



**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)

## **Judge is not paying attention to my questions at trial**

I'm in the middle of trial asking my witness questions and I see that the judge is not paying attention to my questions or the witness' answers. He's busy talking to his law clerk. Do I stop the trial? Do I stop my questioning and wait for the judge to finish or do I just keep going? You want to know the answer? Come join me for a moment as I show 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 depends. I may choose to stop for a few moments and wait for the judge to finish up his conversation. However, if the conversation has been going on for a few minutes, I may decide to simply wait. If I wait, now the jury has to wait, then the judge is going to recognize very quickly that nothing's happening and he's going to turn and want to know why nothing's happening.

Now you should know this, and it's really important for these civil lawsuits here in New York. In cases accident matters and medical malpractice and even wrongful death cases here in New York that go to trial. Those cases are tried by a jury, which means six members of the community are going to be sitting and listening to all the testimony and all the evidence to determine whether we are more likely right than wrong, that what we are claiming is true. Now, it is true that the judge supervises in how the trial proceeds, but the judge is not the trier fact. The judge does not decide who is entitled to a verdict. That's the juries function.

The judge makes ruling of law. The judge determines how the case progresses during the course of trial and the fact that he is now talking to his clerk, not paying attention to the questions or the answers being given, the fact that the judge is not paying attention is that go-

ing to effect the way that the jury perceives this witness and his testimony? In my opinion the answer is yes. Do you want to know why? The judge controls the courtroom. If he's not paying attention the jury may get the idea that this witness' testimony simply is not important. Doesn't care about it. Why should be paying attention.

Now if they're not paying attention, that means they miss some crucial evidence that's coming in and they may give it very little weight or significance. Why? The judge isn't paying attention. I may simply stop, wait for the judge to finish, and then he's going to turn to me and say, "What are you waiting for counselor?" "Oh, I'm sorry judge. I thought you were busy with your clerk. I just decided to wait." "Okay, move on please." Then I'll go ahead and continue. There are some instances where I will wait and other instances where I'll continue on because the jury understands that the judge still has to deal with other matters besides our own case and will accept and understand and acknowledge the fact that he's not 100% listening to testimony all the time. Does it happen often? It happens from time to time. Does it make a difference? It can make a difference. That's why you have to decide as the attorney whether or not wait.

Why do I share this quick story with you? I share it with you just to give you a sense of what goes on in practically in every single civil trial that goes on here in New York. I realize you're watching this because you have questions or concerns about your own particular matter. If your matter did happen here in New York and you're thinking about bringing a lawsuit but you have legal questions, what I encourage you to do is pick up the phone and call me. I can answer your legal questions. You know, it's 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](mailto:gerry@oginski-law.com). That's it for today's video. I'm Gerry Oginski. Have a wonderful day.