the defendant of complying with a requested injunction. *Uhl v. Thoroughbred Technology & Telecommunications, Inc.*, 309 F.3d 978, 983 (7th Cir. 2002). Additionally, the District Court can consider a possible *reasonable* award of punitive damages in determining the amount in controversy. *French v. STL Distribution Services*, 2010 U.S. Dist. LEXIS 75822, \*4 (S.D. Ill. 2010).

Diversity must be complete. This means that none of the parties on either side of the litigation may be a citizen of the state of which a party on the other side is a citizen. *Howell v. Tribune Entertainment Co.*, 106 F.3d 215, 217 (7th Cir. 1997).

Determining citizenship can be dicey. However, it is not as difficult as some counsel make it. Initially, counsel should remember three key points. First, the District Courts look to citizenship, not residency. *Winforge, Inc. v. Coachmen Indus., Inc.*, 691 F.3d 856, 867 (7th Cir. 2012). "Citizenship" and "residence" are not synonyms. *Meyerson v. Harrah's East Chicago Casino*, 299 F.3d 616, 617 (7th Cir. 2002). Numerous cases address pleadings in which the plaintiff alleges that the defendant resides in a particular location, as though a great form book contained this language and it was blindly used by counsel for generations. Second, citizenship is determined at the time the case commences, or in the case of a removed case – more on that later – at the time of removal. *Freeport-McMoran Inc. v. KN Energy, Inc.*, 498 U.S. 426, 428 (1991); *Kanzelberger v. Kanzelberger*, 782 F.2d 774, 776-77 (7th Cir. 1986). Third, the party asserting jurisdiction bears the burden of proof to establish by a preponderance of the evidence that subject-matter jurisdiction exists. *Illinois Bell Telephone Co., Inc. v. Global NAPs Illinois, Inc.*, 551 F.3d 587, 590 (7th Cir. 2008); *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008) (burden on removing party).

The citizenship of a natural person – a human being, like you and us – is determined by domicile, which requires both physical presence and an intent to remain there. *Denlinger v. Brennan*, 87 F.3d 214, 216 (7th Cir. 1996). The physical presence component is relatively easy to establish, whereas, estab-

lishing intent may be more difficult. Factors District Courts have considered in determining a party's intent to remain in a location include the party's current residence, the location of the party's belongings and personal property, the parties voter registration, driver's license and vehicle registration, the party's place of employment, the location of the party's family members, and the extent of the party's social involvement in the surrounding community. *Newsom v. Caliber Auto Transfer of St. Louis, Inc.*, 2010 U.S. Dist. LEXIS 8647, \*6 – 7 (S.D. Ill. 2010).

The citizenship of a legal representative of an estate is the decedent's citizenship before death. *Gustafson v. zumBrunnen*, 546 F.3d 398, 400-01 (7th Cir. 2008).

Business entities can be harder to determine citizenship. A general, run-of-the mill corporation is a citizen of two locations: its place of incorporation and its principal place of business. 28 U.S.C. §1332(c)(1). Legally and factually, the place of incorporation is not difficult to discern. Indeed, the all-knowing Internet can quickly provide this information. In fact, District Courts are authorized to take judicial notice of the public records of corporations maintained by government bodies on the Internet. *French v. STL Distribution Services*, 2010 U.S. Dist. LEXIS 75822, \*6 n. 2 (S.D. Ill. 2010). (In the interest of full disclosure, one of the authors has the Illinois Secretary of State's home page – <http://cyberdriveillinois.com> – as one of its favorites on his tool bar, along with other classics such as the Illinois Department of Corrections inmate locator.) A corporation's principal place of business is where its executive headquarters (the "nerve center") is located. *Illinois Bell Telephone Co. v. Global NAPs Illinois, Inc.*, 551 F.3d 587, 590 (7th Cir. 2008).

The citizenship of a limited liability company is determined by the citizenship of each member of the company, including natural persons, partnership and even other limited liability companies. *Hicklin, L.C. v. Bartell*, 439 F.3d 346 (7th Cir. 2006).

The citizenship of a partnership is determined by the citizenship of all partners or investors in the partnership. *Lear Corp. v. Johnson Electric Holdings Limited*, 353 F.3d 580, 582 (7th Cir. 2003).

A limited partnership is a citizen of every State of which any of the partners – that includes both the general and limited partners – is a citizen. *Smart v. Local 702 IBEW*, 562 F.3d 798, 803 (7th Cir. 2009).

The citizenship of a foreign corporation can be difficult to determine. *BouMatic, LLC v. Idento Operations, BV.*, 2014 U.S. App. LEXIS 13893, \*3 (7th Cir. 2014). Courts analyze the foreign corporation to determine how it would be treated under American law: if it were a limited liability company, it would be analyzed under that standard. *Fellowes, Inc. v. Changzhou Xinrui Fellowes Office Equipment Co.*, 2014 U.S. App. LEXIS 14036, \*4 (7th Cir. 2014).

