

Pa. Judge Won't Toss \$1M Sanction Over Atty's Witness Flub

By **Y. Peter Kang**

Law360, Los Angeles (April 27, 2015, 8:16 PM ET) -- A Pennsylvania judge on Friday refused to reconsider a \$1 million sanction he levied against a Philadelphia-based defense attorney after her expert witness violated a pretrial order in a medical malpractice case, ruling that new evidence could not be considered by the court since it was not "after discovered."

A technician who worked on the 2012 medical malpractice trial had come forward in January claiming he overheard defense attorney Nancy Raynor remind her expert that mentioning the plaintiff's smoking history was explicitly barred in the case.

But Judge Paul P. Panepinto of the Philadelphia County Court of Common Pleas said that technician Joseph Chapman testified that he had informed Raynor the day of the alleged violation of the court's order, therefore the newly proffered evidence did not qualify as "after discovered" evidence.

"This court is compelled to find that the testimonial evidence offered by Raynor at the hearing on newly discovered evidence is not 'after discovered,' as a matter of law and cannot be considered by this court," the judge wrote in the 17-page order.

The judge also noted that Chapman lacks credibility as a witness and questioned his "overall capacity for telling the truth," according to court documents.

"This court is unable to accept Chapman's testimony and reconsider its earlier ruling," the judge wrote. "Raynor's conduct was orchestrated to improperly influence the outcome of the trial. This warranted the imposition of sanctions. Not only are there significant reasons to doubt the veracity of Chapman's testimony, but even if this court were to accept Chapman's version of events, the respondents have not met their burden in convincing this court that Raynor complied with the conditions of the preclusion order."

The \$1 million sanction against Raynor was **meted out in November**, after Judge Panepinto found that Raynor improperly allowed Dr. Paul 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.

Chapman, an audiovisual technician who provided services to Raynor during the trial, emailed Raynor in January offering to testify after he read media reports about the sanction.

Judge Panepinto held **two days of hearings** in March to take Chapman's testimony.

Earlier this month, the plaintiffs urged the judge to reject Chapman's account, arguing that the testimony should be disregarded as both untimely and unreliable.

Representatives for the parties did not immediately respond to requests for comment Monday.

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

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

The case is Rosalind Sutch v. Roxborough Memorial Hospital et al., case number 090700901, in the Court of Common Pleas of the State of Pennsylvania, County of Philadelphia.

--Additional reporting by Matt Fair. Editing by Kelly Duncan.

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