

Maximizing Technology in the Courtroom and the Law Office

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AND THE LAW OFFICE

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COURTROOM TECHNOLOGY PROCEDURES AND EQUIPMENT
FOR THE UNITED STATES BANKRUPTCY COURT DISTRICT OF COLORADO

The United States Bankruptcy Court for the District of Colorado has installed electronic evidence presentation systems in its courtrooms. The evidence presentation system allows for the display of evidence on various monitors located on the bench, witness stand, lectern, and counsel tables.

Procedure

- Attorneys must first contact the Court's technology staff to inquire about availability and to arrange an appointment to test all equipment.
- Unless the court orders otherwise, attorneys are required to test all necessary equipment at least five business days prior to the scheduled court proceeding. To make an appointment, please call 720-904-7451 or email cobml_CourtTechnology@cob.uscourts.gov.
- Once use of the system is approved by the Court, attorneys must arrive 30 minutes in advance of the scheduled court proceeding for connecting and testing purposes.
- Attorneys must provide electronic copies of all evidence on a thumb drive to courtroom staff before the scheduled court proceeding begins.
- THERE IS NO PUBLIC INTERNET ACCESS IN THE COURTHOUSE.

Equipment Options

- Document camera (referred to as "ELMO") to display paper exhibits on screen
- Laptop connectivity with audio at each counsel table
 - Attorneys must provide a compatible display port adapter to connect from their device into a VGA or HDMI cable.
- Tablet (iPad/Android) wireless connectivity
 - If input cables are required, the Court will NOT provide them. You must supply your own input cables (USB, VGA, HDMI, Mini HDMI, power cords, etc.).
 - You must download the Crestron AirMedia™ application from the App Store or Google Play in advance to use this feature.
- Evidence display monitors for Judge, Witness, Counsel, Courtroom Clerk, and ECRO
 - A large display monitor for the gallery may be available upon request.
- Touch screen monitors at the lectern and witness box that allow attorneys and witnesses to annotate or otherwise markup exhibits displayed on the evidence display monitors.
- DVD/VCR combo player
- Video conference system for remote location testimony
 - A motion must be filed and granted before counsel or witnesses may appear by video.
- Electronic Smart Board/White Board (may be available upon request)
- Evidence/Document printing from the counsel touch panel (as necessary during proceedings)
- Assisted listening/Interpreter device

Please contact the Chief Deputy Clerk at 720-904-7302 for specifics on assisted listening and interpreter options. Generally, the Court is not obligated to pay for or provide an interpreter.

ELECTRONIC PRESENTATION OF EVIDENCE: WHAT ARE THE RULES?

1. Examples of the Electronic Presentation of Evidence:
 - a. Conventional exhibits (documents, photographs, charts) displayed electronically.
 - b. Video depositions.
 - c. Documents or photos highlighted to focus attention on particular elements.
 - d. Animations and recreations depict events.
 - e. Charts, graphs and Outlines which summarize important points.
 - f. PowerPoint Presentations in Opening, Closing, and Direct Examination.
2. What are the Rules:
 - a. Generally, the admission or exclusion (including the manner of presentation) of relevant evidence rests within the discretion of the trial court.
 - b. To a great extent the electronic presentation of evidence follows the traditional evidentiary standards, which depend on the intended use.
3. Opening Statement
 - a. The function of an opening statement is to inform the finder of fact of what the party expects to prove and prepare the finder of fact for the evidence that is to be presented. Material that is presented by the attorney is not generally regarded as "evidence" in the strict sense.
 - b. A well-prepared presentation can be an effective road map for the trier of fact during your opening statement. It conveys the important information without getting bogged down in all the details.
 - c. As a general rule, counsel is permitted to put anything on a visual aid that she would be permitted to say. Charts, drawings, or other tangible materials you use in opening statement or closing argument are only visual aids to help illustrate the points that you are trying to make orally.
 - i. Tangible evidence that would otherwise require an evidentiary foundation is not appropriately presented by a lawyer in opening statement unless the exhibit will be offered later through a witness.
 - d. The use of a "PowerPoint" presentation in opening statement approved in *State of Arizona v. Sucharew*, 205 Ariz. 16; 66 P.3d 59; 2003 Ariz. App. LEXIS 61; 397 Ariz. Adv. Rep. 30 (Az. App. 2003). The presentation was essentially a slide show of photographic exhibits. The photographs included in the presentation were the same

ones disclosed to defendant during pretrial discovery and later admitted into evidence at trial. Court of Appeals concluded no abuse of discretion by the trial court in permitting the State's use of the "PowerPoint" presentation based on traditional evidentiary standards. *See also People v. Green*, 47 Cal. 2d 209, 302 P.2d 307, 312 (Cal. 1956) (holding trial court had discretion to permit use of motion picture and photographs later admitted into evidence during opening statement), disapproved on other grounds in *People v. Morse*, 60 Cal. 2d 631, 388 P.2d 33, 36 Cal. Rptr. 201 (Cal 1964).

4. Demonstrative evidence

- a. Demonstrative Evidence is offered to clarify or summarize already admitted evidence, not to evaluate data. Demonstrative evidence includes charts, graphs, and models customarily used to assist testifying witnesses in conveying complex information. When these aids are used as testimonial props, they are considered illustrative aids and are not admitted into evidence.
- b. Federal Rule 1006 is a good rule to follow in preparation of exhibits intended to be presented with testifying witness.
- c. In order to be admitted at trial, demonstrative evidence need only meet the following criteria:
 - i. The item must relate to some other evidence in the case.
 - ii. The item must reflect the other evidence fairly and accurately.
 - iii. The item must be sufficiently explanatory or illustrative to be of potential help to the trier of fact.

