
SILVERBERG LAW OFFICES

ABOUT LAWYERS AND LEGAL FEES

Good legal work is usually cost-effective, but seldom cheap. No one likes to pay legal fees in the first place, but it's even worse when we don't know much about how fees are set, and when we can't quite decide which lawyer is the one for us. Whether you're just considering having me represent you, or whether we've already decided to go ahead, you're entitled to know about the costs, and about my approach to practicing law. If you decide to have me represent you, this document establishes the key aspects of our arrangement.

Getting Along Together

Having a lawyer is like being married. It's a very important relationship—one in which you have a big personal investment as well as a financial one. Lawyers don't always seem to understand this. They sit in big, fancy chairs, with a big impressive desk always stuck between them and the client. You have to go through two or three people just to get them on the phone, and sometimes you find out that someone else is really doing the work on your case. It seems to take weeks just to get an appointment. Their home phones are unlisted. (Maybe they think that the harder they are to get to, the more important they are.) Lots of stuff gets done on forms that have little boxes for you to check off, and confusing blanks for you to fill in.

I worked for years in the biggest, fanciest law firm in Washington, D.C. I know how that kind of system works, and it's fine for some lawyers and some clients. But I've decided to practice law in a much more personal way. I try not to take on so many cases that I always seem overworked and frantic. I work with first-class legal assistants in an informal, comfortable, setting. My practice is computerized and high-tech, but I make sure this helps us both—I don't let it get in the way. I don't practice in a vacuum; I work hard to keep up with developments in the fields I practice in. I read the journals; I attend two or three times as many legal education seminars each year as the regulations require; and I team up with other lawyers to stay fresh and to share ideas on complex cases.

I try to be available for evening or weekend appointments when necessary. I try to take calls throughout the day and often into the early evening. Though I appreciate having a quiet evening or weekend, within reason you should feel free to call me whenever you need me. If you reach my assistant or an answering machine, you can feel confident that I'll return your call as soon as possible. If I'm going to be unavailable for an extended period and I think you might try to get in touch, I'll do my best to let you know in advance.

You can help me (and save some money) by being as organized as possible for our meetings, by giving me every bit of information you can think of (even the bad stuff), **by being on time or a little bit late** (which is actually better than coming early), **by not dropping in without calling first**, and by asking every question you can think of, so that you'll understand what's happening as best I can explain it to you. The only dumb question is the one that you want to ask, but don't.

Consultations

I'll usually talk to you briefly about your case by telephone at no charge. Since we get 20-30 inquiry calls each week, I obviously can't give each caller a free consultation and still have time to do my work. We do initial office consultations for a flat fee of \$150 (a \$50 discount from our lowest rate of \$200/hour). The \$150 is due immediately at the end of the visit. If it turns out for some reason that the consultation didn't provide you with significant information about your situation, there will be no charge.

Fees For Representation

Lawyers set fees individually, and fees vary widely. Our code of ethics requires us to consider certain factors every time we set a fee. Here they are, and here's why they're important:

1. *The time and labor required:* When we can't be sure about how much time and labor a case will take we usually begin by basing our fees on an hourly rate.
2. *The novelty and difficulty of the questions and the skill needed to do the work properly:* Name changes are easy. Civil rights and employment work is quite complex. We set our rates accordingly.
3. *The fee customarily charged for similar work:* Lawyers don't get into price fixing, but we do stay reasonably aware of the "going rate." You should always feel free to shop around.
4. *The amount of money involved and the results obtained:* Sometimes there's a higher hourly rate (worked out in advance—no last-minute surprises) when there's a lot at stake. And a lawyer who gets a truly exceptional result for you may ask you to consider that when paying the final bill. Since this sort of thing can't always be anticipated, we agree to negotiate in good faith; you pay an enhanced fee only if you agree to do so happily, and without pressure.
5. *The time limitations imposed by the client or by the circumstances:* Some cases need instant full-time attention during the early stages. Work for other clients may have to be put off. Potential new clients may be turned away; most never come back. Representing you *against* someone probably means that I'll never get to do any work *for* that person. Every lawyer's basic fee reflects these facts. Sometimes the fee may have to be raised to deal with unusual situations. This is arranged in advance whenever possible—we do our best to avoid surprises.
6. *The nature and length of the relationship with the client:* There may be a discount for long-term clients, reflecting the lawyer's comfort in having steady work. Difficult clients who always seem to be in some sort of crisis (even when they're really not) sometimes pay more for the extra attention.
7. *The lawyer's experience, reputation and ability:* Experience, reputation and ability vary, depending on what kind of case is involved. (A top-notch lawyer with twenty years' experience in criminal law may be just starting her first personal injury case.) We may therefore have a range of fees, depending on our experience and background. It's hard for anyone to discuss ability objectively. I'll try to give you pertinent examples of my accomplishments, but the best measure of ability may be the positions of responsibility that I've held and the career progress I've made. I've included a summary of my experience and background at the end of this document.

