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Is a judge's verbal ruling at trial binding on the litigants?

We're in the middle of a civil lawsuit in New York and now the judge calls the attorneys into his private chambers to talk about a specific legal issue. There's no court reporter present. The judge makes a verbal ruling and gives a verbal order to the attorneys about what he wants done during the course of this trial on this legal issue. If it's not written down, does it carry the same effect and weight as if the judge has a written order? Do 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 here in the State of New York. The answer is, it doesn't really have the same effect, and here's why. During the middle of a trial, the judge will talk to the attorneys. Now we're in his private chambers and there's no court reporter to take down the information. The judge decides that the information involving this particular legal issue, that that information can not come out. The attorney is not to ask questions about it. No witness is to talk about this particular issue. But now, that nothing's written down, do we still have to abide by the judge's verbal ruling or do we have to get a written ruling in order to abide by it?

During the course of trial, we need to abide by the judge's verbal order, because you know what's going to happen? Now, we go back into the courtroom. If I were to now go ahead and ask the witness questions that the judge specifically told us, behind closed doors, not to go there, you know what the judge is going to do? He's likely going to embarrass me in front of the jury. "Mr. Oginski, I told you in chambers, that you are not to ask that question. You know better." Now, what the judge is going to do besides embarrassing me in front of the jury, now he's going to put on the record what this ruling was outside the presence of the jury.

At some point, he's going to excuse the jury, and then he's going to put on the record, "We had a conference in chambers with all the attorneys. I specifically directed that the attorneys not talk about this legal issue. And guess

what? Mr. Oginski has now discussed this issue. Now it creates a problem. I've objected to it and now it's on the record." That's what will happen if I or one of the other attorneys fail to abide by the judge's verbal order during the course of trial. That's something we don't want to get into.

It's also important, very important to recognize, that a judge's verbal order is not as important as a written order, unless it's made during the course of trial and recorded by the stenographer. Why is that? It's because we cannot appeal a judge's verbal order. The better practice is to memorialize the conversation that the judge had in private with the attorneys, by asking the judge for the opportunity to put that entire discussion on the record. Which means, before he calls back the jury, now, the court reporter's there and now we can relay to the court reporter exactly what was discussed. Why do we do that? Because if one side loses, now it's in the record and now we can appeal from that particular record. If it's simply a verbal order, there's nothing to appeal from.

Why do I share this great information with you? I share it with you just to give you an understanding of what goes on in these civil lawsuits here in New York. You know I realize you're watching this video because you likely 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 first, 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 email at Gerry@Oginski-Law.com. That's it for today's video. I'm Gerry Oginski. Have a wonderful day.