

ESTATE ATTORNEY MALPRACTICE—CASE SUMMARY (MURPHY V. HOUSEL)

In 1985, Dominic Badura died. His will named his brothers and sister as the personal representatives (or executors) of his estate. One of the brothers, Mr. Badura, hired a law firm, Housel & Housel (“Housel”), to probate the will in court. Housel proceeded to make serious mistakes. See [*Murphy v. Housel & Housel*](#).

In 1987, Housel filed paperwork valuing the estate at less than \$400,000. In 1986, if an estate was worth over \$400,000, the estate owed an “estate tax” to the IRS, so valuing the estate at less than \$400,000 meant that no estate tax was due. Subsequently, in late 1987, Housel determined that certain estate assets were not valued as part of the estate. Therefore, Housel prepared additional paperwork valuing the estate at over \$400,000 (\$476,000).

Unfortunately, Housel failed to inform the IRS about the new valuation of the estate. Therefore, the estate taxes due were not paid to the IRS.

In 1989, Mr. Badura hired a new attorney to look at the estate (Diane Walsh). Over the next eighteen months, Walsh diligently investigated the Badura estate and determined there was at least another \$834,000 in assets that Housel had not accounted for, putting the estate at a total value of over \$1.3 million. Diane Walsh appropriately informed Mr. Badura that he would need to re-open the estate and pay the estate tax along with interest and penalties for not paying the taxes on time.

In 1993, Diane Walsh ensured the correct tax returns were filed, and in 1995, the IRS informed Mr. Badura that the estate owed \$108,000 for the federal estate tax and over \$200,000 in interest and penalties. Ouch!

The case does not end there. Back in 1991, Mr. Badura’s new attorney (Diane Walsh) informed Mr. Badura that he could pursue a legal malpractice claim against Housel. At that time, Mr. Badura chose not to pursue the claim against Housel. But after the IRS lowered the boom in 1995, Mr. Badura initiated a lawsuit for legal malpractice against Housel.

The Housel & Housel law firm asserted that Mr. Badura’s time to file a lawsuit against the firm had expired. (A deadline to bring a lawsuit is referred to as a “statute of limitation.”) The trial court agreed with the Housel firm and Mr. Badura appealed his case.

The appellate court agreed with the district court. The court stated that Mr. Badura was informed of his ability to bring a legal malpractice suit in 1991. But Mr. Badura failed to file a lawsuit until 4 years later. The statute of limitations was two years for filing the lawsuit. Therefore, time had run out for Mr. Badura to sue the firm for legal malpractice.

Housel & Housel had clearly committed malpractice, but the Badura family simply waited too long to pursue any claim.

See our analysis of this case in the blog titled "[TWO ATTORNEYS: WOULD YOU CHOOSE RIGHT THE FIRST TIME?](#)"

See [Murphy v. Housel & Housel](#), 955 P.2d 880 (Wyoming 1988)[1].

By: Kelly Perri

[1] After Mr. Badura filed the lawsuit, Delphine Badura Murphy was substituted as a party to this case. Thus, the name of the case.