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Collection of \$1M Fine Against Lawyer Again Sought

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After having been put on hold for several months, efforts to resume collection against Nancy Raynor, an attorney sanctioned by a Philadelphia judge for nearly \$1 million for eliciting banned testimony about smoking in a medical malpractice case, have picked up again.

Philadelphia Court of Common Pleas Judge Paul P. Panepinto late last month ruled that evidence presented by Raynor wouldn't get her out of paying her \$1 million fine. The attorney was sanctioned late last year for drawing a prohibited reference to smoking from an expert in a lung-cancer-related medical malpractice case, resulting in a mistrial.

Now, according to emails sent to The Legal, an attorney representing the plaintiff in the underlying medical malpractice cases, Matthew D'Annunzio of Klehr Harrison Harvey Branzburg (no relation to the author), is seeking to resume the collection process against Raynor. In the emails, Raynor's attorney, Jeffrey McCarron of Swartz Campbell, and D'Annunzio appear to disagree over the expiration date of Panepinto's prior order putting a hold on collection, as per the Superior Court's directive.

McCarron's email to D'Annunzio, dated Monday, said, "Your contention the stay expired is not correct. The supersedeas, including the stay of execution and garnishment actions, imposed by the Superior Court did not expire by its terms."

The email continued, "Therefore, it would be improper for you to take action as if there was no longer a supersedeas and stay."

D'Annunzio's reply email argued the stay did in fact expire and Raynor was required to replace any assets she used since the expiration.

"Because you have failed to provide the assurance we required that your client had ceased accessing the funds, we understand you to be advising that to the contrary she has been utilizing the funds and intends to continue to do so," D'Annunzio's email said.

"As you are well aware, Judge Panepinto resoundingly denied your motion to dissolve our garnishments and liens and they have remained very much in place, and your client has been blatantly disregarding them since April 24, 2015," D'Annunzio's email continued. "We require

that she account for and immediately replace the funds she has unlawfully and knowingly diverted. Plaintiff intends to fully assert her rights to remedy and sanction the unlawful, intentional conduct."

D'Annunzio declined to comment on the email exchange because of the multiple ongoing proceedings related to the case. McCarron and Raynor's appellate attorney, Maureen McBride, did not return calls seeking comment.

Late last month, Panepinto ruled that trial technician Joseph Chapman, who claimed he had overheard Raynor instructing medical expert Dr. John J. Kelly not to mention smoking during the trial in the underlying case—in compliance with the court's order banning smoking references—was not new evidence and did not warrant reconsideration of the sanctioning.

In March, an evidentiary hearing over Chapman's testimony was held in Panepinto's courtroom. Those proceedings took on a chaotic atmosphere, with lawyers and the judge engaging in heated shouting matches in all directions ultimately bringing the contentious nature of the issue to a head.

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, over two years after the nodule was first discovered.

The case resulted in a \$2 million verdict in favor of Sutch, handed down shortly after the order sanctioning Raynor was issued. Raynor was ordered to pay \$615,349 in attorney fees to Klehr Harrison, \$160,612 to co-counsel Messa & Associates, and \$170,235 to Sutch.

Additionally, on May 15, Philadelphia Court of Common Pleas Judge Frederica Massiah-Jackson denied post-trial motions and ordered delay damages paid by Raynor's former client, Dr. Jeffrey Geller, in the underlying medical malpractice suit.

According to Massiah-Jackson's order, Geller is to pay \$120,731 in delay damages; 33 percent of the \$657,912 he is liable for out of the verdict.

Raynor & Associates attorney Judy Royer May took over the case after Raynor was disqualified from representing Geller for writing a letter to the employer of a plaintiff's expert witness. May did not return a call seeking comment. D'Annunzio also declined to comment on Massiah-Jackson's order.