

Court-Ready Checklist

Evaluating or Drafting an Expert Declaration in Federal Court

Governing Framework: FRE 702, 703, 704, 705 | FRCP 26(a)(2) | Daubert / Kumho / Joiner

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Tier Legend — How to Read This Checklist

GREEN [REQUIRED — FRE 702 ADMISSIBILITY]: The court must find this condition satisfied to admit the testimony under Rule 702 and Daubert. Failure here can result in exclusion before the jury hears anything. **PURPLE [REQUIRED — FRCP 26 DISCLOSURE]:** Required for retained experts under FRCP 26(a)(2)(B). Deficient disclosure can result in automatic exclusion under Rule 37(c)(1). Note: Rule 26 disclosure obligations and Rule 702 admissibility conditions are distinct — both matter, but through different procedural mechanisms. **PINK [REQUIRED — ETHICAL & EVIDENTIARY CONDITION]:** A required condition under applicable professional responsibility rules and evidentiary practice, whose violation creates major admissibility risk and credibility damage — but whose mechanism is distinct from Rule 702 gatekeeping. **AMBER [IMPORTANT — CONTEXT-DEPENDENT]:** Significant in many cases but whether and how it applies depends on the specific issue, tribe, period, and record availability. Exercise judgment. **WHITE [BEST PRACTICE]:** Strengthens credibility even when not strictly required.

STEP 0 — IDENTIFY THE ISSUE PRECISELY BEFORE PROCEEDING

Before any other item can be usefully evaluated, identify the precise factual and legal proposition the expert will prove. Different issues require different experts, different methods, and different records.

0-A **The precise issue has been identified and documented** *[REQUIRED — FRE 702 ADMISSIBILITY]*

Specify: Is this documented ancestry? Lineal descent? Tribal citizenship? Enrollment eligibility? ICWA membership/eligibility? NAGPRA cultural affiliation? Community affiliation? Social identity in a discrimination context? An expert who proves ancestry when the statute requires enrollment eligibility has failed regardless of the evidence strength.

0-B **The governing legal or factual standard has been identified** *[REQUIRED — FRE 702 ADMISSIBILITY]*

ICWA, NAGPRA, tribal enrollment criteria, blood quantum requirements, and discrimination-context standards differ materially. Verify the applicable standard from the specific statute, regulation, or tribal law before retaining an expert.

COURT-READY CHECKLIST: EXPERT DECLARATION
ANCESTRY, DESCENT, TRIBAL STATUS, OR COMMUNITY AFFILIATION

- 0-C** **The expert's assignment is framed to track that standard** *[IMPORTANT — CONTEXT-DEPENDENT]*
The assignment given to the expert should mirror the governing standard precisely — not a broader generic heritage question.

PART A — QUALIFICATION

- A-1** **Expert is qualified for the SPECIFIC issue addressed — not just a related field** *[REQUIRED — FRE 702 ADMISSIBILITY]*
FRE 702 requires qualification specifically for the precise opinion offered. A historian is not automatically qualified as a genealogist. An anthropologist with expertise in one community is not automatically qualified to opine about another. The expert's credentials must match the specific issue.

- A-2** **Declaration includes a qualifications section connecting credentials to the specific issue** *[REQUIRED — FRE 702 ADMISSIBILITY]*
List degrees, professional appointments, publications, fieldwork, and experience in the pertinent area. The qualifications section should explain why this expert specifically has the knowledge needed for this precise issue.

- A-3** **Expert has specific experience with the relevant tribe, community, record system, or period** *[IMPORTANT — CONTEXT-DEPENDENT]*
General expertise in 'indigenous studies' is weaker than documented familiarity with the specific community, archival system, or time period at issue. The stronger the match, the less vulnerable the qualification is to challenge.

- A-4** **Qualifications are accurately stated — material inaccuracies have been checked** *[IMPORTANT — CONTEXT-DEPENDENT]*
Credential misrepresentations range from immaterial to disqualifying depending on severity and subject matter. Any inaccuracy touching the core expertise claimed for this issue is a serious vulnerability. Verify all listed degrees, positions, and publications before filing. Opposing counsel will check independently.

