

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE¹**

1 **Rule 1006. Summaries to Prove Content**

2 **(a) Summaries of Voluminous Materials Admissible**

3 **as Evidence.** The ~~proponent~~court may admit as
4 evidence~~use~~ a summary, chart, or calculation to
5 prove the content of voluminous writings,
6 recordings, or photographs that cannot be
7 conveniently examined in court, whether or not they
8 have been introduced into evidence.

9 **(b) Procedures.** The proponent must make the
10 underlying originals or duplicates available for
11 examination or copying, or both, by other parties at
12 a reasonable time and place. And the court may
13 order the proponent to produce them in court.

¹ New material is underlined in red; matter to be omitted is lined through.

- 14 (c) Illustrative Aids Not Covered. A summary, chart,
15 or calculation that functions only as an illustrative
16 aid is governed by Rule 611(d).

Committee Note

Rule 1006 has been amended to correct misperceptions about the operation of the Rule by some courts. Some courts have mistakenly held that a Rule 1006 summary is “not evidence” and that it must be accompanied by limiting instructions cautioning against its substantive use. But the purpose of Rule 1006 is to permit alternative proof of the content of writings, recordings, or photographs too voluminous to be conveniently examined in court. To serve their intended purpose, therefore, Rule 1006 summaries must be admitted as substantive evidence and the rule has been amended to clarify that a party may offer a Rule 1006 summary “as evidence.” The court may not instruct the jury that a summary admitted under this rule is not to be considered as evidence.

Rule 1006 has also been amended to clarify that a properly supported summary may be admitted into evidence whether or not the underlying voluminous materials reflected in the summary have been admitted. Some courts have mistakenly held that the underlying voluminous writings or recordings themselves must be admitted into evidence before a Rule 1006 summary may be used. Because Rule 1006 allows alternate proof of materials too voluminous to be conveniently examined during trial proceedings, admission of the underlying voluminous materials is not required and the amendment so states. Conversely, there are courts that deny resort to a properly

supported Rule 1006 summary because the underlying writings or recordings – or a portion of them – *have been* admitted into evidence. Summaries that are otherwise admissible under Rule 1006 are not rendered inadmissible because the underlying documents have been admitted, in whole or in part, into evidence. In most cases, a Rule 1006 chart may be the only evidence the trier of fact will examine concerning a voluminous set of documents. In some instances, the summary may be admitted in addition to the underlying documents.

A summary admissible under Rule 1006 must also pass the balancing test of Rule 403. For example, if the summary does not accurately reflect the underlying voluminous evidence, or if it is argumentative, its probative value may be substantially outweighed by the risk of unfair prejudice or confusion.

Although Rule 1006 refers to materials too voluminous to be examined “in court” and permits the trial judge to order production of underlying materials “in court,” the rule applies to virtual proceedings just as it does to proceedings conducted in person in a courtroom.

The amendment draws a distinction between summaries of voluminous, admissible information offered to prove a fact, and summaries of evidence offered solely to assist the trier of fact in understanding the evidence. The former are subject to the strictures of Rule 1006. The latter are illustrative aids, which are now regulated by Rule 611(d).