

Graphics Inside of a Motion to Dismiss?

Team -

What are your thoughts on putting flow charts inside of a motion to dismiss? Most of my reading of case law involves Westlaw, which obviously is graphics free. A local civil rights attorney routinely puts photos of his plaintiffs into his complaints which I find distasteful, but what do you think about black and white flow charts?

In state court I wouldn't care, but the 10th Circuit and D.Colo are notoriously mean and strict.

Open to any comments from any federal practitioners.

As exhibits, if otherwise admissible (even as demonstrative evidence), I'd say yes; sometimes a picture can make pages of narrative immediately comprehensible. Ask yourself if the judge will thank you for doing so, for making her life easier. I wouldn't put them in-line, however.

-Rick

Richard J. Rutledge, Jr., North Carolina

Photos are routinely placed in motions in patent cases. Like looking at two screens though, instead of one, sometimes they are best as exhibits.

Craig McLaughlin, California

TL;DR version: if the flowchart will help the judge understand your argument, include it in the brief.

Full answer: I'm interested in all aspects of the interaction between technology and legal writing, including the use of images in briefs. The use of images in briefs is one of the topics discussed (albeit briefly) in my CLE program, Pixel Persuasion: Legal Writing for the 21st Century. You can find a recording of the program at <http://www.mycase.com/blog/2014/03/webinar-recap-legal-writing-21st-century/> (relevant discussion starts at around 54:00). I also discuss the topic briefly in an article of the same name, which you can find at http://questionoflaw.net/pixel_persuasion_natl_bar.pdf#page=2.

I've also written extensively about Judge Posner's frequent use of images in his opinions. You can find the most recent article (which links to the previous ones) at <http://us2.campaign-archive1.com/?u=0e191c30ea4edca249759366e&id=cc95456664>.

Here are some relevant law review articles:

Visual Rhetoric and Visual Narrativity in Five Sections of a Brief:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2460357

Taking Images Seriously:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2430894:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2573943

Is the Medium the Message? Unleashing the Power of E-Communication in the

Twenty-First Century

Also, see Judge David Nuffer's Suggestions for Creating a Really Accessible

Document:

http://www.utd.uscourts.gov/judges/Creating_A_Really_Accessible_Document.pdf

Finally, Westlaw (or, at least, WestlawNext) is not image-free: in the recent past, I have come across a few opinions in which graphics included in the original opinion were displayed on WestlawNext, not replaced with: [graphical material presented here].

Lisa Solomon,

I was hoping you would answer.

The case is INCREDIBLY complex (3 plaintiffs, 17 defendants, and 5 separate Civil Rico Complaints) and explaining my defense (of 6 defs) would be nary impossible purely in text.

Thanks for the links, Ill check these out when Im not an awful work DSL.

Matthew Buck

I recently filed a Maryland Court of Special Appeals brief in which I inserted, on the first page, a photo of my license plate, which was the subject of the appeal. I think it makes sense to use photos, flow charts or

what-have-you if they are helpful in the presentation of the case. In my case, wanted to show the actual image, rather than just a textual description, of the use of the letters "MIERDA" with the background of Maryland's "agricultural" themed plate, with the words, "our farms, our future" on it.

OTOH, I'm realizing now that the mierda I placed in my raised bed last fall was a bit too "hot" as they call it, and the garlic bulbs I planted are having a tough time surviving the insufficiently composted mierda. Which does to say, if you use it in a brief, make sure it is ripe for such use, and used in moderation.

John T. Mitchell, District of Columbia

John, can you send me a copy of the brief offlist? I'd love to use it as an example in my Pixel Persuasion CLE.

Lisa Solomon

See page 10 of the pdf file for an interesting graphic we used in one of our NSA cases (though on a partial SJ motion, not an MTD).

https://www.eff.org/files/2014/07/25/jewel_4th_a_mpsj_brief.pdf

James S. Tyre, California

Always be sure your mierda is sufficiently composted before using it. Otherwise your plants will be in deep doo-doo.

Good luck with your appeal.

Bert Krages, Oregon

You need to check the local court rules of that court no matter what. Those rules are probably silent on this point.

Assuming the local rules are silent, next step would be to call the judge's staff attorney and ask about it.

Rob V. Robertson, Texas