- A-5** **Expert and counsel are prepared for qualification and admissibility challenges** *[IMPORTANT — CONTEXT-DEPENDENT]*
Courts may permit preliminary examination of the expert's qualifications or the basis of testimony, whether through motion practice, an evidentiary proceeding, or limited voir dire — at the court's discretion. Anticipate challenges to: currency of expertise; familiarity with the specific tribe, community, or record set; prior inconsistent positions; and fee arrangements.

PART B — FACTUAL BASIS

COURT-READY CHECKLIST: EXPERT DECLARATION
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□ B-1 **All materials reviewed are identified** *[REQUIRED — FRCP 26 DISCLOSURE]*
For retained experts, full identification of materials reviewed is a Rule 26 disclosure obligation. Under Rule 702, the expert's opinions must also rest on sufficient facts or data. These are related but distinct requirements: disclosure of what was reviewed (Rule 26) and admissibility of opinions resting on adequate facts (Rule 702). Omissions provide opposing counsel with ready attacks on both fronts.

□ B-2 **Principal relevant record sets for this specific tribe, period, and issue have been identified and addressed** *[IMPORTANT — CONTEXT-DEPENDENT]*
Identify and address the record sets relevant to the tribe, community, geography, period, and issue in dispute. These may include federal enrollment rolls, census schedules, BIA records, church records, vital records, tribal records, family records, oral histories, or other historically appropriate sources. What is relevant varies substantially by case — there is no single required list. Failure to consult obviously relevant and reasonably available sources is a significant vulnerability.

□ B-3 **Genealogical chain is explained and any gaps are addressed** *[IMPORTANT — CONTEXT-DEPENDENT]*
Each generational link relevant to the opinion should be traceable through identified records or through a professionally explained reconstruction. An unexplained gap can be a serious weakness, particularly where the issue requires documented lineal descent. Whether a gap is decisive depends on the burden of proof, the nature of the issue, and the corroborating evidence available.

□ B-4 **The declaration does not rely solely on self-identification or uncorroborated family history** *[IMPORTANT — CONTEXT-DEPENDENT]*
Self-identification alone will often carry limited weight where the issue requires documentary, tribal, genealogical, or other external proof. The declaration should identify what independent evidence supports the proposition being advanced.

□ B-5 **Genetic ancestry evidence is properly limited and contextualized, if used** *[IMPORTANT — CONTEXT-DEPENDENT]*
Genetic ancestry evidence generally should not be treated as sufficient by itself to establish tribal citizenship, enrollment status, or other legal status. If used, explain the limits, identify what it may and may not show, connect it to other evidence, and explain its relevance to the actual issue.

□ B-6 **Oral history and ethnographic materials are identified and evaluated if relied upon** *[IMPORTANT — CONTEXT-DEPENDENT]*
If the expert relied on oral histories or ethnographic materials, explain how they were authenticated or evaluated and how they were weighed against documentary evidence. FRE 703 permits reliance on materials experts in the field reasonably use — but that reliance must be explained in the report.

□ B-7

Materials supporting each opinion are identified by exhibit or citation

[IMPORTANT — CONTEXT-DEPENDENT]

Each factual finding and opinion should be linked to identified records. Opinions without a traceable reasoning bridge from evidence to conclusion invite ipse dixit attack and potential exclusion under Joiner. Courts do not impose a rigid exhibit-citation checklist, but the opinion must show an adequate factual basis and reasoning path — the analytical gap problem is among the most commonly cited bases for Daubert exclusion and post-admission impeachment.

PART C — METHODOLOGY

□ C-1

Methodology is explicitly described — not just the conclusion *[REQUIRED — FRE 702 ADMISSIBILITY]*

FRE 702(c) requires testimony based on reliable principles and methods. The declaration must explain how sources were identified, how lineage was traced, how conflicting records were reconciled, and what criteria were applied. Conclusions without shown methodology are vulnerable to exclusion.

