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Pa. Judge Defends \$1M Fine For Atty's Witness Instructions

By **Dan Packel**

Law360, Philadelphia (February 06, 2015, 4:07 PM ET) -- A Pennsylvania state judge has said that he fined a hospital defense attorney nearly \$1 million because she didn't properly warn an expert witness in a malpractice trial against referencing the smoking history of a plaintiff who died of lung cancer.

In an opinion issued Tuesday, Philadelphia Court of Common Pleas Judge Paul P. Panepinto emphasized that he did not believe attorney Nancy Raynor's testimony that she had raised the issue with the witness, adding that he found the testimony of witness Dr. John Kelly to be more credible.

Judge Panepinto had **previously ordered** Raynor to pay \$615,000 to Klehr Harrison Harvey Branzburg & Eilers LLP and \$160,000 to Messa & Associates PC, the plaintiff's firms, and \$170,000 to the plaintiff for actual costs, based on his finding that her conduct in the trial was "dilatatory, vexatious and obdurate,"

The judge justified all three of these adjectives in the opinion. 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 "dilatatory" because the the omission led to extensive delays in the proceedings, including a new trial and substantial post-trial work.

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.

She has appealed the sanctions, and Thursday she renewed her efforts to receive a stay on when the payments are due.

Her attorney, Jeff McCarron of Swartz Campbell LLC, has called the sanctions order "grossly excessive."

Meanwhile, attorneys for the plaintiffs in the suit have urged the judge to dissolve a temporary order, arguing that it's time they and Wilson's family recover the substantial costs they incurred by having been forced to bring the case to trial a second time.

A hearing on the sanctions issues is scheduled for Feb. 19.

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

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

The case is Rosalind W. Sutch as executrix of the estate of Rosalind Wilson, deceased v. Roxborough Memorial Hospital et al., case number 090700901, in the Court of Common Pleas of Philadelphia County.

--Additional reporting by Caroline Simson. Editing by Chris Yates.

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