

Collection Efforts Begin on Attorney Sanctioned \$1M in Malpractice Case

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Pennsylvania defense attorney Nancy Raynor, sanctioned nearly \$1 million when a defense expert made a prohibited remark about smoking during a lung cancer-related malpractice case, is now being told it's time to pay up.

Plaintiff's attorneys in the case, *Sutch v. Roxborough Memorial Hospital*, are going after Raynor's business bank accounts and personal assets.

Judge Paul P. Panepinto, of the Philadelphia Court of Common Pleas, previously ordered Raynor, the founder of Malvern, Pa.-based Raynor & Associates, to pay \$615,349 in attorney fees to plaintiff's attorney Klehr Harrison Harvey Branzburg; \$160,612 to Messa & Associates, also representing the plaintiff; and \$170,235 to plaintiff Rosalind Sutch. In an earlier ruling at trial, Panepinto told all lawyers in the case to remind their witnesses of an order barring them from talking about smoking during the trial.

"Nancy Raynor violated this court's order in that she failed to so advise Dr. [John] Kelly of this court's preclusion order and/or failed to follow this court's clear instructions by failing to remind Dr. Kelly just prior to his taking the stand as to this court's order precluding any reference to decedent's smoking history," Panepinto said, according to *The Legal Intelligencer*.

Kelly's reference to smoking brought the case to a mistrial. According to the docket, a writ of execution now has been filed to garnish Raynor's assets. Raynor's attorney has filed a motion to delay payment of the judgment and Panepinto has not yet ruled on that. Raynor also has filed an appeal to the ruling, which is pending. She previously told *The Legal* that the sanction against her was outrageous and that an appeal would only be the beginning.

"I'm not only going to appeal the decision, I am going after everyone in this," Raynor had said, adding that she was calling for an investigation into Panepinto and had met with lawyers to discuss lawsuits against Messa & Associates and Klehr Harrison.

Panepinto said that by violating the court's prohibition against a smoking reference, plaintiff Sutch and her counsel were forced to waste time and money preparing for a case that ultimately resulted in a mistrial.

The monetary sanctions were in addition to a \$44,693 penalty that already had been imposed upon Raynor in the case for writing a letter to the employer of a plaintiff's expert witness.

The case originated with Sutch's allegations that the defendants did not inform her mother, Rosalind Wilson, that a chest X-ray performed at Philadelphia's Roxborough Memorial Hospital in May 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 hospital stay, 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 in July 2009, over two years after the nodule was first discovered.

The case ultimately resulted in a \$2 million verdict in favor of Sutch, handed down shortly after the order sanctioning Raynor was issued.