□ C-2

Methodology is professionally grounded in the relevant discipline *[REQUIRED — FRE 702 ADMISSIBILITY]*

The declaration should explain why the method is standard, accepted, commonly used, or otherwise professionally grounded in the relevant field. For scientific methods, Daubert factors may apply directly. For humanities-based methods, Kumho requires a flexible but genuine reliability showing.

□ C-3

Methodology is applied step-by-step to the specific facts of this case *[REQUIRED — FRE 702 ADMISSIBILITY]*

Under the 2023 FRE 702(d) clarification, the court must find that the expert reliably applied the methodology to the specific case facts — not just that the general method is sound. Walk through the case-specific application, inference by inference.

□ C-4

Contrary, adverse, or ambiguous records are identified and addressed

[IMPORTANT — CONTEXT-DEPENDENT]

A declaration relying only on favorable records while ignoring obvious contrary evidence suggests advocacy, not expertise. Address contrary records and explain why they do not defeat the conclusions.

□ C-5

Name and identity reconciliation is explained where applicable *[IMPORTANT — CONTEXT-DEPENDENT]*

Where the expert has treated records with variant names as referring to the same person, the reasoning should be explained — by comparing dates, relationships, geography, household composition, language, and other identifiers.

**COURT-READY CHECKLIST: EXPERT DECLARATION
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- C-6** **Methodology is not ad hoc or litigation-driven** *[IMPORTANT — CONTEXT-DEPENDENT]*
A methodology that appears invented for this case, or unsupported by the expert's regular professional practice, is more vulnerable to exclusion. The declaration should demonstrate how the approach reflects accepted or professionally grounded practice.

PART D — LEGAL AND FACTUAL ALIGNMENT

- D-1** **Testimony addresses the actual legal or factual standard at issue — not generic heritage** *[REQUIRED — FRE 702 ADMISSIBILITY]*
Identify the governing issue precisely: documented ancestry, lineal descent, tribal citizenship, enrollment eligibility, ICWA status, blood quantum, NAGPRA cultural affiliation, or another specific standard. The expert's analysis must track that issue. An expert who establishes ancestry when the statute requires enrollment eligibility has answered the wrong question.

- D-2** **Testimony fits the specific disputed fact in the case** *[REQUIRED — FRE 702 ADMISSIBILITY]*
Under Daubert's fit requirement and FRE 401, testimony must address a fact actually in dispute and of consequence. Academically sound testimony that answers a different question than the one the court must decide will be discounted or excluded.

- D-3** **Expert stays within specialized factual analysis — not pure legal conclusions** *[IMPORTANT — CONTEXT-DEPENDENT]*
Under FRE 704(a), experts may offer opinions on ultimate issues in civil cases including mixed fact-law questions. The line: specialized factual analysis is permitted; telling the court what the law means or who should win is not.

- D-4** **Tribal sovereign authority over membership is addressed if relevant** *[IMPORTANT — CONTEXT-DEPENDENT]*
Where tribal citizenship or enrollment is the issue, acknowledge that federally recognized tribes have sovereign authority to define membership criteria. If tribal records, determinations, or citizenship letters are available, address them.

- D-5** **Declaration explains what specialized understanding the expert contributes** *[IMPORTANT — CONTEXT-DEPENDENT]*
FRE 702(a) requires the testimony to help the trier of fact understand evidence or determine a fact. Explain what the expert's knowledge contributes that a lay person or judge would not already have.

PART E — OBJECTIVITY AND LIMITATIONS

**COURT-READY CHECKLIST: EXPERT DECLARATION
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□ E-1 **Contrary evidence, limitations, and alternatives are acknowledged and addressed** *[IMPORTANT — CONTEXT-DEPENDENT]*
Experts are generally more credible when they acknowledge limitations and alternative explanations, and then explain why conclusions remain supported. A declaration presenting certainty without engaging problems is more vulnerable.

□ E-2 **Factual findings, inferences, and opinions are clearly separated** *[IMPORTANT — CONTEXT-DEPENDENT]*
Distinguish: (1) what records show; (2) what reasonable inferences can be drawn; and (3) the ultimate expert conclusion. This separation helps the court assess reliability at each step.

