

Judge defends \$1M fine against lawyer over banned testimony

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Defense lawyer Nancy Raynor, who is appealing the penalty, says her accounts have been frozen and a lien is on her home. Opposing counsel counter that her witness cost them and their client more than \$1 million. JOSEPH KACZMAREK / For the Inquirer

MARYCLAIRE DALE, The Associated Press

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PHILADELPHIA (AP) - The judge who lodged a nearly \$1 million fine against a Philadelphia-area lawyer believes she intentionally elicited banned testimony that caused a mistrial - and then lied about it.

The judge concluded that Berwyn lawyer Nancy Raynor failed to instruct a witness that he could not say the patient in a medical malpractice case against her client had smoked.

Raynor, who was defending a doctor, had vigorously fought the judge's pretrial ruling.

Still, she insists that her expert blurted out the smoking reference despite her warnings weeks earlier and just before he took the stand.

Philadelphia Common Pleas Judge Paul Panepinto said that Raynor's story has changed repeatedly since the 2012 trial.

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"Raynor's determination to try this case in her own way and against the rules of this court, with a lack of fairness to other parties, culminated in her willful elicitation of barred testimony from Dr. (John) Kelly," the judge wrote in an opinion Wednesday.

He said she had "sabotaged" the other side's case after they finished presenting evidence.

Panepinto found Raynor in contempt and upheld the \$950,000 award he had granted opposing lawyers and their client for the cost of the three-week retrial more than a year later.

"He certainly issued a scathing, factually inaccurate opinion,"

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said Raynor, who said the judge ignored witnesses in her camp who said they heard her warnings to Kelly.

She vows to fight the sanctions at a Feb. 19 hearing before Panepinto. In the meantime, liens have been placed on her bank accounts that she said put her family and small law practice in jeopardy.

"It takes money to make money," Raynor, 54, said Thursday. "It's a major problem."

The plaintiff's lawyers represent the family of a woman who died of lung cancer after Raynor's client and others allegedly failed to diagnose the disease early on. The judge found they put in 2,900 hours of legal work that involved 14 lawyers and two paralegals. He cut their proposed fee request by about one-third.

"What's lost in all of this - and I understand a certain amount of shock about the sanctions - ... is the right of a family who was wronged by the negligence of a physician to have their fair day in court," lawyer Joseph Messa said. "They had to go through not just financial trauma, but the emotional trauma of reliving this nightmare."

The first jury had come back with a \$190,000 verdict for the family. They won a \$2 million judgment at the retrial.

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