5. Substantive Evidence

- a. Substantive Electronic Evidence is frequently a reworking of admitted evidence, for the purpose of arriving at a conclusion. Examples include recreations, simulations, and computer-enhanced photographs derived from information already in evidence.
- b. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, requires federal courts to evaluate the theory or the technique being used to create the scientific evidence. According to this standard, the judge considers whether the theory or technique has been sufficiently tested, has been subject to peer review, and has gained widespread acceptance within the appropriate scientific community. Courts require answers in the affirmative for the following questions:
 - i. Is the scientific theory underlying the computer program used to generate the evidence valid?

- ii. Is the application of that theory generally accepted by the proper scientific community?
 - iii. Does the methodology produce accurate and valid data?
 - c. Even with a proper foundation that substantiates the credibility of the proposed Electronic Evidence, its admission is not guaranteed. Along with traditional evidentiary concerns, courts are considering fairness issues that, while not unique to Electronic Evidence are highlighted by its usage.
 - d. Fairness issues : Electronic Evidence is inadmissible if:
 - i. its probative value is outweighed by its prejudicial effect.
 - ii. its admission would confuse case issues or mislead the finder of fact.
 - iii. its admission would waste time or create undue delay.
 - iv. its admission would be a needless presentation of cumulative evidence.
 - v. the evidence is inaccurate or incomplete.
 - vi. opposing counsel was not provided with adequate opportunity to review the evidence and therefore cannot properly cross-examine the testifying expert witness.
- 6. Closing Statement
 - a. At closing argument the exhibits which have been admitted into evidence can be used without obtaining special permission from the court.
 - b. Some courts have approved use of demonstrative aids that were not used during the trial. *See Shuck v. Cook*, 494 P.2d 306 (Okla. 1972) (whether counsel may use charts in closing is left to discretion of court); *Haycock v. Christie*, 249 F.2d 501 (D.C. Cir. 1957) (blackboard used to tabulate damages); *Mastro v. City of San Diego*, 62 P.2d 407 (Cal. Ct. App. 1936) (blackboard used for mathematical calculations related to speed of automobiles); *Texas Employers' Ins. Ass'n. v. Cruz*, 280 S.W.2d 388 (Tex. Civ. App. 1955) (blackboard in closing argument).
 - c. Other courts, however, have disapproved of the use of demonstrative exhibits that were not accepted into evidence during the trial. *See Mirabile v. New York R.R.*, 230 F.2d 498 (2d Cir. 1956) (court within its discretion in denying counsel's request to use blackboard); *Shuck v. Cook*, 494 P.2d 306 (Okla. 1972) (similar); *People v. Jones*, 205 Cal. App. 2d 460, 23 Cal. Rptr. 418 (1962) (map or diagram prepared by attorney and not received in evidence properly excluded from closing argument); *Andrews v. Cardosa*, 97 So.2d 43 (Fla. Dist. Ct. App. 1957).

**OTHER CONSIDERATIONS FOR PRESENTING EVIDENCE ELECTRONICALLY
IN BANKRUPTCY COURT**

1. Equipment/hardware not provided by the Court:

- Any laptop, tablet, etc. with HDMI or VGA capability
- Appropriate wire adapter for HDMI or VGA for your device
- Wireless connection to the monitors through Air Media™ is possible
- Access to the internet is **NOT** available in the courthouse

2. Potential software:

- Apple programs

TrialPad (\$109.99) - TrialPad is the leading trial presentation and legal file management app for your iPad! Inexpensive, easy, effective, and intuitive, TrialPad can be used to present and annotate evidence in any trial, hearing or ADR setting. www.litsoftware.com

TrialDirector (Free) - TrialDirector for iPad is a simple, easy to use evidence management and presentation tool designed specifically for use with the iPad. www.indatacorp.com

ExhibitView (\$89.99) - Organize by folders, issues, annotate, and present with ease using our cutting edge iPad App. Intuitive features, easy file management, and email and phone support ensure your success with ExhibitView iPad! www.exhibitview.net

RLTC Evidence (\$4.99) - Evidence is image presentation software built for trial lawyers. Organize and annotate documents and images on the iPad, then present them via the standard Apple iPad VGA Adapter. <http://www.rosenltc.com/app.html>

- Windows programs

TrialDirector – Trial presentation software with transcript management, document management, video management functions. www.indatacorp.com

ExhibitView PC - Organize by folders, issues, annotate, and present with ease using our cutting edge iPad App. Intuitive features, easy file management, and email and phone support ensure your success with ExhibitView iPad! www.exhibitview.net

Sanction - Sanction provides litigators with a single resource to quickly assemble documents, exhibits, transcripts, questions, visuals and video that will be used to manage and present evidence throughout litigation, categorize them, and then create clear, polished and compelling presentation materials necessary for building a case.

<http://www.lexisnexis.com/en-us/litigation/products/sanction.page>

Powerpoint - non-litigation specific presentation software

Slidedog – non-litigation specific, SlideDog is a multimedia presentation tool that lets you combine PowerPoint presentations, PDF files, and other formats into one innovative, seamless viewing experience. www.slidedog.com

Adobe PDF Reader (Free) - for viewing .PDF documents

3. Key Features of electronic evidence presentation

- Electronic batch exhibit labeling (not all software)
- Allows electronically exchanging exhibits (sign up for free Dropbox account)
- No bankers boxes of trial notebooks
- No fumbling for the right page (or right notebook)
- Electronically annotating exhibits at trial
- Side by side document comparison
- Highlighting, call outs, and magnifying parts of documents
- Impeaching with deposition transcripts electronically
- Document management and organization
- Opening / closing visuals