

## PROFESSIONAL LIABILITY UPDATE

### ETHICS

By Jennifer Becker

*Butler v. LeBouef* (2016) 248 Cal.App.4<sup>th</sup> 198

*The Second District holds an attorney cannot benefit from a client's estate plan presumed to result from undue influence.*

John A Patton had been a client of John F. LeBouef. Patton suffered from depression, alcohol abuse, and many health problems. After Patton's partner died, LeBouef befriended him. When Patton died, LeBouef proffered an estate plan that benefitted him. This was a radical change in Patton's prior estate plan, which benefitted his nieces and a long-time friend.

In affirming the trial court's decision to invalidate the trust, the Court of Appeal upheld the trial court's admission of evidence the inferences it drew. There was ample evidence LeBouef had manipulated Patton, and engaged in other dishonest acts.

Patton had complained LeBouef visited too frequently, and commandeered his finances. Patton had discussed his estate plan with numerous potential beneficiaries, all of whom were excluded from the trust proffered by LeBouef.

The trial court concluded LeBouef prepared the estate plan, and tampered with Patton's donative intent. It rejected LeBouef's claim another attorney prepared the plan, because he presented no evidence to support this

theory, such as billings, payments, correspondence, estate planning questionnaires, or identification of the other lawyer on the estate planning documents. The trial court properly admitted evidence that the look and feel of the trust documents mimicked other questionable estate plans LeBouef had drafted and benefitted from.

The trial court was entitled to reject as concocted LeBouef's claim that the original trust document, which would have shown whether LeBouef improperly substituted himself for the true beneficiaries, was lost in a burglary.

The trial court properly considered, as evidence of a pattern or practice, eight prior incidents showing LeBouef had befriended an elderly testator and benefitted from an estate plan.

Patton considered LeBouef his attorney. LeBouef was disqualified under the probate code from benefitting from the estate without the additional procedural step of a certificate of independent review.

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The circumstances of Patton's death were suspicious. It was unexpected, and LeBouef was in Patton's house for hours prior to calling emergency services to report the death.

It was proper to award attorney's fees against LeBouef when he failed to rebut the presumption under the Probate Code that the estate plan resulted from his undue influence on Patton. Patton was not entitled to trustee fees, attorney fees, or out-of-pocket costs under the trust because the trust was void and the trial court found LeBouef breached Patton's trust.

Further, LeBouef had enriched himself at the expense of the trust and pursued litigation to promote his own self-interest. He lived in Patton's home rent free, did not maintain property insurance on three houses, used trust assets to maintain his residences, and spent over half a million dollars on his own defense. LeBouef could not recover fees, costs, and expenses springing from his own fraud, concealment, and misconduct.

The Court of Appeal directed the clerk of the court to forward its opinion to the State Bar and the District Attorney.

*Conclusion:* This case adds little to our collective knowledge of attorney ethical duties. Attorneys cannot engage in criminal conduct and benefit from a client's estate plan. Publicizing LeBouef's conduct however, serves as a warning to the public.