□ E-3 **Language is appropriately hedged — no overstated certainty** *[IMPORTANT — CONTEXT-DEPENDENT]*
Conclusions should be stated to the degree appropriate for the discipline and the available evidence. Overstated certainty is a credibility vulnerability. Use language such as 'consistent with,' 'supported by the available evidence,' or 'to the degree of confidence appropriate to my field.'

□ E-4 **Compensation is non-contingent** *[REQUIRED — ETHICAL & EVIDENTIARY CONDITION]*
Contingent fee arrangements for expert witnesses are prohibited under applicable professional responsibility rules and, in some jurisdictions and courts, have been treated as a basis for exclusion or severe limitation of testimony. At minimum, contingent compensation is a powerful impeachment tool that opposing counsel will exploit. This is not a Rule 702 admissibility element in the strict sense — it is a required ethical and evidentiary condition whose violation creates major admissibility risk, credibility damage, and potential professional consequences. Confirm that compensation is fixed (hourly, daily, or flat fee) and does not depend on the outcome of the case or the substance of the opinions expressed.

PART F — FRCP 26(a)(2) DISCLOSURE COMPLIANCE

The items below are FRCP 26 disclosure obligations for retained experts — distinct from, though related to, Rule 702 admissibility conditions. Deficient disclosures can result in automatic exclusion under FRCP 37(c)(1).

□ F-1 **Complete statement of all opinions and basis for each** **[FRCP 26(a)(2)(B)(i)]** *[REQUIRED — FRCP 26 DISCLOSURE]*
Every opinion to be offered at trial must be stated. Opinions not disclosed may be excluded.

□ F-2 **Complete list of facts or data considered** **[FRCP 26(a)(2)(B)(ii)]** *[REQUIRED — FRCP 26 DISCLOSURE]*
Includes all materials reviewed — not just those relied upon. Materials found unpersuasive must still be disclosed.

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□ F-3 List of exhibits [FRCP 26(a)(2)(B)(iii)] [REQUIRED — FRCP 26 DISCLOSURE]
Identify all charts, timelines, genealogical trees, or other demonstratives the expert may use.

□ F-4 Publications from the PREVIOUS TEN YEARS [FRCP 26(a)(2)(B)(iv)] [REQUIRED — FRCP 26 DISCLOSURE]
The look-back period is ten years — a frequently missed requirement. Incomplete publication history can result in exclusion under Rule 37(c)(1).

□ F-5 Prior testimony from the PREVIOUS FOUR YEARS [FRCP 26(a)(2)(B)(v)] [REQUIRED — FRCP 26 DISCLOSURE]
List all trial and deposition testimony across all cases — not only those in this subject area.

□ F-6 Compensation stated [FRCP 26(a)(2)(B)(vi)] [REQUIRED — FRCP 26 DISCLOSURE]
The rate and total compensation must be stated. It will be used in cross to probe bias.

□ F-7 Report signed by the expert personally [REQUIRED — FRCP 26 DISCLOSURE]
FRCP 26(a)(2)(B) requires the report to be prepared and signed by the expert. A report written by counsel and rubber-stamped is a professional responsibility issue and a credibility vulnerability.

PART G — STRUCTURE AND PRESENTATION

□ G-1 Declaration uses the correct legal structure for filing [IMPORTANT — CONTEXT-DEPENDENT]
If filed as a declaration, it must conclude with a declaration under penalty of perjury under the laws of the United States. Include full legal caption, numbered paragraphs, and labeled exhibits. Note: this is a filing mechanics and evidentiary form requirement — not a Rule 702 admissibility condition — but failure here can render the declaration inadmissible on procedural grounds independent of its substantive content.

□ G-2 Declaration is navigable for a judge reviewing a Daubert motion [IMPORTANT — CONTEXT-DEPENDENT]
A judge must be able to determine from the document alone: who the expert is and why qualified; what was asked; what was reviewed; what method was used and why grounded; how it was applied; what contrary evidence exists; and how each conclusion follows. If any element is unclear, revision is needed.

