

## Suggested Reading Related to Demonstrative Exhibits

One of the leading cases on demonstrative exhibits in Nebraska is Benzel v. Keller Indus., Inc., 253 Neb. 20 (1997), which held that “demonstrative exhibits are admissible if they supplement the witness’ spoken description of the transpired event clarify some issue in the case, and are more probative than prejudicial.” Id. at 28. “Demonstrative exhibits are inadmissible when they do not illustrate or make clearer some issue in the case; that is, where they are irrelevant, or where the exhibit’s character is such that its probative value is substantially outweighed by the danger of unfair prejudice.” Id.

“Demonstrative exhibits” are broadly defined as “aids offered to illustrate or explain the testimony of witnesses, including experts, or to present a summary or chronology of complex or voluminous documents. State v. Pangborn, 286 Neb. 363, 370 (2013). The case law in Nebraska specifically defines “demonstrative exhibits” as those that clarify some issue in the case. Id. Demonstrative exhibits are defined by the purpose for which they are offered at trial – “to aid or assist the jury in understanding the evidence or issues in a case.” Id.

Even though “demonstrative exhibits” may be “admitted” into evidence, they serve a different purpose than other types of exhibits – they may be a “pedagogical aid.” State v. Pangborn, 286 Neb. 363, 370-371 (2013). It is possible for demonstrative exhibits to be used in jury deliberations in certain situations. State v. Pangborn, Id. at 372. The main law cited in support over the use of demonstrative exhibits during trial is Rule 611(a) of the Fed. R. Evid. Id. at 373. Neb. R. Evid. R. 611(1) is substantially identical to Fed. R. 611. Id.<sup>1</sup> (citing Neb. Rev. Stat. § 27-611 and Fed. R. Evid. 611). There is a circuit split as to the use of demonstrative exhibits during jury deliberations. See State v. Pangborn, 286 Neb. 363, 374 (2013).

<b>Federal Rule</b>	<b>Nebraska Equivalent</b>	<b>Topic</b>
Fed. R. Evid. 611	Neb. Rev. Stat. § 27-611(1)	Mode and order of interrogation and presentation
Fed. R. Evid. 401	Neb. Rev. Stat. § 27-401	Relevant evidence defined
Fed. R. Evid. 403	Neb. Rev. Stat. § 27-403	Exclusion of relevant evidence – probative value outweighed by prejudice
Fed. R. Evid. 703	Neb. Rev. Stat. § 27-703	Bases of opinion testimony by experts, when revealed; admissibility
Fed. R. Evid. 802	Neb. Rev. Stat. § 27-802	Hearsay rule
Fed. R. Evid. 1006	Neb. Rev. Stat. § 27-1006	Voluminous writings, recordings, or photographs; summaries; availability
Fed. R. Civ. P. 26(a)(2)(B)(iii) *Deals with disclosure of expert testimony via reports	Neb. Ct. R. Disc. § 6-326(b)(4)(A)(i) – only requires disclosure of subject matter, substance of facts and	If any expert relies on a demonstrative, then it should be disclosed ahead of time.

<sup>1</sup> “The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (a) make the interrogation and presentation effective for the ascertainment of the truth, (b) avoid needless consumption of time, and (c) protect witnesses from harassment or undue embarrassment.” Neb. Rev. Stat. § 27-611(1)).

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and requires report to contain “any exhibits that will be used to summarize or support them”	opinions, and summary of the grounds for each opinion.	
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- Mangrum on Nebraska Evidence, § 27-401(1) – Demonstrative Chart or Exhibit. “[C]ounsel may use a demonstrative chart or exhibit during opening and throughout the trial to clarify complicated transactions or relationships if proper foundation establishes factual support for the material depicted.” Id. (citing State v. Gutierrez, 272 Neb. 995, 1016 (2007) and Ford v. Estate of Clinton, 265 Neb. 285 (2003)).
- Mangrum on Nebraska Evidence, § 27-611(a) Use of Demonstratives During the Trial; (b) Use of Demonstrative Exhibits During Deliberations; (c) Use of Testimonial Demonstratives During Deliberations.
- 2 McCormick on Evidence § 214 (Kenneth S. Broun, et al. eds., 7th ed. 2013).
- 5 Stephen A. Salzberg et al., Federal Rules of Evidence Manual § 1006.02 (8th ed. 2002).
- State v. Ramirez, 287 Neb. 356 (2014)
- State v. Pangborn, 286 Neb. 363 (2013) (explaining the different types of demonstrative exhibits and how they are used).
- Benzel v. Keller Indus., Inc., 253 Neb. 20 (1997)
- Visual Litigation: Visual Communication Strategies and Today’s Technology, Patrick M. Muscat, et al. (Full Court Press).
- Do’s and Don’t of Demonstrative Evidence at Trial, Hon. David K. Thomson, Feb. 26, 2020 (American Bar Association)
- Mills v. Balius, 254 Miss. 353 (1965) (trial courts have discretion to permit the use of blackboards, freehand drawings thereon, or on paper, miniature models or other media properly utilized in the trial of a lawsuit; where the blackboard is desirable or necessary in the trial of a case, a safer and better procedure is to introduce, and have marked as an exhibit, a photograph, map, facsimile or what is on the blackboard, or introduce the blackboard itself)
- United States v. Buck, 324 F.3d 786 (5th Cir. 2003) (discussing differences between introducing summary diagram to the jury through admission under Rule 611(a) or 1006 or simply as a pedagogical aids, which are instead governed by Rule 611 and 403 and laying a proper foundation for summaries).

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- United States v. Taylor, 21 F.3d 311, 315 (5th Cir. 2000) (allowing use of charts as pedagogical devices intended to present the government's version of the case is within the bounds of trial court's discretion to control the presentation of evidence under Rule 611(a)).
- United States v. Harms, 442 F.3d 367, 375 (5th Cir. 2006) (summaries under Rule 1006 are not to be considered as evidence, but only as an aid in evaluating evidence).