



**LAW OFFICE OF GERALD  
OGINSKI, LLC**

67 Cutter Mill Road  
Great Neck, NY 11021

T 516-487-8207

[Gerry@Oginski-Law.com](mailto:Gerry@Oginski-Law.com)

## **They Don't Want to Negotiate With Us. Instead, they Want to Mediate this Case Privately**

If your case is on the trial calendar waiting to come up for trial, during the course of this wait and see period I make a demand to settle this case. The defense turns around and says, "Listen, they don't want to go ahead and start negotiating instead they'd rather mediate the case." Do I agree to that or say, "No, we're going to trial?" You want to know the answer? Come join me for a moment as I share with you some great information.

Hi, I'm Gerry Oginski, I'm a New York Medical Malpractice and Personal Injury Attorney practicing law in the state of New York. You should know that mediation is like a settlement conference but we do that privately with a retired judge who now has experience trying to settle and resolve these types of accident cases or medical malpractice cases or even wrongful death cases.

Now, are there instances where the defense does not want to negotiate with us personally, one on one, lawyer to lawyer? Yes, there are some instances where that will happen and there could be many different reasons why that would occur. There might be multiple defendants involved, meaning there might be multiple people that we have sued and they cannot agree amongst themselves as to how much each one is responsible.

In that instance it might be helpful to have a mediator, a private judge go ahead and try and listen to the story, listen to each side and then put pressure on everybody to try and reach an agreement. That maybe one reason why the defense does not want to negotiate one on one with us and instead they may turn around and say, "Listen, we'll be happy to negotiate by a mediator." Now, do I agree to do that? The answer is in most cases we will agree to do that provided I get some vibe from them, provided I get some feedback that they are serious about trying to resolve this case.

Now, you should know that just because we agreed to go ahead and try and mediate this case, which means trying to settle this out of court, doing it privately, does not automatically mean that we're going to be successful in reaching an agreement. The defense might not offer what we're asking for and we might not reach that agreement and if we can't reach that agreement what happens next? If we can't reach an agreement during the course of mediation then we proceed to trial.

Now during the course of trial does the jury ever learn about this mediation, this attempted settlement negotiation? The answer is, "No, they don't." They never hear or learn about this attempted settlement negotiation. Is there any real benefit to negotiating this prior to trial? There actually is because if we can negotiate this and mediate it prior to trial it's a guaranteed amount of money that my client is going to receive. If we go to trial on the other hand nobody knows the result, nobody knows the outcome beforehand. It could go either way.

Why do I share this quick information with you? I share it with you just to give you an insight then an understanding into what goes on during the last phases of the litigation involving accidents and medical malpractice and wrongful death here in New York.

You know I recognize that 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 answers, what I encourage you to do is pick up the phone and call me. I can answer your legal questions, you know that's something I do every single day and I'd love to talk to you.

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