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Attorney drafted trust to benefit himself, appellate court rules

By Kevin Lee

The 2nd District Court of Appeal tore into a Santa Barbara lawyer for drafting a trust and will for an "elderly and mentally infirm" client to benefit himself and his associates.

The three-judge panel found John F. LeBouef's conduct so troublesome that the panel forwarded its opinion against LeBouef to the State Bar and the Santa Barbara County district attorney's office.

The appellate court on Monday affirmed probate code violations against LeBouef less than two weeks after hearing oral arguments. LeBouef was appealing an adverse judgment in Santa Barbara County Superior Court. *Butler v. LeBouef*, 2016 DJDAR 5911.

"The trial court factual findings are disturbing, fatal to appellant's contentions, and suggest criminal culpability," Justice Kenneth R. Yegan wrote about LeBouef.

Yegan wrote that the panel expressed no opinion "on discipline and/or the decision to initiate criminal prosecution."

Experts said they have never heard of an appellate court sending an opinion regarding probate code violations to local prosecutors for review.

"That being said, the facts of *Butler* are extraordinary, shocking in fact," said Mark J. Phillips, an Encino-based probate law specialist who was not involved in the case. "The court likely believed that his parasitic preying on the community had to stop, and that criminal prosecution needed to be considered to do so."

The dispute focuses on LeBouef and John Patton, an interior designer who suffered from "depression, alcohol abuse, hepatitis, diabetes, high blood pressure, gout, and incontinence" before his 2011 death at age 73.

LeBouef visited Patton following the 2004 death of Patton's domestic partner Leo Duval. Those visits increased in frequency as Patton's health deteriorated.



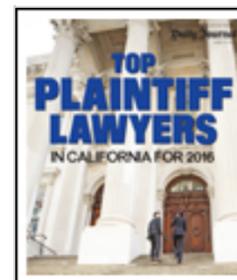
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Justice Kenneth R. Yegan of the 2nd District Court of Appeal castigated a Santa Barbara attorney for drafting a client's trust and will to benefit himself. The court forwarded its opinion to the State Bar and to the Santa Barbara DA's office.

Wednesday, June 22, 2016

SPECIAL REPORT

Top Plaintiffs



Weekly Appellate Report Podcast

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Labor/Employment

State appellate decision pours cold water on employers' summary judgment motions

The 4th Appellate District decision may curb the success of employers' summary judgment motions and also put the Regents of the University of California on notice about following their own policies.

Litigation

Defense rests in Led Zeppelin trial

Closing with testimony from Led Zeppelin singer Robert Plant and an encore performance by guitarist Jimmy Page, attorneys defending the band from accusations of copyright infringement rested their case Tuesday.

Criminal

State Senate committee considers notifying suspects of their gang designation

A measure that would give individuals added to the CalGANG database the right to be notified of their designation as gang members was passed by the Senate Public Safety Committee on Tuesday.

Patton went on to supposedly draft a 2006 will and trust that named LeBouef the principal beneficiary of a \$5 million estate.

After Patton died, Patton's nieces petitioned the trial court to reject the transfer.

The trial court found that LeBouef, acting as Patton's attorney and fiduciary, crafted the 2006 trust and was responsible for the loss of the original trust. The court ordered LeBouef to turn over trust assets and pay more than \$1.2 million in legal fees.

The appellate panel affirmed the trial court Monday.

"This was a damning opinion, in terms of the court's assessment of both LeBouef and the meritless arguments his lawyers tried to make on appeal," said John G. Derrick, appellate counsel for Patton's heirs.

The three-judge panel also noted two other scenarios in which LeBouef had drafted questionable trusts. LeBouef unsuccessfully argued that these events were inadmissible as evidence because they were prejudicial.

"In each trust matter, appellant befriended an elderly person and drafted or helped draft a trust that benefited himself or his associates," Yegan wrote.

Michael P. Ring, trial and appellate counsel on behalf of LeBouef, said he was disappointed with the decision. He said he had not discussed what to do next with his client.

Jerome Sapiro Jr., a San Francisco practitioner with experience in estate planning and legal ethics, said the probate code has explicit restrictions governing transfer of estate assets to practitioners.

"Attorneys can be disqualified from receiving assets under an instrument such as a will or a trust, even without proving that the attorney exercised undue influence," said Sapiro, who had not read the opinion and was not involved in the case. "Essentially, there's a presumption of undue influence if the gift is to an attorney who drafted the instrument."

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Butler v. LeBouef

June 21, 2016

Probate judgment invalidating will and trust upheld where attorney uses law license to take advantage of elderly and mentally infirm trustor to enrich himself.

Government

Revered federal defender to retire

After 27 years of service, Deputy Federal Public Defender Guy C. Iversen will retire June 30.

Litigation

Starbucks must face consumer class action

A federal judge denied a motion to dismiss a putative class action filed by two Californians that accuses the coffee chain Starbucks Corp. of under-filling their drinks while charging customers the full-size price.

Corporate

Ex-Allergan attorney becomes Ultragenyx GC

The former associate general counsel of Allergan PLC, Karah Parschauer, has joined Ultragenyx Pharmaceutical Inc. in Novato, as executive vice president and general counsel.

Litigation

\$31M lawsuit brought by Russian bank dismissed

A San Diego County Superior Court judge has dismissed a lawsuit seeking to enforce a nearly \$31 million money judgment in Russia against a defendant now living in the U.S.

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Law and motionless

If you are not outraged by the delays in your cases in superior court, you are not paying attention. By **Neville L. Johnson and Jordanna Thigpen**

Criminal

State high court should weigh in on campus sexual assault decision

The California Supreme Court should put an end to these lawsuits, which only revictimize the victims of assault and ask courts to second-guess private administrative decisions. By **Judith Chirlin**

High court limited the reach of RICO

On Monday, the U.S. Supreme Court ruled that private civil Racketeer Influenced and Corrupt Organizations Act claims must involve a domestic injury in order to be actionable. By **Jeremy Robinson**

Appellate Practice

Anti-SLAPP appealability getting complicated

There has always been a tension between the immediate appealability of California anti-SLAPP orders and the finality rules in federal court. That tension has re-surfaced in a recent 9th Circuit decision. By **Jens Koepke**

International

First enforcement action under new EU data privacy regime

German regulators recently issued the first fines on companies who were still relying on the now-

defunct EU Safe Harbor Principles for transferring data to the U.S. By **Marie-José van der Heijden and Françoise Gilbert**

Civil Rights

Jury still out on whether bill will stymie access lawsuit abuse

It remains to be seen whether Senate Bill 269 will have the impact its advocates desire: reduce the extraordinary number of ADA-access lawsuits. By **Elizabeth B. Stallard**

Judicial Profile

Jo-Lynne Q. Lee

Superior Court Judge
Alameda County (Oakland)

California Courts of Appeal

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