

TWO ATTORNEYS: WOULD YOU CHOOSE RIGHT THE FIRST TIME?

This analysis refers to the case *Murphy v. Housel & Housel*, summarized in our blog titled "[ESTATE ATTORNEY MALPRACTICE--CASE SUMMARY \(MURPHY V. HOUSEL\)](#)" To best appreciate the following analysis, read this previous blog summarizing the case. (Hover over the title with your cursor and click.)

The two lessons to be learned from this case are straightforward:

1. Estate planning law is complex and
2. Choose your attorney carefully.

Estate Planning Law is Complex. There is a misperception among some lawyers that estate planning law is easy. This is particularly true for new law school graduates or general practitioners. Even some experienced lawyers may have a perception that estate law is for those lawyers who could not make it in *international corporate law* or *complex business litigation* or *corporate mergers and acquisitions*. I remember many years ago watching the television series "Boston Law." In one episode, the slick and sophisticated corporate lawyers mocked their estate planning colleague with the statements that he "just does wills"—the clear message being that estate planning was far beneath the heights of corporate legal complexities.

Experienced estate planning attorneys (particularly those who work orchestrating complex estate tax laws, or work transferring a variety of corporate or other assets to beneficiaries, or work litigating an inheritance conflict)—these experienced estate attorneys shrug off such criticisms. We know our area of law is as complex as any area of law. And we are confident we could be competent international corporate lawyers—it's just that those areas of law seem so boring!

The complexities of estate planning law are not limited to high-value estates or perceptions among lawyers themselves. The real problem is the perception among common folks that their middle-class assets (a home, retirement account, life insurance policy) are easily transferred using an online LegalZoom will, or easily probated with an Office Depot probate document kit. It may be impossible for these folks to really believe that they will save much more money than they will ever pay by hiring a competent estate planning attorney. Even "simple" estates can be surprisingly complex.

Choose Your Attorney Carefully. In the *Housel* case, compare attorney Housel with attorney Diane Walsh. What more need be said? The contrast is clear: a poor attorney and a competent attorney.

In my experience, poor attorneys are often not so much incompetent or unintelligent as they are incapable of standing up to clients, insisting on doing quality work, and

demanding to be paid for that quality work. That is, poor attorneys are often embarrassed to look a client in the eye and say, “This is potentially complex work and will require 40 to 50 hours of my time to get started. That will be \$12,000 to \$15,000, initially. If you can’t pay that, I am not your guy.”

I think incompetent attorneys are attorneys who are unwilling to walk away from a cheap-skate client. The cheap-skate client gets the cheap, incompetent attorney, and they both proceed to hate each other. They each got exactly what they wanted.

Clearly, Diane Walsh was a straight shooter—a competent attorney. Was she expensive? I am certain she was. But do you want an expensive straight shooter or a cheap document-mill attorney? You are not going to have your cake and eat it too.

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See [Murphy v. Housel & Housel](#), 955 P.2d 880 (Wyoming 1988).

By Craig E. Hughes