Reputation is almost as important as experience and know-how; it greatly affects a lawyer's success with judges and other lawyers. *Reputation depends mainly on character and ability, but finances also can affect it.* If the client won't pay the lawyer enough to let him do a first-class job, very few people will know enough to blame the second-class job on the client. They blame the lawyer: "Herb must be slipping—he really should have called in an expert witness on that point." So please remember that when we talk money, we're talking about my reputation, too. It's a significant factor when I decide which cases to take, and how much to charge.

8. *Whether the fee is fixed or contingent:* You always have the option of paying a fixed hourly rate in advance if that's what you prefer—I can charge less if I know for certain I'll be paid. I get paid more if I take a significant risk, such as on contingency cases, or if there is a likelihood of long delay in payment. (These factors also help me decide whether I'll charge an advance fee, and if so, how much.)

My Base Rate Once You're A Client

Applying these factors to the kinds of cases I usually take, I arrive at a base rate of \$200/hour for non-business clients who can pay me in advance, and whose situations do not involve litigation or extensive legal research. The base rate becomes \$225 if they can't continue to pay in advance. The base rate for business and professional people is usually \$225/hour (the issues are more complex, more is usually at stake, and my fees are usually tax deductible). We'll agree on a base rate for your work before I start.

Adjustments to The Base Rate

Routine and Simple Work: Even for business and professional people, I charge \$200/hour for work that is reasonably routine and not especially risky or time-consuming.

Deadline Work and Trial Work: Some clients face or impose deadlines that require me to set aside other work, or to work 16-hour days so that I can do their work and still meet my other obligations. If a client's special needs prevent me from working in an orderly way at my own pace, I charge \$225/hour for this extra-high-pressure work.

Potential For Additional Work: I may charge less than usual if there's a good chance that your problem will lead to other work, such as the first of a series of projects you may have, or referrals to people who are similarly situated.

Less Familiar Territory: I'll never take on work that I'm not competent to do. Sometimes, though, a case raises issues that I'm very interested in and could do a good job on, although it might take me a bit longer to get up to speed. I'll let you know if we're in such a situation, and if we decide to go ahead I'll reduce my hourly fee or make some other adjustment. You won't pay for an educational effort that another lawyer might not have to go through.

My Individual Specialties: I charge non-business clients the \$225 rate when I work on problems that are so "up my alley" that my contribution is truly special. If another lawyer would take ten hours to do something that I can do in one or two, an increase in my hourly rate compensates me for my special knowledge and ability, and still gives you a bargain.

Computer-Assisted Legal Research: Much of the cost of legal work is for legal research: focusing in on the right principles of law, and then analyzing the court decisions that have applied them to situations similar to yours. This helps us predict what a court might do if your problem got that far, and we can use that prediction to help choose the best approach. There is no substitute for careful and thorough legal research; cases are routinely lost when this is missing.

This office is equipped with a variety of on-line research capabilities—some of the most up-to-date systems available. I *must* use them to ensure that the work I do for you is of professional quality, but these high-tech resources can be extremely expensive. Clients don't like to be "nickel and dimed" for extra minute-by-minute computer-research fees, and courts increasingly prefer that we include such items in our base rate, which is why I charge an additional \$15/hour when I use these resources. It's so fast and accurate that you'll still save considerable money compared to the old-style system of manual research, book-by-book, at a law library. (A job that could have taken six hours of manual research may take only one via computer, and the result is much more up-to-date and reliable.)

