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## Fined Pa. Atty Tried To Stop Barred Testimony, Witness Says

By **Matt Fair**

Law360, Philadelphia (March 04, 2015, 6:20 PM ET) -- A Pennsylvania judge heard evidence Wednesday that Philadelphia-based defense attorney Nancy Raynor, who is facing \$1 million in sanctions after an expert witness offered forbidden testimony about a plaintiff's smoking history during a medical malpractice trial, reminded the doctor not to broach the subject before taking the stand.

Joseph Chapman, an independent contractor who provided audio/video services during the malpractice case, testified that he'd overheard a conversation between Raynor and the expert witness before his testimony during which she stressed that any references to smoking had been expressly barred.

"I can hear it clear as day in my head," he said during an evidentiary hearing in the Philadelphia County Court of Common Pleas.

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

Kelly's testimony did not result in an immediate mistrial, and a jury awarded \$190,000 in damages to the family of plaintiff Rosalind Wilson. But Judge Panepinto ultimately ordered a second trial as a result of the issue.

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

Wilson sued the Roxborough Memorial Hospital in July 2009 over claims she was never told about a suspicious nodule that had appeared on a chest X-ray until she was diagnosed with stage IV lung cancer some 20 months later. She died several weeks after the complaint was filed.

The state's Superior Court **stayed the \$1 million penalty** in mid-February after Raynor said that she'd been approached by Chapman with his recollections of the alleged conversation she had with Kelly before his testimony.

Chapman said he'd been standing outside of the courtroom as Raynor and Kelly stood nearby discussing the testimony the doctor was preparing to give. When Kelly mentioned Wilson's smoking history among a list of her medical issues, Chapman said Raynor specifically reminded him that smoking was out of the case.

"I remember him rattling through these medical issues and he said something about smoking, so my ears perked up simply because these attorneys had been on my back about

the smoking issue the whole trial," he said.

Matthew D'Annunzio, an attorney with Klehr Harrison Harvey Branzburg & Eilers LLP representing the plaintiffs, suggested during cross-examination that Chapman's testimony was simply too good to be true.

"Is there any more helpful testimony that a witness could come into this courtroom to give?" he asked. "Isn't this the most helpful, most dramatic testimony a witness could take the stand here and give to this court?"

He questioned why Chapman had only come forward with his recollections in January and hadn't said anything during the 2012 trial when Judge Panepinto specifically questioned both Raynor and Kelly about why the violation had taken place. At the time, D'Annunzio said, neither Raynor nor Kelly said anything about the conversation that Chapman has come forward to testify about.

Chapman said that he briefly mentioned overhearing the conversation to Raynor following discussions about the testimony during the 2012 trial, but that she never followed up with him. He added that he knew nothing about the punishments that Raynor ended up facing as a result of the testimony until shortly before contacting her in January.

"With all this press going on, including the sanctions being requested, the new trial being granted, the conduct of Nancy Raynor being held sanctionable, did you participate in any conversations with anyone in your dealings with the legal sphere?" D'Annunzio asked.

"I will happily take the heat for not being as informed as maybe someone who is in the courtroom all the time should be, but the fact of the matter is that this is when I noticed it and this is when I said something," Chapman said.

Judge Panepinto scheduled an additional day of hearings in the matter for Tuesday.

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.