

## **TOP 10 QUESTIONS TO ASK A LAWYER DURING THE INITIAL INTERVIEW**

**1. Is the majority (over 50%) of your practice limited to sex crimes and crimes against children?**

**Answer:**\_\_\_\_\_

**The Why:** A lawyer must be fully dedicated and committed to this area of the law. Sex crimes and crimes against children are the most difficult, demanding, and sensitive practice areas in criminal defense. Handling a few a year is not nearly enough to maintain even basic proficiency in this area of the law.

**2. How many felony jury trials have you actually tried as the 1st Chair attorney?**

**Answer:**\_\_\_\_\_

**The Why:** Far too many of these cases get set for trial. A client with a serious felony case such as these absolutely needs a true trial lawyer with the skills, experience, and the reputation as a lawyer who is not afraid to go to trial and welcomes the challenge when necessary.

First chair experience is vitally important. As the first chair (lead lawyer) you develop the theory and themes of the defense, are responsible for the entire case, the delegation of work and case assignments, and makes all key decisions as well as examining all essential witnesses at trial. Second chair lawyers routinely handle very little and mainly fill a support role.

\*Watch out for lawyers that count bench trials (a trial held in front of a judge only, not a jury), juvenile cases, or misdemeanor trials. That is not the experience you should be looking for, and if a lawyer is counting those, its because they are light in the areas that matter.

**3. How many years have you continuously practiced law and in what jurisdictions are you licensed to practice?**

**Answer:**\_\_\_\_\_

**The Why:** This is similar to number 2 above. You should seek a lawyer with at least ten (10) years of experience, especially, if the lawyer was never an Assistant District Attorney. Knowledge, skill, experience, and reputation in the practice of law, each contain an important element for which there is no substitute-time.

This is not to say that you should necessarily choose a lawyer that has practiced the longest. This is but one metric to consider when evaluating a lawyer. Where is the "prime" for a lawyer? For each person, their window for their prime or best work is usually only determined after they have passed it and the window varies from person to person. It also does not mean that the particular prime for one lawyer exceeds the that of another lawyer. It is certainly possible that a ten year lawyer who isn't even in their prime yet, is a better practitioner than a 15 or 20 year lawyer that is in their individual prime.

As far as jurisdiction is concerned, you should seek a lawyer that at a minimum is licensed in both State and Federal Court for the area where you are charged. In Tulsa, Oklahoma, you would want a lawyer licensed in Oklahoma (member of the Oklahoma Bar), and the Northern District of Oklahoma (Federal Court). Being a member of additional State bars or Federal Districts or Appellate Courts is interesting, but does not necessarily extend greater credentials or skill upon the lawyer.

**4. Have you previously served as an Assistant District Attorney (ADA), if so, where, how long, and what were your assignments as an ADA?**

**Answer:** \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**The Why:** You absolutely need a criminal lawyer that has previously served as an ADA at some point in their career. There is simply no substitute. None. That is a statement without compromise. In this business, you must know exactly how your opponents think, what motivates them, their decision making process, their concerns and fears, the mechanics of how the office operates, and ultimately, how to leverage this knowledge to help you in your particular case.

I am utterly amazed when I see lawyers “brag” about having never been an ADA. RUN, DO NOT WALK, from this ignorance and obvious insecurity. These lawyers do not even know, what they do not know.

Two years as a felony prosecutor is usually enough time in a large and busy District Attorney’s Office to satisfy this requirement. Look for four or more years if the lawyer served in a smaller office or spent a significant amount of time in the juvenile or misdemeanor divisions of the office.

It is a volume and numbers evaluation for the purposes of experience. Beyond four to five years the law of diminishing returns kicks in and the lawyer is typically not extracting much more in new experiences, just more of the same.

**5. Have you handled cases similar to my case?**

**Answer:** \_\_\_\_\_

**The Why:** Unless there is something extremely novel or unique about your case, you do not want your case to be one of first impression to the lawyer you hire. Sometimes, that is impossible, especially in sex crime and crimes against children cases. Novel and unique is a weekly occurrence in this practice. However, the practice of law does not mean your lawyer should “practice” on you. Avoid the lawyer that cannot give you a case example they have handled that is similar to your case. Again, novel and unique fact patterns are the exception. Really listen to experience the lawyer has in similar cases.

