# New York Frye and Rule 702 Admissibility Guide

Organize the source records, examination methods and supporting documentation for New York Frye and federal Rule 702 review.

Edition 2026-11-03 · Online at newyorkcomputerforensics.com/guides/digital-evidence-admissibility/

A persuasive digital evidence presentation begins before an expert report is drafted. Counsel needs a proposition worth proving, a source capable of addressing it and a record that explains how the examiner moved from source material to a conclusion. A device image, a vendor certification and an expert's credentials each address part of that foundation, and the strongest presentation brings all three together.

This guide organizes the technical work counsel needs when preparing digital evidence for New York state or federal court. Identify the required showing under the current authorities before commissioning an examination, so the method is built for the question instead of retrofitted to a finished report.

## Start with the proposition and the actual proponent

Write the proposed proposition in a complete sentence. For example, the issue may be whether a particular account accessed a file during a defined period, whether an export accurately represents a mailbox, or whether two media files differ in a way that matters to the dispute. Distinguish those issues from an accusation about who physically operated a device. Account, device and person attribution are related but separate questions.

Identify who will sponsor each part of the record. A custodian may explain how a system is used. A collector may explain acquisition and handling. A technical expert may explain methods and inferences. One witness may cover several roles if the foundation supports it, but the report should make those roles visible. Ask early what material will be offered, what conclusions are necessary and which alternative explanations the opinion will address.

## Separate New York Frye analysis from the factual foundation

New York state courts follow Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), and under People v. Wesley, 83 N.Y.2d 417 (1994), ask whether the accepted techniques, when properly performed, generate results accepted as reliable within the scientific community generally. In People v. Williams, 35 N.Y.3d 24 (2020), the Court of Appeals held that a trial court abused its discretion by admitting DNA results from a contested method without a Frye hearing, and that general acceptance requires more than a showing that an opinion has some support. In People v. Wakefield, 38 N.Y.3d 367 (2022), it upheld a Frye ruling admitting TrueAllele probabilistic genotyping results and the denial of the defense request for the software source code. [People v Williams] [People v Wakefield]

Parker v. Mobil Oil Corp., 7 N.Y.3d 434 (2006), separates that general reliability question from the foundation for applying a method in the particular matter. The examiner documents how each published method was applied to identified source material and records the condition of that material. [Parker v Mobil Oil Corp.]

© 2026 Global Digital Forensics, Inc. All rights reserved.

New York expert disclosure runs through CPLR 3101(d)(1)(i): on request, a party identifies each expert it expects to call and discloses in reasonable detail the subject matter, the substance of the facts and opinions, the expert's qualifications and a summary of the grounds for each opinion. Build the examination record so that disclosure can be written from it. [New York CPLR 3101]

Have the examiner explain whether the disputed conclusion depends on a novel method, an established technique or a combination of steps. Identify the professional community, validation material and limitations relevant to the actual proposition. Tie each court reference to the specific tool version and inference it supports. Decide early whether a hearing, supporting declarations or a narrower presentation fits the opinion.

## Address federal Rule 702 before treating objections as weight alone

Under the current federal rule, the proponent must demonstrate to the court that the specified admissibility requirements are more likely than not satisfied. The rule addresses helpful specialized knowledge, sufficient facts or data, reliable principles and methods, and a reliable application reflected in the opinion. Answer each methodological concern with the record itself, ahead of cross examination. [Federal Rules of Evidence]

Prepare a foundation table with one row for each proposed opinion. Identify its factual inputs, examination method, validation basis, application steps and limitations. Then identify the witness who can explain them. Distinguish a missing fact from a disputed interpretation of an available fact, and fit each opinion to the record that supports it before testimony.

## Preserve the source, acquisition record and history of handling

Record the source identity, collection authority, operator, date, time basis, tool and version, method, filters, errors and outputs. Retain verification values where the acquisition method supports them. Explain whether collection was physical, logical, targeted, live or provider generated. A cryptographic hash confirms that specified bytes match, and the source record and collection log show what the content says and which sources were collected.

Maintain a handling record from receipt through examination and production. Identify transfers, working copies and access to the material. When a source was changed during necessary live collection, document the reason and expected effect. Preserve earlier versions of exports and reports so a later correction does not erase the history. The result is a complete custody account for every step, ready for deposition.

## Authenticate the offered item itself

Federal Rule 901 concerns evidence sufficient to support a finding that an item is what its proponent claims. For electronic records, the supporting account may involve a knowledgeable witness, distinctive characteristics, a reliable process or other applicable evidence. Identify what the proponent says the item is before choosing the foundation. A screenshot of a message, a native message and a provider export present different questions. [Federal Rules of Evidence]

Collect the context needed to explain the offered item: account identifiers, conversation boundaries, attachments, available metadata, source location and the relationship to a preserved export. Separate an exhibit prepared for presentation from the underlying data. Retain the steps used to create a timeline, crop

© 2026 Global Digital Forensics, Inc. All rights reserved.

an image, transcribe audio or select messages. Label each courtroom graphic as a demonstrative and keep its edits and its source record traceable.

