

# Lawyer faces \$1M in sanctions because her witness stumbled

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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*

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Nancy Raynor says the fate of her law practice, built over more than a decade, is hanging in the balance.

Raynor is an insurance defense lawyer with a high-volume practice and relatively low hourly rates. She defends her physician clients against medical-malpractice claims mostly, but also represents

It is an intensely competitive area of the law, and lawyers, at least on the defense side, typically don't get rich doing it.

But for Raynor, the financial pressures recently have become nearly unbearable.

On Nov. 4, Philadelphia Common Pleas Court Judge Paul Panepinto slapped her with a sanctions order that directs her to pay nearly \$1 million in penalties.

The offense? One of her witnesses in a medical-malpractice case blurted out that a woman at the heart of the 2012 trial was a smoker, breaching an order by Panepinto that there be no mention of her smoking habits.

As a consequence of the order, Raynor's bank accounts have been frozen and her client fees are subject to seizure. There is a lien on her home and she is afraid she might soon lose it. She won a temporary stay and is scheduled to appear at a hearing Feb. 19 on whether the asset seizures should be halted pending the outcome of an appeal to state Superior Court.

But if collection efforts proceed, she says, her four-lawyer firm likely will collapse, and along with it her ability to support two college-age children and perhaps to even stay in her house. Much of what she has worked so hard for would disappear, said the 54-year-old Villanova University Law School graduate from Berwyn.

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"They took on a small guy, a single mother," said Raynor. "They ruined my reputation and career, and if they can do it to me, they can do it to anyone."

The situation, she says, is taking a toll.

"I cry all the time," Raynor said. "I don't get any sleep."

Raynor's adversaries, Matt D'Annunzio, an attorney at Klehr Harrison Harvey Branzburg L.L.P., and Joseph L. Messa Jr., of Messa & Associates, say the reference by Raynor's witness to their

client's smoking forced them to seek a new trial, costing them and their client more than \$1 million.

The fact that the lawyers obtained a reversal and their client won a \$1.9 million verdict in a subsequent trial doesn't make up for that loss, they said.

"That's a big burden on a law firm," D'Annunzio said of the cost of the mistrial. "We are not a mammoth financial institution."

On Friday, Panepinto denied an emergency motion by Raynor to unfreeze some of her funds to pay bills and make payroll. He said in his order that Raynor had failed to show she needed the money.

### **Unusual sanctions**

Jeffrey B. McCarron, Raynor's Center City-based lawyer, said the amount of the sanctions far outstrips anything he had ever seen in civil litigation, and was all the more inexplicable given the conflicting factual backdrop.

"I represent lawyers, and have for 21/2 decades - it just never happens," McCarron said of the sanctions facing Raynor.

Former Common Pleas Court Judge Gene Cohen, a partner at Cohen Seglias Pallas Greenhall & Furman P.C., said that in his 17 years on the bench he too had never seen sanctions of the magnitude imposed on Raynor.

"I have never heard of a lawyer being fined \$1 million for the kind of violation that was in this case, and it is apparently excessive," he said. "I don't know that the judge has sufficiently justified this kind of sanction."

The case also has drawn the attention of the Philadelphia Association of Defense Counsel. Its president, James W. Scott Jr., of the Center City firm of Bodell Bove, said that while the group had not yet taken a position, he personally was troubled by the sanctions.

"I am concerned that this case may establish a precedent for potentially ruinous sanctions being imposed on any attorney, either plaintiff or a defense attorney, simply because a witness may have blurted something out through no fault of the attorney," Scott said.

Panepinto, a Widener University Law School graduate, declined to comment on the matter in a brief encounter Thursday outside his courtroom. But a short time later, in a hearing on a motion by McCarron to unfreeze some assets, he urged both sides to settle, and suggested that Raynor's side had made a tactical error by not moving earlier to halt execution of the judgment.

"I think it is good to settle cases," Panepinto said.

The November sanctions marked the second time in the case Raynor was hit with penalties. Earlier, she was ordered to pay \$44,693 for accusing one of the plaintiffs' expert witnesses of giving false testimony in a letter to the witness' employer. D'Annunzio characterized the letter as witness intimidation. Raynor says the letter was justified, given that the testimony was inaccurate. Raynor has appealed that sanction as well.

### **How it began**

The case began in May 2007 when Rosalind Wilson went to Roxborough Memorial Hospital complaining of chest pains and shortness of breath. Doctors there ordered a chest X-ray and performed other diagnoses, but they never told Wilson of a suspect, and possibly cancerous, nodule that appeared on the X-ray.

Twenty months later Wilson was diagnosed with Stage IV lung cancer. She died July 21, 2009, six months after she had been diagnosed.

Her daughter, Rosalind Sutch, a Philadelphia accountant, sued the hospital and physicians involved in her mother's care.

At the outset of the trial, Panepinto ruled that Wilson's smoking habits could not be mentioned. The idea was that Wilson, apart from

whether she had caused her illness by smoking, was entitled to the best possible medical care.

The trial proceeded uneventfully until May 31, 2012, when a defense witness, Dr. John Kelly, took the stand and was questioned by Raynor.

"Did [Mrs. Wilson] have any cardiac risk factors?" Raynor asked. To which Kelly replied: "The patient was a smoker. The patient was hypertensive. So, yes, I mean, those are big risk factors."

Raynor says she "froze like a deer in the headlights" when she heard Kelly's remarks, knowing Panepinto had issued a strict order.

The reaction on the plaintiffs' side was equally intense.

"There was a visceral reaction from the jury," said D'Annunzio. "They were writing notes and whispering among one another. We lost their trust and could never regain it."

A jury verdict came down against the defendants and in favor of Wilson's daughter for \$190,000, an amount that barely covered the cost of the expert witnesses. That verdict was voided when Panepinto ordered a new trial.

The dispute hinges to some extent on Panepinto's instructions to the defense counsel. Although there was an order barring testimony on Wilson's smoking, D'Annunzio said Panepinto also made clear Raynor was to remind her witnesses just before they got on the stand. The trial transcript suggests that, but also leaves room for interpretation.

Kelly, moreover, when asked by Panepinto after his remarks whether he had been told not to mention Wilson's smoking habits, said he couldn't recall. At another point, Kelly said Raynor "possibly" had told him about the smoking ban. Raynor offered testimony from her client, an emergency-room doctor, and an insurance adjuster asserting that Raynor had alerted Kelly.

When and how thoroughly Raynor prepped her clients on the smoking question is important, D'Annunzio said, but perhaps more

central is the fact that there was an order at the start of the trial banning such testimony. Given that, D'Annunzio said, it was clear that Raynor's responsibility was to make sure her witnesses made no mention that Wilson was a smoker.

Whether Raynor will have to come up with the cash as her appeal is sorted out by Superior Court is the subject of the Feb. 19 hearing before Panepinto. The sanctions money would be distributed among D'Annunzio's firm, Messa's firm, and Sutch.

For the moment, Raynor's struggle is meeting payroll for the four lawyers and two support staff at her firm, the subject of the Thursday hearing.

"Driving a firm out of business and causing people to lose their jobs and ability to support their families is not fairness," Raynor said.