**6. How many felony sex crime/crimes against children cases do you handle a year? Cases you are actually retained on by private clients.**

**Answer:** \_\_\_\_\_

**The Why:** I am typically retained by private clients on average of 24 sex crime/crimes against children cases in a given year. By my estimates, this number is

anywhere from six to twelve times greater than the average criminal trial lawyer in Oklahoma. This is a reflection of experience and industry knowledge and recognition.

**7. How many new felony cases do you take on in total during a calendar year? Do you limit the number of cases you take on in a calendar year? How many active cases do you have pending right now?**

**Answer:** \_\_\_\_\_

**The Why:** These cases are extremely time consuming. After handling these cases for years, I have concluded that the most a skilled, diligent, honest, ethical, and competent attorney should handle in a year is 24 to 30 felony sex crime/crimes against children cases. This number is if the attorney does not handle any other felony matters. Discount these numbers by the number of other felony cases the attorney is retained or appointed to. These figures do not consider or factor misdemeanor cases.

Seek out a lawyer that has conducted this analysis and determined the maximum number of cases they should (not could) handle. The mix of cases, and style and class of the lawyer will have an affect in the total. Type of case matters. For example, a skilled and experienced criminal lawyer that focuses on drug crimes, that maintains a support staff, could handle 20 to 30 new cases a month! There are plenty of volume based and low cost "plea" lawyers that handle 150-300 cases a year. That is NOT a business model that fits this subject matter.

**8. List the last three years worth of Continuing Legal Education (CLE) you attended.**

**Answer:** \_\_\_\_\_

**The Why:** Does the lawyer back up what he is saying? Do they put their money and time where their mouth is? You want to see CLE dealing with sex crimes/crimes against children (and those areas immediately related, i.e. forensics) and trial techniques. You want to see lots of it too. How dedicated is the lawyer to becoming or staying at the top of their profession and this niche? If the attorney is only attending the minimum training required to stay an active member of the bar through the annual criminal defense CLE or have the majority of their CLE in subject matter not related to criminal law of trial techniques-find out why. It is ok if some of the CLE is in collateral subject matters or areas of personal interest, however, the bulk of their training and education MUST be trial or sex crimes oriented.

**9. Have you ever had any disciplinary action taken against you by any bar association?**

**Answer:** \_\_\_\_\_

**The Why:** This is a big red flag. You should want to know if any adverse action (censure, reprimand, suspension, or disbarred) has ever been taken by the prospective lawyer, and if so, the nature of it and the action taken. You want to know if this lawyer adheres to the ethical and professional standards of the profession.

Do not be worried about a bar complaint that was not substantiated or even formally investigated. Anyone can complain about any lawyer for anything. The complaint doesn't even need to be relevant to a case the complaining person is involved in or actually a cause for concern for bar. I would probably be more concerned if the lawyer had not ever received a complaint at all. I would wonder what the hell the lawyer had been doing during their career in this field if they were clean as a whistle. Regardless, this is not an area of inquiry, only those actions taken or adverse conduct substantiated by the bar should be your concern.

**10. Are you now or have you been a member of a Criminal Justice Act (CJA) Panel?**

**Answer:** \_\_\_\_\_

**The Why:** Federal practice is very complicated and it is an accomplishment to be selected to serve as a CJA Panel Member. CJA Panel Members represent defendants in criminal matters in Federal Court typically where a conflict exists in the Federal Defender's Office that prevents that office from representing the defendant. To be selected to the Panel you must complete months of training and classes, handle two separate cases in Federal Court under the supervision of an Assistant Federal Defender, be proposed for admission by the Federal Defender, and ultimately be approved by the Federal Judges of the U.S. District Court for where you intend to serve. Panel members come from a variety of practice areas and have varying levels of competence, skill, and experience in criminal law. As such, membership should not be the sole factor you use in making a decision, but serve as but one additional point of consideration.

