

Expert Witness Vetting Guide

How to evaluate credentials, survive Daubert challenges, and avoid costly disqualification

- ✓ Daubert and Frye standards explained — what courts really evaluate
- ✓ Step-by-step credential verification process
- ✓ 12 red flags that predict Daubert exclusion
- ✓ Sample vetting questionnaire you can send to experts

Daubert vs. Frye: What Courts Evaluate

Before an expert can testify, the court must determine their testimony is admissible. Two standards govern this gatekeeping function — and which one applies depends on your jurisdiction. Understanding the standard in YOUR court is the first step to retaining an expert who will survive challenge.

Side-by-side comparison

Factor	Daubert Standard	Frye Standard
Origin	Daubert v. Merrell Dow (1993)	Frye v. United States (1923)
Governs	Federal courts + ~39 states	~11 states (CA, FL, IL, NY, NJ, PA, MD, MN, WA, AZ, DC)
Focus	Reliability of methodology	General acceptance in the field
Judge's Role	Gatekeeper — evaluates methodology, not conclusions	Narrower — only evaluates whether methods are "generally accepted"
Key Factors	(1) Testable theory, (2) Peer review, (3) Known error rate, (4) Standards/controls, (5) General acceptance	Method must be "sufficiently established to have gained general acceptance in the particular field"
Amended Rule 702 (Dec 2023)	Expert must demonstrate opinions are "more likely than not" based on reliable methods and facts	N/A — Frye states apply their own standard

Rule 702 Amendment (effective December 1, 2023)

The amended rule explicitly requires that the expert's opinion reflect a reliable application of reliable principles and methods to the facts of the case. This raised the bar — experts must now show their methodology is "more likely than not" reliable, not merely "plausible."

States Using Frye

California, Florida, Illinois, New York, New Jersey, Pennsylvania, Maryland, Minnesota, Washington, Arizona, District of Columbia

Practical Impact

In Frye states, novel or cutting-edge methodologies face higher scrutiny. In Daubert jurisdictions, even well-accepted methods can be excluded if the expert applied them poorly to the specific case facts. Both standards demand rigorous vetting.

The 5-Factor Credential Evaluation

Rule 702 Qualification: What You Must Verify

Federal Rule of Evidence 702 allows expert testimony when the witness is "qualified by knowledge, skill, experience, training, or education."

Factor 1: Education

- Advanced degree from accredited institution in the relevant field
- Degree specialty matches the case subject matter (not tangential)
- Board certification (for medical experts: ABMS board certified in relevant specialty)
- Verify degrees independently (diploma mills exist — check institution accreditation)

Factor 2: Experience

- Years of active practice in the relevant specialty (10+ preferred)
- Specific experience with the type of case at issue (not just general field knowledge)
- Deposition and trial testimony history (number of times testified, for plaintiff/defense)
- Prior Daubert/Frye challenges and outcomes

Factor 3: Publications & Teaching

- Peer-reviewed publications in the relevant field
- Publications that support (or at least don't contradict) the opinions they'll offer
- Teaching positions at accredited institutions
- Conference presentations and invited lectures

Factor 4: Professional Standing

- Active membership in relevant professional associations

- No disciplinary history with licensing boards

- No malpractice judgments or sanctions related to their professional practice

- Active license in the state where they practice (for licensed professionals)

Factor 5: Prior Testimony Record

- Track record of being admitted as an expert (not excluded)

- Review prior Daubert challenges using DaubertTracker.com (201,000+ case records, 111,000+ expert records)

- Balanced plaintiff/defense retention (heavy skew in either direction is attackable)

- Prior testimony consistent with current opinions (impeachment risk if contradictory)

Daubert Challenge Vulnerability Assessment

Will Your Expert Survive a Daubert Challenge?

Score each factor 1-5 and total

Factor	Low Risk (4-5)	Moderate Risk (2-3)	High Risk (0-1)	Score
Methodology	Peer-reviewed, widely accepted, published standards	Accepted but not peer-reviewed in this application	Novel, untested, or contested methodology	___
Qualifications	Board-certified, 15+ years, 50+ testimonies	Qualified but limited testimony history	Credentials tangential to case; limited practice	___
Data/Facts	Reviewed all relevant data; considered alternatives	Reviewed primary data; some gaps	Cherry-picked data; ignored contrary evidence	___
Application	Methods properly applied to this specific case	Generally correct but some gaps in reasoning	Methods not tailored to case facts; "one-size-fits-all"	___
Prior History	No Daubert exclusions; consistent testimony	1-2 prior challenges (survived)	Prior exclusions or contradictory testimony	___
Total	20-25: Strong	10-19: Moderate concern	0-9: Significant risk	___/25

A total score below 15 means you should seriously reconsider this expert or prepare extensive briefing to defend their admissibility. Scores below 10 suggest you'll likely face a successful Daubert motion.

How to Verify Expert Credentials

Step-by-step verification process

Request the expert's complete CV and compare it to publicly available records. Verify every claimed degree, certification, and professional affiliation independently.

Search DaubertTracker.com for the expert's name. Review all prior challenges — particularly any where the expert was excluded. (Database contains 201,991 case records and 111,425 expert records as of 2026.)

Verify professional licenses through the relevant state licensing board (e.g., state medical board for physicians, state bar for attorney-experts, state PE board for engineers).

Search PubMed, Google Scholar, and relevant academic databases for the expert's publications. Confirm the publications actually exist and match what the expert claims.

Credential Fraud is Real.