## Use certifications for the questions they actually address

Federal Rule 902 contains provisions for certain certified electronic process records and copied electronic data. Counsel applies their conditions, certification and notice requirements, and the examiner supplies the technical facts each certification relies on. A qualifying certification addresses authentication, while relevance, hearsay, attribution, expert methodology and the meaning of the content each rest on their own record. [Federal Rules of Evidence]

Ask the provider or collector what facts can be certified and what supporting material exists. Confirm that the certificate identifies the actual data and process offered, rather than a product category or an unrelated export. Calendar any notice and inspection requirements under the applicable rule and order. Where the foundation runs through a witness rather than a certification, identify that witness early, while the people and records are easy to reach.

## Treat hearsay, completeness and preservation as separate workstreams

Authentication and hearsay are separate questions, as are business use of a system and the business record status of a statement stored there. Identify the purpose for which each statement is offered, the relevant rule and the supporting witness or certification. Technical staff preserve the facts that analysis needs. [Federal Rules of Evidence]

An authentic item can represent part of a conversation or a limited export, so record collection filters, time ranges, pagination, excluded locations and missing attachments. Where lost ESI is relevant, preserve the facts needed for the governing preservation analysis, including reasonable steps taken and possible replacement sources. [Federal Rules of Civil Procedure]

## Make the method reproducible at the appropriate level

Retain examination notes, relevant queries, processing options, scripts, tool versions and the records used to reach each material finding. Explain how source times were interpreted and normalized, including time zones, clock differences and conversion assumptions. Where a tool output rests on a single run, identify the corroborating method that supports it.

Examine alternative explanations that bear on the proposition. A file timestamp may change through normal system behavior. Tying a successful account event to the person at the keyboard draws on device, session and access records. A log gap is read against retention settings before any inference about deletion by the disputed actor. Explain which alternatives the available data tests and how. This gives counsel a defensible boundary for the opinion and a clear view of the questions an opposing expert may raise.

## Keep automated analysis and AI assistance reviewable

If automated classification, transcription, extraction or AI assistance contributes to the work, record its purpose, input boundaries, relevant version and the human review performed. Preserve the underlying evidence and the means to check material outputs. Keep protected source material within an approved

© 2026 Global Digital Forensics, Inc. All rights reserved.

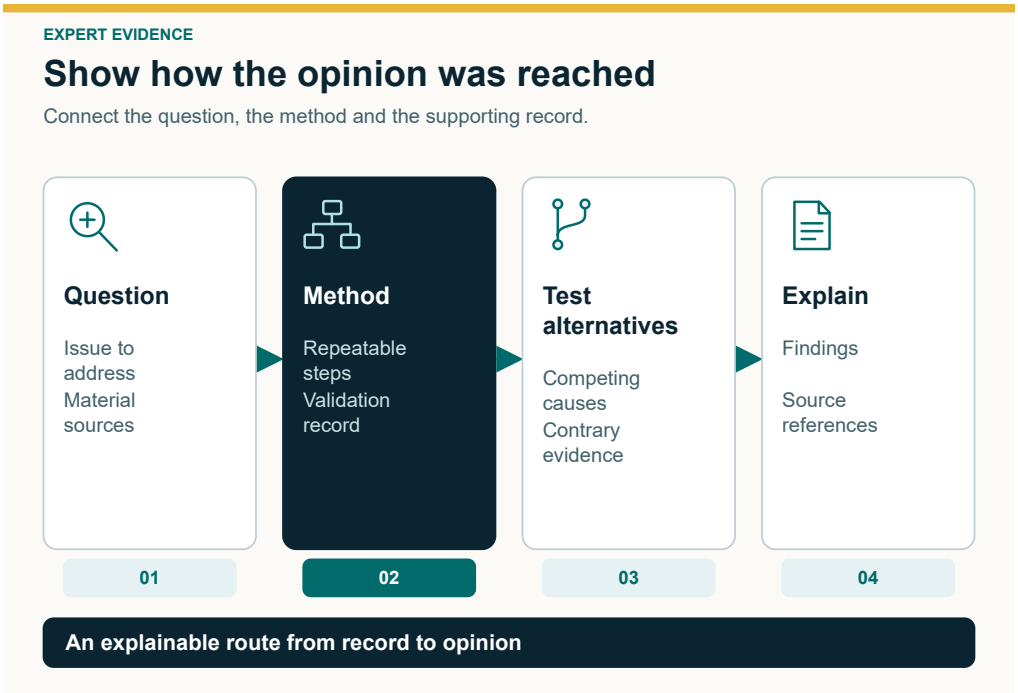
handling arrangement.

