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Judge Stands by Decision to Kick Raynor Out of Case

P.J. D'Annunzio, The Legal Intelligencer

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A Philadelphia judge is standing by an order that booted defense attorney Nancy Raynor from a medical malpractice case for sending a letter to the employer of one of the plaintiff's experts.

Philadelphia Court of Common Pleas Judge Jacqueline F. Allen issued her opinion in response to Raynor's appeal to the state Superior Court, which came three years after the order. Allen wrote that Raynor's June appeal of the 2012 order taking her out of *Sutch v. Roxborough Memorial Hospital* was untimely.

The same case later saw Raynor sanctioned nearly \$1 million for soliciting a banned reference to smoking from a witness in the lung-cancer-related medical malpractice case, ultimately resulting in a mistrial. The Superior Court has yet to rule on Raynor's appeal of those sanctions.

Raynor was first sanctioned for sending an extrajudicial letter to the employer of the plaintiff's expert witness, Dr. Stefanie Porges: the Hospital of the University of Pennsylvania. According to Allen, the letter sent to the hospital's senior counsel, Mary Ellen Nepps, explained Porges was working for the plaintiff and offered an "untenable opinion" and that Raynor thought Nepps "might want to know that, if this is her position and the plaintiff's attorneys become aware of it, it could expose the Hospital of the University of Pennsylvania to significant liability."

Sanctions from Allen followed, first ordering Raynor to refrain from further contact with Porges. Additional sanctions came in the form of disqualification from representing her clients, Dr. Jeffrey Geller and Roxborough Memorial Hospital.

Allen said Raynor missed three chances to file her appeal on time: the first being when a new trial was granted in 2012; the second, when the Superior Court affirmed Philadelphia Court of Common Pleas Judge Paul P. Panepinto's decision to grant a new trial; and the third, any point before the second trial started in 2014.

Additionally, Allen said Raynor provided "no legally cognizable defense" at the two sanctioning hearings; she attempted to justify sending the letter.

According to an excerpt of Raynor's testimony in Allen's opinion, Raynor said, "'It was outside of this litigation and I sent a letter to Ms. Nepps. This is the type of thing—not that this really is

the issue, but to respond to [plaintiff's counsel] this is the type of thing that happens all the time."

Allen called Raynor's actions "willful" and "unconscionable."

"Her conduct could have had the potential effect of witness intimidation and the potential obstruction of a party's access to evidence," Allen said.

Allen said Raynor's contact with Porges was "clearly improper" and sanctioning was warranted.

Maureen McBride of Lamb McErlane, an appellate attorney for Raynor, did not return a call seeking comment.

"As Judge Allen has stated, there's no appropriate justification for this type of conduct and it could be a chill on the entire litigation process," said the plaintiff's lawyer, Joseph Messa Jr. "I just don't think this type of conduct should be tolerated, on any side."

The underlying case stems from plaintiff Rosalind Sutch's allegations that the defendants failed to inform her mother, Rosalind Wilson, that a chest X-ray performed at Roxborough Memorial Hospital on May 3, 2007, showed a suspicious nodule that would have required further examination, including a follow-up CT scan, Superior Court Senior Judge John L. Musmanno wrote in a November 2013 opinion upholding the grant of a new trial.

During Wilson's overnight hospitalization, no doctors informed her of the nodule in her lung, nor did they advise her to seek follow-up care, according to Musmanno. Wilson did not discover the existence of the nodule until 20 months later, when she was diagnosed with stage IV lung cancer. Wilson died July 21, 2009, more than two years after the nodule was first discovered.

Panepinto sanctioned Raynor late last year for eliciting the banned reference to smoking from defense expert Dr. John J. Kelly in violation of a court order prohibiting the mention of such references during trial. Throughout the sanctions proceedings, Raynor has claimed she repeatedly instructed Kelly not to bring up smoking on the stand.

The lion's share of the sanctions against Raynor were designated for Klehr Harrison Harvey Branzburg, roughly \$615,349. Messa & Associates, co-counsel in the case, was allotted \$160,612. Sutch's share of the fine was roughly \$170,235. Additionally, Sutch received a \$2 million verdict after the case was tried the second time around.

P.J. D'Annunzio can be contacted at 215-557-2315 or pdannunzio@alm.com. Follow him on Twitter @PJDannunzioTLI.

(Copies of the eight-page opinion in Sutch v. Roxborough Memorial Hospital, PICS No. 15-1616, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information.) •