In 2019, a prominent forensic expert was discovered to have fabricated academic credentials over a 20-year career. Always verify degrees independently through the institution — never rely on the expert's CV alone.

Check the expert's testimony split (plaintiff vs. defense). An expert who testifies 90%+ for one side is vulnerable to the argument that they're a "professional witness" who reaches predetermined conclusions.

Review the expert's rate history. Dramatically above-market rates (2x+ the specialty average) can be used to argue financial bias on cross-examination.

Google the expert's name + "Daubert" + "excluded." Read any exclusion orders to understand what went wrong.

12 Red Flags That Predict Exclusion

1

Credentials outside the case specialty.

A cardiologist opining on orthopedic surgery. A mechanical engineer testifying about electrical systems. Courts exclude experts who stray outside their demonstrated expertise.

2

No peer-reviewed publications.

Especially damaging for academic or scientific experts. If the expert has never published in the relevant field, their methodology is harder to defend.

3

Prior Daubert exclusions.

If a court has previously excluded this expert for methodology failures, opposing counsel will find it. Check DaubertTracker.

4

"Ipse dixit" opinions.

Expert offers conclusions without explaining the methodology that led to them. ("It is so because I say it is so" — the classic Daubert failure.)

5

Cherry-picked data.

Expert reviewed only materials provided by retaining counsel and ignored readily available contrary evidence.

6

No testing or validation.

Expert's methodology has never been tested, has no known error rate, and has not been subject to peer review. Fatal under Daubert Factor 1.

7

Contradictory prior testimony.

Expert testified to opposite conclusions in a previous case. Prior deposition transcripts are discoverable and will be used for impeachment.

8

90%+ plaintiff or defense retention.

Extreme one-sided retention creates a "hired gun" narrative that undermines credibility with juries.

9

Contingency fee arrangement.

Expert compensation tied to case outcome. This is the single most devastating credibility attack — and may result in disqualification.

10 Wildly above-market fees.

Expert charges \$1,500/hr in a specialty where the average is \$400/hr. Opposing counsel will argue financial motivation taints objectivity.

11 Cannot explain methodology in lay terms.

If the expert cannot clearly articulate their reasoning to a judge during voir dire, they will struggle to persuade a jury.

12 Failure to consider alternative explanations.

Expert reached a conclusion without ruling out other plausible causes. This is increasingly the basis for exclusion under the 2023 Rule 702 amendment.

When to Use Which Type of Expert

Decision Matrix

Case Type	Expert Specialty	Budget Range	Key Selection Criteria
Medical malpractice	Same-specialty physician (matching defendant's specialty)	\$15,000–\$50,000	Must be board-certified in the SAME specialty; active practice preferred
Personal injury (damages)	Economist + Life Care Planner	\$10,000–\$30,000	Economist for lost earnings; LCP for future medical costs
Product liability	Engineer (matching product type)	\$15,000–\$60,000	Must have hands-on experience with the specific product or system
Construction defect	Structural/civil engineer + contractor	\$10,000–\$40,000	Field experience critical; pure academics less persuasive
Patent infringement	Technical expert + damages expert	\$25,000–\$100,000+	PhD in relevant field; prior patent litigation experience
Employment / discrimination	Vocational expert + statistician	\$8,000–\$25,000	Vocational for lost earnings; statistician for pattern evidence
Financial fraud / breach	Forensic accountant + damages economist	\$15,000–\$60,000	CFF or CFE credential; complex financial analysis experience
Environmental / toxic tort	Environmental scientist + epidemiologist	\$15,000–\$50,000	Published research on the specific substance/exposure
Cybersecurity / data breach	Digital forensics expert	\$15,000–\$45,000	Industry certifications (CISSP, EnCE); real-world IR experience

Sample Vetting Questionnaire

Expert Witness Vetting Questionnaire — Send This Before Retaining

Copy and send these questions to any expert witness you're considering. Their answers — combined with independent verification — will determine whether this expert will survive challenge.

1. Qualifications & Credentials

- Please provide your current CV with complete education, publications, and testimony history.
- What board certifications or professional licenses do you hold? In which states?
- Are any certifications, licenses, or professional memberships currently suspended, revoked, or subject to disciplinary proceedings?
- How many times have you been retained as an expert witness? Approximate plaintiff/defense split?

2. Prior Testimony & Daubert History

- Have you ever been the subject of a Daubert or Frye challenge? If so, what was the outcome?
- Have you ever been excluded from testifying as an expert? If so, in which case(s) and why?
- Have you ever testified to a conclusion in a prior case that differs from or contradicts the opinion you expect to offer here?
- Can you provide transcripts or reports from 2-3 recent engagements?

3. Methodology & Opinions

- What methodology will you use to form your opinions in this case?
- Is this methodology published, peer-reviewed, and generally accepted in your field?
- What data and materials will you need to review?
- Estimated hours for review, report, and testimony preparation?

4. Fees & Engagement Terms

- What are your current rates for: case review, report writing, deposition, and trial testimony?
- What is your retainer amount and replenishment policy?
- What is your cancellation policy for depositions and trial dates?
- What is your minimum billing increment?
- Do you charge for travel time? At what rate?

5. Availability & Logistics

- Are you available for the anticipated deposition and trial dates?
- What is your typical turnaround time for an expert report?
- Do you have a conflict of interest with any party, attorney, or entity in this case?

ExpertSlate

ExpertSlate

The most comprehensive directory of expert witnesses in the United States

[Search experts at expertslate.com](https://www.expertslate.com)