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## Atty Sanctioned \$1M Pushes Pa. Judge To Nix Penalty

By **Matt Fair**

Law360, Philadelphia (March 25, 2015, 5:41 PM ET) -- A Pennsylvania state judge was urged on Monday that the emergence of new evidence required that he nix a \$1 million sanction he slapped on a Philadelphia-based defense attorney after an expert witness offered forbidden testimony in a medical malpractice case in 2012.

Nancy Raynor, who was **slapped with the sanction** after her expert witness mentioned a plaintiff's smoking history on the stand despite a pretrial order barring the subject from being raised during the medical malpractice case, said that punishment should be vacated in light of new evidence from a trial technician who said he overheard Raynor warn the witness not to bring up the forbidden topic.

The trial technician, Joseph Chapman, **testified** during two days of hearings earlier this month that he'd been standing nearby when he heard Raynor specifically tell Dr. Paul Kelly that the issue of smoking was out of the medical malpractice case.

"Chapman's testimony — from a disinterested, independent witness — firmly establishes that Raynor had assured that Dr. Kelly was informed and fully understood that he was prohibited from mentioning smoking during history," the brief said. "With the benefit of Chapman's testimony, the court should reconsider its earlier ruling that Raynor had not informed Kelly of the smoking order prior to taking the stand."

Chapman, an audiovisual technician who provided services to Raynor during the 2012 malpractice case, came forward in January after he said he read reports that the attorney had been hit with the sizable sanction.

The punishment was meted out in November after Judge Paul Panepinto in the Philadelphia County Court of Common Pleas found that Raynor had improperly allowed Kelly to testify about the plaintiff's smoking history in violation of pretrial orders in the medical malpractice case.

The July 2009 lawsuit accused Roxborough Memorial Hospital of failing to inform plaintiff Rosalind Wilson of a suspicious nodule that appeared on a chest X-ray until she was diagnosed with stage four lung cancer some 20 months later.

Trial was allowed to continue in 2012 despite Kelly's testimony, and a jury returned a \$190,000 verdict in Wilson's favor. But Judge Panepinto subsequently ordered a second trial after determining that Kelly's testimony had tainted the proceedings.

A jury in the second trial awarded \$2 million to Wilson's family in November, according to court records.

Raynor is currently appealing the sanctions order to the Pennsylvania Superior Court, which ordered Judge Panepinto in February to hold additional evidentiary hearings after Chapman came forward with his recollections.

In addition to the new evidence offered by Chapman, Raynor said Kelly had never told the court he'd not been informed of the order precluding smoking from being mentioned in the case. Rather, the record showed that Kelly simply didn't remember whether he'd been informed of the pretrial order.

"Kelly's testimony, which evidences, at most, a lack of recollection, is not proof that Raynor did not inform Kelly about the smoking order," the brief said. "Considered in its entirety, Kelly's testimony did not prove the validity of plaintiff's motion for sanctions. Truthful or not, Kelly's testimony establishes nothing more than he did not remember. This lack of recollection is not substantive evidence of a fact."

An attorney for the plaintiffs did not immediately return a message seeking comment on Wednesday.

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 Court of Common Pleas of Philadelphia County, Pennsylvania.

--Editing by Chris Yates.

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