Additional considerations:

These first 10 recommended questions are based upon my industry knowledge, discussions with hundreds of clients over the years, the unique aspects of this subject matter, hundreds of hours of advanced training and education, the Rules of Professional Responsibility, and the high standards I hold myself to. This is not an exhaustive list, but can serve as a foundation of your examination of prospective lawyers. I encourage you to print out these questions found on the next page and bring it to your appointment with any attorney you meet with. You don't have to explain why you are asking the questions or how you came up with the questions, just put them to the attorney. If they object, thank them for their time and leave.

I encourage you to also think about the following areas: attorney-client communications (acceptable methods and hours), attorney availability, attorney fees and additional costs of representation, type of personality you are looking for in a lawyer, whether you are looking for a plea or to go to a jury trial, range of punishment, legal options, and anything else you need to feel completely satisfied in your decision to hire a lawyer.

Lee F. Berlin, Attorney at Law

First 10 Questions I am Going to Ask a Lawyer During My Initial Meeting

1. Is the majority (over 50%) of your practice limited to sex crimes and crimes against children?

Answer: \_\_\_\_\_

2. How many felony jury trials have you actually tried as the 1st Chair attorney?

Answer: \_\_\_\_\_

3. How many years have you continuously practiced law and in what jurisdictions are you licensed to practice?

Answer: \_\_\_\_\_

4. Have you previously served as an Assistant District Attorney (ADA), if so, where, how long, and what were your assignments as an ADA?

Answer: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

5. Have you handled cases similar to my case?

Answer: \_\_\_\_\_

6. How many felony sex crime cases do you handle a year? Cases you are actually retained on by private clients.

Answer: \_\_\_\_\_

7. How many new felony cases do you take on in total during a calendar year?

Answer: \_\_\_\_\_

8. List the last three years worth of Continuing Legal Education you attended.

Answer: \_\_\_\_\_

\_\_\_\_\_

9. Have you ever had any disciplinary action taken against you by any bar association?

Answer: \_\_\_\_\_

10. Are you now or have you been a member of a Criminal Justice Act (CJA) Panel?

Answer: \_\_\_\_\_

OTHER QUESTIONS: \_\_\_\_\_

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First 10 Questions I am Going to Ask a Lawyer I am Interviewing to be My Lawyer  
**Answers of Attorney Lee Berlin**

1. Is the majority (over 50%) of your practice limited to sex crimes and crimes against children?

Answer: **Yes, on average 90% of my practice is devoted to this area.**

2. How many felony jury trials have you actually tried as the 1st Chair attorney?

Answer: **30+**

3. How many years have you continuously practiced law and in what jurisdictions are you licensed to practice?

Answer: **16+ years (since 2000), Oklahoma, Texas, New Mexico, D.C., U.S. Dist. CT. for the Northern and Eastern Districts of Oklahoma.**

4. Have you previously served as an Assistant District Attorney (ADA), if so, where, how long, and what were your assignments as an ADA?

Answer: **YES / Tulsa/Wagoner / 3.5 years / Felony, Major Crimes, Gangs**

5. Have you handled cases similar to my case?

Answer: **To be determined upon initial client meeting.**

6. How many felony sex crime cases do you handle a year? Cases you are actually retained on by private clients.

Answer: **24-30**

7. How many new felony cases do you take on in total during a calendar year?

Answer: **24-30**

8. List the last three years worth of Continuing Legal Education you attended.

Answer: **2012/13/14/15/16 3 Day Defending Sexual Assault & Child Victim cases, 2012/13: Criminal Defense Institute, 2014 Trial Lawyers College-Jury Selection, 2014 NCDC-Trial Practice Institute, 2015/16 NCDC Advanced Cross Examination, 2016 Fundamentals of Federal Criminal Defense, 2012/13: NACDL 3 day DUI Defense Seminar**

9. Have you ever had any disciplinary action taken against you by any bar association?

Answer: **NO.**

10. Are you now or have you been a member of a Criminal Justice Act (CJA) Panel?

Answer: **YES.**