



Judge fines Lynch again in lead case

The attorney general is ordered to pay \$10,000 out of his own pocket for comments he made about paint companies.

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PROVIDENCE -- Attorney General Patrick C. Lynch, in a highly unusual action, was ordered to pay an additional \$10,000 personal fine yesterday for making critical comments about three corporations after a jury found that they created a public nuisance with their lead-based paints.

Judge Michael A. Silverstein imposed the fine yesterday as a result of a second instance in which he found Lynch in contempt of court rules prohibiting lawyers from criticizing each other publicly during the trial.

On the first occasion, Silverstein fined Lynch \$5,000, also to be paid with his own funds.

Lynch plans to appeal both fines to the state Supreme Court. His staff argued in hearings that the judge's sanctions violated Lynch's First Amendment rights to free speech.

Experienced court observers could not think of any other Rhode Island attorney general in recent years so penalized by a judge.

But one legal expert, Prof. Carl Tobias of the University of Richmond School of Law, said Lynch appeared to have fallen into a conflict that trips many attorneys general.

"[Attorneys general] are politicians as well as lawyers, and those in many states have difficulties knowing which hat to wear," Tobias said. But even he wasn't aware of many attorneys general around the country being hit with the sanctions Lynch faces.

The penalties are far less extreme than what the lead-paint manufacturers recommended: setting aside the jury's verdict.

Lynch made his comments in February, minutes after the jury found three of the four defendants had created a public nuisance. He described the defendants as those who "duck and run" and "refused to clean up."

Earlier in the trial, Silverstein gave Lynch a warning for complaining about the "despicable tactics" used by one defendant. Silverstein found Lynch in contempt for the first time early in the trial when he referred to the defendants as "those who would spin and twist the facts."

IN A RELATED MATTER, the Supreme Court issued a ruling yesterday involving a separate issue in

the lead-paint trial. The court denied arguments by defense lawyers that the state illegally enlisted private lawyers to argue its case.

Former Attorney General Sheldon Whitehouse initiated the lawsuit in 1999, asserting that Rhode Island was the lead-paint capital of the country, and that the paints had created a public-health crisis.

Whitehouse said he didn't have the staff and resources to engage in a prolonged legal battle with some of the country's largest corporations, so he signed agreements with two firms of top trial lawyers, Motley Rice and Decof & Decof. The agreement promised to pay them contingency fees of 16 2/3 percent of any money recovered in the lawsuit.

The defendants argued that the agreement amounted to "an unlawful delegation of the Attorney General's authority" and violated their rights to due process.

The defendants were joined by probusiness groups such as the **Washington Legal Foundation**, the Product Liability Advisory Council Inc., the Chamber of Commerce of the United States, and the American Tort Reform Association.

Chief Justice Frank J. Williams, writing for the court, noted that the court does not issue advisory opinions. It will also not decide on constitutional issues when it is clear that a case can be decided more readily on other issues.

Williams noted that a remedy has yet to be crafted in response to the jury's verdict for the state. And more appeals are pending.

Since the arguments raised by the defendants over hiring legal counsel involve "novel questions of constitutional law in this jurisdiction," Williams said the justices decided to postpone their review until the many other issues in the case are resolved.

Bonnie Campbell, speaking for Atlantic Richfield, Millennium Holdings, NL Industries and Sherwin Williams, noted that the court said the case raised "important questions of constitutional law," and the defendants look forward to a later review by the Supreme Court.

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