

A client consulted with his lawyer about handling the sale of the client's building, and asked the lawyer what her legal fee would be. The lawyer replied that her usual charge was \$100 per hour, and estimated that the legal work on behalf of the client would cost about \$5,000 at that rate. The client said, "Okay; let's proceed with it," and the lawyer timely and successfully completed the work. Because of unexpected title problems, the lawyer reasonably spent 75 hours on the matter and shortly thereafter mailed the client a bill for \$7,500, with a letter itemizing the work performed and time spent. The client responded by a letter expressing his good-faith belief that the lawyer had agreed to a total fee of no more than \$5,000. The client enclosed a check in the amount of \$5,000 payable to the lawyer and conspicuously marked, "Payment in full for legal services in connection with the sale of my building." Despite reading the "Payment in full..." language, the lawyer, without any notation of protest or reservation of rights, endorsed and deposited the check to her bank account. The check was duly paid by the client's bank. A few days later, the lawyer unsuccessfully demanded payment from the client of the \$2,500 difference between the amount of her bill and the check, and now sues the client for that difference.

What, if anything, can the lawyer recover from the client?

- A. \$2,500, because the client agreed to an hourly rate for as many hours as the work reasonably required, and the sum of \$5,000 was merely an estimate.
- B. Nothing, because the amount of the lawyer's fee was disputed in good faith by the client, and the lawyer impliedly agreed to an accord and satisfaction.
- C. Nothing, because the risk of unexpected title problems in a real-property transaction is properly allocable to the seller's attorney and thus to the lawyer in this case.
- D. The reasonable value of the lawyer's services in excess of \$5,000, if any, because there was no specific agreement on the total amount of the lawyer's fee.

### **Explanation:**

When a **debt is disputed in good faith**, the debtor can offer to **settle** the debt by giving the creditor a **check with a conspicuous notation** stating that it constitutes **payment in full**. The creditor can then:

**cash the check** – in which case the creditor impliedly agrees to an accord and satisfaction, and the **debt is discharged** *or*

**reject the check** – in which case the **debt is not discharged**.

Here, the lawyer agreed to handle the sale of the client's building for \$100 per hour at an estimated cost of \$5,000. Due to unexpected title problems, the lawyer reasonably spent 75 hours on the matter and billed the client \$7,500. However, the client replied with a letter disputing the fee in good faith and enclosing a \$5,000 check conspicuously marked "Payment in full." Since the lawyer cashed the check, she impliedly agreed to an accord and satisfaction. Therefore, the client's debt was discharged, and the lawyer can recover nothing from the client.

**(Choice A)** A court could find that the client agreed to an hourly rate for as many hours as the work reasonably required and that the \$5,000 sum was merely an estimate. But since the client disputed the \$7,500 fee in good faith, he was entitled to offer a lesser amount to discharge the debt.

**(Choice C)** The parties never indicated who would bear the risk of unexpected title problems, and there is no rule automatically placing that risk on the seller's attorney (here, the lawyer). And regardless of where the risk is placed, the lawyer cannot recover since she cashed the check.

**(Choice D)** Had the lawyer rejected the check, she might be able to recover the reasonable value of her services in excess of \$5,000 under a **quasi-contract** (ie, unjust enrichment) theory.

### **Educational objective:**

When a debt is disputed in good faith, the debtor can offer to settle the debt by giving the creditor a check with a conspicuous "payment-in-full" notation. The debt is then discharged if the creditor chooses to cash the check.

### **References**

Restatement (Second) of Contracts § 281 cmt. d (Am. Law Inst. 1981) (explaining that a creditor who cashes a check marked "payment in full" may have formed an enforceable accord).

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## Offer to satisfy debt with check

