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Philly Lawyer's \$1M Sanction On Hold By Appeals Court

By **Matt Fair**

Law360, Philadelphia (February 19, 2015, 1:50 PM ET) -- A Pennsylvania appeals court on Wednesday temporarily halted a \$1 million fine levied against defense attorney Nancy Raynor by a Philadelphia County judge after a witness raised improper issues during testimony in a medical malpractice case she was trying.

The Pennsylvania Superior Court stayed the sanction and ordered a hearing to determine whether newly discovered evidence in the case might clear Raynor of the "dilatory, vexatious and obdurate" conduct that Judge Paul Panepinto found the attorney had engaged in after an expert witness in the malpractice case violated a pretrial order not to mention the plaintiff's history of smoking during his testimony.

The court did not comment on the matter in issuing its order, but Raynor's attorney told Law360 on Thursday that he was gratified by the decision.

"We're encouraged because of the opportunity to present additional evidence to support the position that Nancy Raynor complied with the order by adequately advising [the expert] about the limitations," Swartz Campbell LLC attorney Jeffrey McCarron said.

Raynor was **slapped with the sanctions order** in November after Judge Panepinto found that she'd allowed an expert witness to testify about a plaintiff's smoking history in violation of a pretrial order precluding any mention of the issue.

The judge ordered Raynor to pay \$615,000 to Klehr Harrison Harvey Branzburg & Ellers LLP and \$160,000 to Messa & Associates PC, the plaintiff's firms, and \$170,000 to the plaintiff for actual costs.

McCarron said that after stories about the sanction appeared in the media, Raynor was contacted by a witness who said he'd heard her remind the expert prior to his testimony not to mention the plaintiff's smoking history.

The witness, McCarron said, is a contractor who provided audio/video services to Raynor during the malpractice trial. An affidavit of the new witness has since been taken.

The original sanctions order came down in November, the same day that plaintiff Rosalind Wilson's family was awarded nearly \$2 million after a jury found that doctors at Roxborough Memorial Hospital had been negligent following a 2.5-week trial.

Wilson sued the hospital in 2009 because she was never told about a suspicious nodule that had appeared on her chest X-ray until 20 months later, when she was diagnosed with stage IV lung cancer. She filed the suit in July 2009 and died several weeks later.

Raynor allegedly violated the order by not stopping Kelly from referencing Wilson's smoking history during the first trial, which finished in June 2012. But Judge Panepinto granted a new trial in October 2012 after the jury awarded the plaintiffs \$190,000, and he determined that the court had erred when it failed to declare a mistrial. A state appeals court upheld the decision for a new trial in December 2013.

In an **opinion** filed earlier this month, Judge Panepinto stood by his decision to order the sanction.

He called Raynor's failure to raise the issue with Kelly "vexatious" because it lacked justification and was clearly intended to harass opposing counsel. He said it was "obdurate" because she failed to follow the court order prohibiting the discussion of the plaintiff's smoking history. And he called it "dilatory" because the the omission led to extensive delays in the proceedings, including a new trial and substantial post-trial work.

The plaintiffs are represented by Klehr Harrison Harvey Branzburg & Eilers LLP and Messa & Associates PC.

Raynor is represented by Jeffrey McCarron of Swartz Campbell LLC..

The case is Rosalind Sutch etc. v. Roxborough Memorial Hospital et al., case number 090700901 in the Philadelphia County Court of Common Pleas, and case number 3494 EDA 2014 before the Pennsylvania Superior Court.

— Additional reporting by Caroline Simpson and Dan Packel. Editing by Ben Guilfooy.
