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Phila. Judge Stands by \$1M Fine Against Attorney

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The Philadelphia judge who sanctioned attorney Nancy Raynor for close to \$1 million for evoking a banned reference to smoking in a lung-cancer-related medical malpractice case—which resulted in a mistrial—said Raynor's punishment was "reasonable."

Philadelphia Court of Common Pleas Judge Paul P. Panepinto said in an opinion Wednesday in response to Raynor's appeal of the sanctions that Raynor was responsible for prolonging the case, causing the plaintiff to incur massive legal expenses.

Panepinto admonished Raynor's actions as intentional and improper, and therefore deserving of the penalty.

"It is glaringly apparent that Raynor's conduct was orchestrated to improperly influence the outcome of this trial," Panepinto said.

In November, Panepinto fined the founder of Malvern, Pa.-based Raynor & Associates in the amount of the plaintiff's legal expenses for failing to instruct medical expert Dr. John J. Kelly about an order prohibiting mention of the deceased plaintiff Rosalind Wilson's smoking history.

Raynor was ordered to pay \$615,349 in attorney fees to Klehr Harrison Harvey Branzburg, \$160,612 to Messa & Associates, and \$170,235 to Wilson's executrix, Rosalind Sutch, according to the order.

Those sanctions were on top of a \$44,693 penalty previously imposed upon Raynor in the same case for writing a letter to the employer of a plaintiff's expert witness. Raynor was also disqualified from representing her client in the case.

Raynor's attorney, Jeffrey McCarron of Swartz Campbell, said Panepinto's opinion did not take everything into account.

"It does not reflect the full extent of the information included in the record," McCarron said. "It doesn't take into account Dr. Kelly's testimony in which he acknowledged he had properly been told about the order and that Nancy Raynor had spoken truthfully to the court when she said she told him about the order."

When collection efforts began last month, McCarron had said the plaintiff's lawyers were going after Raynor's business bank accounts and her personal assets.

"It will likely interrupt the business of her firm to an extent that it will be difficult for her to survive," McCarron had said. "She's obviously in distress and very concerned about the impact this activity will have on her personally and professionally."

Matthew D'Annunzio of Klehr Harrison, an attorney for the plaintiff, did not return a call seeking comment.

When the order sanctioning Raynor came down, she vowed to fight Panepinto's decision.

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

In his opinion defending the sanctions, Panepinto said Raynor resisted the court's order to properly warn her witness to avoid smoking references.

"By eliciting testimony from Dr. Kelly that the decedent was a smoker, Raynor displayed her inflexibility and unyielding position towards this court and its preclusion order," Panepinto said. "This, even after all parties including Raynor agreed to the preclusion order that the court entered."

Additionally, Panepinto said the amount of the sanctions represented the cost of the plaintiff's attorney fees and were necessary based on Raynor's conduct.

The court found, Panepinto said, "that the fees were reasonable and based on industry standards."

"Additionally, extreme efforts were required to be undertaken by plaintiffs to remedy the outgrowth of Raynor's obdurate, vexatious, and dilatory conduct," he continued. "The first trial was wasted and had to be retried after a new trial was granted, and voluminous post-trial work was necessitated."

The case stems from Sutch's allegations that the defendants failed to inform her mother, 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, 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.

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