□ G-3 Declaration follows the recommended structural order [IMPORTANT — CONTEXT-DEPENDENT]

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Qualifications → Assignment → Materials Reviewed → Methodology → Case-Specific Analysis → Contrary Evidence → Opinions → Limitations/Scope. This structure maps onto the FRE 702 requirements.

□ G-4 Declaration sounds like an expert, not a lawyer's memo [IMPORTANT — CONTEXT-DEPENDENT]

The filed declaration should read in the expert's professional voice. Embedded rule explanations, legal citations, and meta-commentary about Rule 702 belong in an internal drafting guide — not in the filed declaration.

□ G-5 Exhibits are attached and cross-referenced [IMPORTANT — CONTEXT-DEPENDENT]

Recommended: Curriculum vitae; list of materials reviewed; genealogical chart if applicable; timeline of key records; table correlating record citations to opinions; key archival documents.

⚠ RED FLAGS — Declaration Potentially Vulnerable to Exclusion or Serious Impeachment

1. Expert not qualified for this specific tribe, community, lineage, record system, or issue (scope mismatch).
2. Opinions stated without showing the reasoning bridge from evidence to conclusion (ipse dixit — Joiner).
3. Methodology unclear, ad hoc, or insufficiently grounded in the expert's discipline.
4. Obviously relevant and reasonably available record sets were not consulted or addressed.
5. Genealogical chain has material unexplained gaps for the specific proposition being proved.
6. Relies principally on self-identification or uncorroborated family history where stronger external proof is expected.
7. Contrary or adverse records ignored rather than addressed.
8. Testimony does not track the actual legal or factual standard — expert has proved the wrong proposition.
9. Expert offers pure legal conclusions rather than specialized factual analysis.
10. FRCP 26(a)(2) disclosures incomplete — particularly the ten-year publication and four-year prior testimony lists.
11. Compensation is contingent on the outcome.
12. Genetic ancestry evidence used without clear limitations, context, or linkage to the actual issue.

One-Page Court-Use Test

Before filing, ask: Can the judge determine from the declaration alone — (1) who this expert is and why qualified for this specific issue; (2) what exact legal or factual standard is relevant; (3) what specific materials were reviewed; (4) what methodology was used and why professionally grounded; (5) how that methodology was applied to this plaintiff's specific facts; (6) what contrary evidence or limitations exist and how they were addressed; and (7) how and why each conclusion follows from the evidence? If any answer is 'no,' the declaration needs revision.

QUICK REFERENCE: GOVERNING RULES

Rule / Authority	Key Requirement
FRE 702 (2023)	Admissibility requires: (1) helps trier of fact; (2) sufficient facts/data; (3) reliable methodology; (4) reliable application to this case's facts. Court decides by preponderance — a clarification and reinforcement of existing gatekeeping authority.
FRE 703	Expert may rely on otherwise inadmissible facts/data if experts in the field reasonably rely on such materials.
FRE 704(a)	Opinion not excluded merely because it embraces an ultimate issue. Pure legal conclusions and legal instruction to the court remain outside the expert's role.
FRE 705	Expert may give opinion without first disclosing basis. Opponent may compel disclosure on cross-examination.
FRE 104(a)	Court decides preliminary admissibility — on briefs, or sometimes at a hearing, at the court's discretion.
Daubert (1993)	Judge is gatekeeper. Reliability factors include: testability, peer review, error rate, general acceptance. Fit required.
Joiner (1997)	Exclusion reviewed for abuse of discretion. Too great an analytical gap between data and conclusion justifies exclusion.
Kumho (1999)	Daubert gatekeeping applies to all expert testimony. Reliability inquiry is flexible and adapted to the discipline.
FRCP 26(a)(2)(B)	Retained expert must disclose: opinions + basis; facts/data considered; exhibits; qualifications; publications (previous 10 years); prior testimony (previous 4 years); compensation.
FRCP 37(c)(1)	Failure to properly disclose required information may result in automatic exclusion.

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