Contingent Fees

Contingent fees make sense only if we expect to recover a very substantial amount of money at the end of the case, but it's often hard to predict this at the beginning. Because of special complications, I don't do civil rights or employment cases on a pure contingency basis. We'll start with an advance retainer at \$200/hour up to a certain point, possibly changing to a percentage arrangement later as we learn more about the case. We'll discuss this in more detail if your case is in this category, and we'll write a separate agreement if we switch at some point to a contingent-fee arrangement.

My contingent-fee share is usually 35% of the recovery if we settle before we have to file suit, and 40% if we have to go to court. My share comes “off the top,” meaning before out-of-pocket expenses are deducted. You’re always responsible for out-of-pocket expenses; they’re discussed in detail on page 5.

Gross Receipts Tax

New Mexico gross receipts tax applies to all legal fees and costs, including contingency percentages.

Retainers

Lawyers have learned that to earn a living we need to get a certain amount “up front.” That lets us dig in enthusiastically, without money distractions. There’s no uniform policy for retainers. Some lawyers want a certain amount just to take a case. Some demand enough in advance to ensure payment for all the work they may conceivably have to do. Your money sits in their trust account, not your bank account, until it’s used up or the case is over. That’s an unfair hardship; it can keep a person from finding representation.

I never ask you to finance the whole case up front. Most of the time I’ll ask for a retainer that buys the first five-hour “chunk” of work and expenses we’ll incur. It is always at least \$1000 plus tax. Often the initial retainer will be higher, but experience teaches that it typically takes at least five hours, and often twice as long, to properly investigate and analyze a serious case so that we can decide how best to proceed. We’ll agree on the initial retainer at our first meeting. After the initial retainer, if we agree to continue beyond what the last payment covered, we’ll decide step-by-step on a series of further retainers. (Please bear in mind that even if we’ve agreed on an hourly base rate, that’s just *one* of the many components that go into determining what I’ve earned. That’s why I devote so much space to the eight fee-setting factors I described earlier.)

If we get an unexpectedly fast and favorable result, a significant part of that outcome can probably be attributed to my experience, ability and reputation. The value to you of that kind of result will generally justify my keeping the current retainer. If the current stage takes lots less time and effort than the last payment uses up, the rest of the work you’ve paid for will be available for any further work we may decide to do. We’ll analyze the amount of each advance payment carefully before you make it.

What Does Your Initial Retainer Buy?

I charge you for the time it takes to analyze and evaluate your case just as a doctor charges you when you come to her with chest pains. She needs to examine you carefully, take some x-rays, do some tests, and maybe read some medical books, so she can sort out whether it’s your heart, your lungs, your ribs, your spine, etc. Only after she does all that can she make a diagnosis, and recommend treatment: she may suggest surgery, medicine, rest, or even some more tests.

Even if she decides that all you need is a week in bed, or that your situation is hopeless, or even if you decide not to take her advice—even if you decide to go see another doctor—she gets paid for the services she has rendered, the tests she has done, the time she has spent doing the evaluation, and the effort that goes into analyzing and explaining your options.

I get paid for my evaluation too. If you don’t feel your case is worth investing in, I probably won’t either. Your initial retainer buys you a sound, seasoned professional evaluation, perhaps some work beyond that, and possibly even an outcome you can be happy with.

Other Costs

Clerical Work: I charge \$10/hour for clerical work outside the normal routine of filing, mailing, etc. For example, if our secretary spends lots of time copying documents at some government agency's office, I'll charge you \$10/hour for those services.

Paralegals: I charge up to \$50/hour for work done by my paralegals, depending on what's involved. It may include preliminary drafting, legal research, interviewing witnesses, investigating, etc., all under my supervision. I remain solely responsible for the quality of the work. I guarantee it. You save time and money. We get more done faster.

