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Defense Refuses to Follow the Judge's Scheduling Order. What Will Judge Do?

In a civil lawsuit in New York if the defense refused to honor a scheduling order by the judge are there any repercussions? Are there any fines? Are there any sanctions? Do you want to know the answer? Come join me as I share with you this great information.

Hi, I'm Gerry Oginski I'm a New York Medical Malpractice and Personal Injury Attorney practicing law here in the state of New York. The answer is, maybe and maybe. Here's what I mean. When you start a lawsuit for an accident matter or a medical malpractice matter or even a wrongful death matter, within a few months the court calls the attorneys into court to have what's known as a scheduling conference. We call that a preliminary conference.

Now the attorneys agree amongst themselves about when things are going to happen during the course of the lawsuit. When is the injured victim going to be asked questions for pretrial testimony? When are the people who are being sued going to be questioned? When does each side have to give each other various documents known as discovery? All of those dates and time frames get put into this document known as a scheduling order. Then we hand it to the court, the judge signs it and now it becomes an official order.

What happens though if the defense doesn't honor those particular time frames? Can they get fined? Can they get sanctioned? The answer is, maybe. It takes a lot to go ahead and get that done.

Let's say the order says the doctor has to be produced for his pretrial testimony by January 1st. Let's say it's now October 30th. Every week I'm on the phone with the defense attorney's office saying, "When are you producing your doctor for his pretrial testimony?" I'll get excuses, "Oh the doctors not available and we're trying to get dates. We'll let you know." Well, week after week goes by and they don't let us know.

Now we're getting closer and I call and I say, "Listen, the doctor has to be produces. When are you producing him?" "Oh, we need an extra few weeks." "Okay, how much time you need?" "Oh, we need 2 weeks." Fine.

Now as long as the attorneys can agree on the time frame there's no problem. What happens if the 2 weeks go by and they still have not produced their doctor? Well, now I may have to ask the court to intervene. Typically when we ask the court, the judge to intervene we have to do it in formal written papers. The judge doesn't want to get bogged down with all those formal written papers. Instead they call the attorneys into court and now the judge or the judge's law secretary will turn around and say, "What's the problem here? Why haven't you produced your doctor as indicated by this court order?"

Now the defense attorneys going to give them some sort of excuse. Based upon that answer he's now going to either direct them and compel them to show up at a particular time and day or he now could go ahead and do something more drastic. "Listen if you don't produce your doctor by this date we're going to strike your answer." Which is devastating, but it doesn't really come to that.

Why do I share this video with you? I share this information with you just to give you an insight and an understanding into what goes on in these civil lawsuits here in New York. I realize you're watching this video because you have questions or concerns about your own particular matter. Well, if your matter did happen here in New York and you're thinking about bringing a lawsuit but you have questions that need answer first. What I invite you to do is, pick up the phone and call me. I can answer your legal questions. You know this is something I do every single day and I'd love to chat with you.

You can reach me at 516-487-8207 or by email at Gerry@Oginski-law.com. That's it for today's video. I'm Gerry Oginski have a fantastic day.