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## Judge, Can I question a witness out of order?

Judge, I have two more witnesses to complete all of the testimony on our case but would it be okay if I questioned a witness out of order? You want to know what that means and why it's important in a civil lawsuit? Come join me for a moment as I share with you some terrific 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. Now, at the beginning of a trial, it might be an accident trial or a medical malpractice trial or even a wrongful death trial, the judge will want to know how many witnesses we have in order to come in to support our claim. He will likely also want to know who the witnesses are. Lets say I have five witnesses scheduled to come in and the last two are medical experts.

Now, during the course of testimony one of my experts cannot make it in that particular day. I speak to my adversary, the defense attorney. I say, "listen is there any way you could have a witness available during that time slot that I was scheduled to have my expert come in." Now, he checks with his experts and he says, "yes, by the way I do have the ability to bring my expert in on that particular day," but can I do that? Can I take a witness out of order? You see typically I have to put on whatever proof, whatever witnesses we need in order to prove our claim. When I'm done putting on all of our witnesses and all of our testimony I then get up and I tell the judge, "your honor, at this time, the plaintiff rests." What does that mean? It means that my part of the case, I literally close out and I can't put on any additional testimony in order to support or prove our case. When I'm done, the defense attorney then has an opportunity to bring in whatever his witnesses are necessary to defend the case.

If he's able to get one of his experts or one of his witnesses to come in, now I have to ask the court for permission to take a witness out of order. Normally, the defense's witnesses would then come in only after I had formally announced that I am done with my part of the case. In many instances because of scheduling issues now it becomes impossible to bring in my expert on a particular day but we can still get testimony from the defense's wit-

ness. I'll say, "judge, is there any way I can question the defense's witness out of order," even though technically I'm not done with putting on all of my proof. In all likelihood, the judge will say, "fine, no problem." Then he will turn to the jury and give the jury an instruction to let them know that now we're taking a witness out of order.

Normally, when I put a witness on the witness stand, I have an opportunity to ask my witness questions. That's known as a direct examination. Then when I'm done with my questioning, the defense attorney has an opportunity to do cross examination. Now, if I'm taking a witness out of order, what that means is that now the defense attorney will be calling the witness to the stand and now the defense lawyer will have the opportunity to question his witness. Then when he's done, I'll then have the opportunity to perform a cross examination. Why do I share this great information with you? I share with you just to give you an insight and an understanding into what goes on in a civil lawsuit here in New York involving accident cases, medical malpractice cases and even wrongful death cases.

I recognize and acknowledge that 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, what I invite you to do is pick up the phone and call me. I can answer your legal questions. This is 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](mailto:Gerry@Oginski-law.com). That's it for today's video. I'm Gerry Oginski, have a great day.