Distinguish an automated lead from a validated finding. The examiner confirms each automated lead against the source itself and, where a model or service is closed to inspection, applies a more direct method to the disputed proposition. The expert explains the opinion and its actual basis in plain terms.

## Build and rehearse the pretrial evidence packet

Organize the packet around the proposed findings. Include the source register, handling records, method and validation explanation, key underlying records, alternative explanations, exhibits and a list of missing material.

Before the deadline, ask the examiner to explain each opinion in ordinary language and point to the supporting source. Test whether a reviewer can follow the chronology and identify the distinction between observation and inference. Resolve inconsistent exhibit labels and unexplained date conversions. Where the foundation has a gap, identify the missing fact and the person who can supply it. A focused, well explained opinion carries the most weight under questioning.




An opinion traced from the question through the sources, the method and its stated scope.

## Information Gathering Q&A Checklist

Use this Q&A with the people who own the systems and the relevant legal or business decisions. Mark unknown or not applicable answers explicitly. Record an owner, a confirming source and the date.

Record who controls access to each source and how a secure handoff can be arranged, and keep completed copies with the matter records the company maintains.

© 2026 Global Digital Forensics, Inc. All rights reserved.

**What exact factual proposition is the evidence intended to support?**

Separate the offered item, its source, the proposed inference and the witness who can explain each.

Answer:

Owner, source, date and open questions:

**Is the matter in New York state court, federal court or both?**

Record the court and part, any scheduling order and the expert disclosure dates. State courts apply Frye; federal courts apply Rule 702. Note any CPLR 3101(d)(1)(i) demand or Rule 26(a)(2) deadline already served. [New York CPLR 3101] [Federal Rules of Civil Procedure]

Answer:

Owner, source, date and open questions:

**Which items will be offered, and in what form?**

List native files, provider exports, screenshots, forensic images and demonstratives separately, with the person who created each one.

Answer:

Owner, source, date and open questions:

**Where did each item come from, and who collected it?**

Record the source device or account, the collector, the tool and version, hash values where the method supports them and every transfer since collection.

Answer:

Owner, source, date and open questions:

**Does any opinion depend on a novel method or a proprietary tool?**

Name the method, its validation studies and the professional community that uses it. Note any earlier Frye ruling on the method and whether software code or validation data may be demanded. [People v Wakefield] [People v Williams]

Answer:

Owner, source, date and open questions:

© 2026 Global Digital Forensics, Inc. All rights reserved.

**Is a certification under Rule 902(13) or 902(14) or a business records witness available?**

Identify the provider or custodian who can certify the process or the copy, and calendar the notice the rule requires. [Federal Rules of Evidence]

Answer:

Owner, source, date and open questions:

**Which alternative explanations will the other side raise?**

List shared accounts, synchronization, automated processes, time zone conversion and clock drift that could account for the record, and the data that can test each one.

Answer:

Owner, source, date and open questions:

**Which deadlines and rulings has counsel flagged for the expert work?**

Record each date and ruling so the examination is built to answer the questions the court will actually ask.

Answer:

Owner, source, date and open questions:

## Primary sources and further reading

Sources checked November 3, 2026.


1. Federal Rules of Evidence, current December 1, 2025 edition https://www.uscourts.gov/sites/default/files/document/federal-rules-of-evidence.pdf
2. Federal Rules of Civil Procedure https://www.uscourts.gov/sites/default/files/document/federal-rules-of-civil-procedure.pdf
3. Parker v Mobil Oil Corp., New York Court of Appeals, 2006 https://www.nycourts.gov/Reporter/3dseries/2006/2006_07391.htm
4. People v Wakefield, 38 NY3d 367, New York Court of Appeals, April 26, 2022 https://www.nycourts.gov/reporter/3dseries/2022/2022_02771.htm
5. People v Williams, 35 NY3d 24, New York Court of Appeals, March 31, 2020 https://www.nycourts.gov/reporter/3dseries/2020/2020_02123.htm
6. New York CPLR 3101, scope of disclosure, including expert disclosure in 3101(d)(1)(i) https://www.nysenate.gov/legislation/laws/CVP/3101


© 2026 Global Digital Forensics, Inc. All rights reserved.

## Get a Free Consultation

The first call is a free consultation with a senior examiner. We review the matter, the evidence and the deadline, and outline the collection and analysis it needs. Requests are handled in confidence.

**Call (800) 868-8189, 24/7 · New York office (212) 561-5860**

Email info@evestigate.com or request your consultation at newyorkcomputerforensics.com/contact.

© 2026 Global Digital Forensics, Inc. All rights reserved.