A proper pleading needs to identify all the relevant citizenships to establish complete diversity. Counsel needs to drill down into each layer of citizenship and identify the citizenships of all parties. *Meyerson v. Showboat Marina Casino Partnership*, 312 F.3d 318, 321 (7th Cir. 2002); *Guaranty National Title Co., Inc. v. J.E.G. Assoc.*, 101 F.3d 57, 59 (7th Cir. 1996). And counsel might as well do it properly in the District Court because they will definitely need to do it properly on appeal. The Seventh Circuit engages in a just-as-thorough determination of subject matter jurisdiction. In fact, some may say they are even more thorough. See *Lear Corp. v. Johnson Elec. Holdings, Ltd.*, 353 F.3d 580, 582-83 (7th Cir. 2003).

The citizenship of a trust the is citizenship of the trustee. *Guaranty National*, 101 F.3d at 59.

The citizenship of a prisoner is the state in which the prisoner was a citizen before being incarcerated, unless the prisoner intended to live elsewhere when released. *Bontkowski v. Smith*, 305 F.3d 757, 763 (7th Cir. 2002).

#### **Supplemental Jurisdiction: 28 U.S.C. §1367**

The first thing to know about supplemental jurisdiction is that it is not called "pendent jurisdiction" anymore, and has not been since 1990. Moreover, this jurisdictional basis was never called "pendant jurisdiction." Counsel does not generate significant confidence with the District Court by using either misnomer.

In 1990, supplemental jurisdiction codified the concept of pendent jurisdiction established in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). *Freiburger v. Emery Air Charter*, 795 F. Supp. 253, 257 (N.D. Ill. 1992). Supplemental jurisdiction allows the District Court to hear state-law claims that are based on a "common nucleus of operative facts" as the federal claim giving rise to subject-matter jurisdiction. *Id.* An easy example is that a state-law battery claim could be heard under supplemental jurisdiction in a case involv-

ing a Fourth Amendment excessive force case, brought under 42 U.S.C. §1983. In the Seventh Circuit, the connection between the facts relating to the federal and state claims is not overly strict. *Baer v. First Options of Chicago*, 72 F.3d 1294, 1299 (7th Cir. 1995).

The District Courts have discretion to allow claims brought under supplemental jurisdiction. *McCoy v. Iberdrola Renewables, Inc.*, 2014 U.S. App. LEXIS 14380, \*15-18 (7th Cir. 2014). Most often, if the federal claims are dismissed, the District Court will likewise dismiss the supplemental state-law claims so that they can be brought in circuit court. *RWJ Mgmt. Co. v. BP Prods. N. Am.*, 672 F.3d 476, 479-80 (7th Cir. 2012). But District Courts are not required to do so. *Id.*

#### **Removal: 28 U.S.C. §1441**

Cases that could have been filed in district court but were filed in circuit court can be removed to district court. 28 U.S.C. §1441. When those cases are removed, District Courts subject them to similar screening

procedures. As discussed above, the District Courts will determine the alleged basis for subject-matter jurisdiction. In doing so, the District Court will determine the timeliness of the notice of removal, which must be filed within 30 days after being served with the state court complaint (or within 30 days of ascertaining that the case may be removed). 28 U.S.C. §1446. Furthermore, the District Court will verify that the basis for removal is based upon the *complaint* filed in circuit court. The purported basis for subject-matter jurisdiction cannot be based upon an affirmative defense or counterclaim. *Rice v. Panchal*, 65 F.3d 637, 639 (7th Cir. 1995) (affirmative defense); *Shannon v. Shannon*, 965 F.2d 542, 545 (7th Cir. 1992) (counterclaim).

#### **Subject-Matter Jurisdiction of Counterclaims**

A District Court may have subject-matter jurisdiction to hear the plaintiff's case against the defendant. But if the defendant files a

counterclaim, the District Court must also determine if it has subject-matter jurisdiction to hear the counterclaim. District Courts have supplemental jurisdiction to hear compulsory counterclaims. 28 U.S.C. §1367, Fed. R. Civ. P. 13(a). But permissive counterclaims require an independent basis for federal jurisdiction. *Oak Park Trust & Savings v. Therkildsen*, 209 F.3d 648, 651 (7th Cir. 2000).

#### **Conclusion**

District Courts carefully scrutinize cases when they are initially filed to determine if subject-matter jurisdiction exists. If the District Court believes that subject matter is lacking, neither counsel nor its client will be thrown into the Gorge of Eternal Peril. However, the District Court will, at least, require a supplemental briefing or amended pleading, establishing the existence of subject-matter jurisdiction. If those filings do not satisfy the District Court, then the case will be dismissed. ■

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