Out-Of-Pocket Items: Virtually all lawyers require clients to pay for out-of-pocket costs. I bill for fewer of them than most lawyers do, but I will bill you at my cost for major out-of-pocket expenses: FEDEX (but not ordinary postage for every letter); significant amounts of copying that can't reasonably be done in-house; major travel (only with your approval); filing fees and other court costs; process servers; expert consultants; witness fees; special trial exhibits; etc. If we go to court and lose, you'll typically be responsible for most of the other side's expenses (but not attorney fees). If we win, your expenses will typically be reimbursed by the other side.

A Confession

One of my major failings as a lawyer is my complete inability to figure out who will pay me and who won't. I've been very severely burned by some of the nicest people you'd ever want to know. Because this has often become a major problem, once we've started work I'll expect you to pay for further work in advance unless your case or your situation is truly unusual. *So please plan for the need to pay in advance before you decide to have me start work, and please be prepared to understand that I may well have to stop work if you stop paying.* Nothing spoils a lawyer-client relationship faster than when the lawyer has to stop being a lawyer and start being a bill collector. I hate it. (You would too!) I'll do my best from the start to keep either of us from getting into that sort of situation.

Money should be a tool that helps both of us get what we need, rather than a constant problem. If you have any questions at all about costs please discuss them with me right away. The idea is to be comfortable with our arrangement from the beginning, so that we can keep our minds on what's most important: getting your project done or your problem resolved.

What's The Next Step?

Shop around for your lawyer. Talk to friends and relatives. Ask lots of questions. Use this document to formulate questions about fees, experience, style of practice, etc. Pick a lawyer you feel comfortable with and have confidence in. No one lawyer is right for every person or problem, but once you've made the choice, no matter who it turns out to be, go into the relationship with the same enthusiasm, confidence and commitment that you want back. A good lawyer who gets that kind of investment from you will surely return it, with interest! Whomever you choose, I wish you all the best.

Herb Silverberg



A Little About Me

I was born in Philadelphia in 1939, educated in its public schools, and graduated from the University of Pennsylvania (B.A. 1961) and the University of Pennsylvania Law School (J.D. 1968). Between college and law school I spent three years in the Army, including a year or so with the Special Forces.

After law school I went to work in Washington D.C.'s largest law firm, where I was first admitted to the Bar in 1968. I concentrated on trial work, usually involving some aspect of federal government law or regulation. I also spent time doing free work on behalf of mental patients, and later spent several years in various aspects of mental health law, including becoming the Executive Director of a major national project of the American Bar Association. My Washington background gave me very concentrated experience in trial law, and in practice before the federal agencies, trial courts and appeals courts, as well as in legislative work.

I moved to Santa Fe in 1976. My first New Mexico experience was in the Attorney General's Office; I worked there for about six years, concentrating first on consumer protection, and later on representing state agencies. At one time or another I was general counsel or special litigation counsel for many state agencies, such as the Environmental Improvement Board, the Board of Public Accountancy, the Board of Medical Examiners, and the Human Rights Division/Commission. I became Director of Litigation for the Civil Division under Senator Jeff Bingaman when he was Attorney General. In addition to handling my own caseload I supervised a number of other attorneys in trials and appeals at all levels of the state courts, including considerable work on business regulation and professional licensure cases, as well as extensive involvement in employment discrimination and wrongful discharge matters. I held the highest-level classification then available for state lawyers.

In 1983, I left the Attorney General's Office to open a private practice in Santa Fe. In 1994 I became engaged to a Sandia National Lab employee who claimed she couldn't find a way to move all of her lasers and other classified lab equipment to Santa Fe. She was pretty convincing, so I opened a small Albuquerque office, though I still worked and lived mostly in Santa Fe. As we got closer to our wedding day my Albuquerque practice began expanding. By the time we were married in 1995, about 95% of the work was being done in Albuquerque, and the Santa Fe office became a satellite office. It is not staffed; I just use it to meet with my Northern New Mexico clients (I'll always have a Northern New Mexico practice), or as a headquarters when I have trials in Santa Fe or farther north.

I represent individuals, small businesses, non-profit organizations and state agencies in a wide variety of cases and projects. I have substantial experience in security clearance litigation and other employment-related National Lab matters. I've also done a number of special computer research projects for law firms and government agencies.

I'd be happy to discuss my background or experience in detail to help you decide whether I'm the right lawyer for you.