

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CIVIL DIVISION

3
4 Cause No: LPDC 1 of 2017

5
6 IN THE MATTER OF SECTION 7 OF THE LEGAL PRACTITIONERS LAW (2015
7 REVISION)

8 AND IN THE MATTER OF MR. A, ATTORNEY AT LAW

9
10

11 **Appearances:** Ms. Claire Allen of the Attorney General's
12 Chambers

13
14 Mr. A in Person

15 **Before:** The Hon. Justice Paul Worsley (Actg.)

16 **Heard:** 22nd and 24th – 26th February 2021

17

18 **HEADNOTE**

19 *Civil Division – Section 7 of the Legal Practitioners Act– Disciplinary*
20 *Proceedings.*

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JUDGMENT

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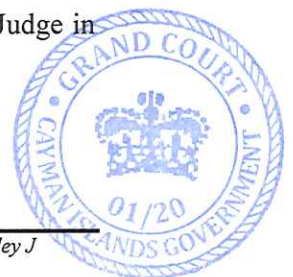


1 1. As with professional bodies the world over, Codes of Conduct exist to regulate the
2 professional activities of Attorneys at Law. That applies no less in the Cayman Islands
3 where there is a high proportion of top-calibre lawyers. To maintain public confidence
4 in the Rule of Law it is essential to ensure that all who practice in this field comply
5 rigorously with the Code of Conduct (“the Code”) for their profession.

6 2. These proceedings concern allegations of a breach of the Code here in the Cayman
7 Islands, where, thankfully, such proceedings are virtually unheard of. The parties to the
8 proceedings are the Attorney General’s Chambers (the AG) and Mr. ‘A’ an Attorney at
9 Law admitted into practice on 10th April 1995. This hearing relates to Mr. A’s handling
10 of a running-down action. It turned out to be an unusual case. It was one where,
11 according to Mr. A, he was justified in taking 10 years to get to judgment in a
12 damages-only matter, he was paid only half his fees, he presented no Fee Note, he
13 drew up no Final Account, his computer records crashed, there was no written
14 termination of his Retainer and where the Chief Justice unjustifiably criticised him.

15 **AUTHORITY OF COURT**

16 3. There is no dispute that I am duly authorised to sit as a Judge in this matter even
17 though I have passed the usual retirement age of 70. I first heard applications and set
18 timetables in this case in 2017, during the tenure of my appointment as an Acting
19 Judge of the Grand Court before I reached 70 and as such was seized of the case. I sit
20 with the specific authorisation of the Chief Justice to determine this matter and have
21 been given a Government Contract of Employment authorising me to sit as a Judge in
22 the Cayman Islands from 15th September 2020 until 13th March 2021.



1 4. As the Attorney at the centre of these allegations is well known in the community it
2 has been important that a Judge from out of the jurisdiction with no knowledge of him
3 or his practice deals with every aspect of this matter. The nature of the complaints were
4 communicated in writing to Mr. A on 30th March 2017 and he has throughout been
5 aware of his right to call witnesses and make submissions to the Court.

6 **CONDUCT OF THE PROCEEDINGS**

7 5. There are no Cayman precedents for the procedural conduct of cases such as this. In
8 March 2017 when I last sat as an Acting Judge of the Grand Court of the Cayman
9 Islands the Solicitor General, on behalf of the Attorney General's Chambers asked to
10 see me in Chambers to discuss the institution of disciplinary proceedings and requested
11 guidance on procedure in this unfamiliar territory. I directed that our meeting be tape
12 recorded so it was available for all parties. A copy has been provided to Mr. A. He has
13 submitted that at that meeting I appeared to act as Judge and prosecutor in advising the
14 Attorney General's Chambers as to the steps to take to initiate these proceedings. He
15 has further contended that the withdrawal of the Plaintiffs from the proceedings (they
16 having supplied statements to the AG in 2016) so they are not now available for cross
17 examination, is fatal to the AG's case. If that be right it would mean that witness
18 unavailability would abort disciplinary proceedings however meritorious. That would
19 be a very surprising position. He submitted that it would be an abuse of the process of
20 the Court for this hearing to take place. The Court considered his arguments and found
21 no merit in them.

22





1 6. The Court has considered whether a hearing conducted by Zoom with the parties in
2 Cayman and Judge in the UK is appropriate. The Zoom link is secure. The case
3 depends upon a mass of documentation. There was potential evidence by Zoom from
4 witnesses outside the jurisdiction. The Chief Justice invited me to come to Cayman to
5 hear this case in person. Mr. A submitted he would prefer to make submissions in
6 person. These are all persuasive considerations.

7 7. I have concluded, not without regret - as I sit in my study in Yorkshire looking out
8 over a bleak and cold landscape - that the present Lockdown in the UK will prevent me
9 travelling to the Cayman Islands for the foreseeable future. The original Directions
10 Hearing was now almost four years ago. The case which is the backcloth to this
11 hearing started life in 2001 with Mr. A being retained as the Plaintiffs' Attorney early
12 in 2002. It has taken almost twenty years to reach this stage. I see no good reason for
13 further postponement. It now transpires that the witnesses who might have given
14 evidence by Zoom from the USA will not now do so. That potential complication is
15 therefore removed.

16 8. Application was made in 2017 for all proceedings to be conducted in private with no
17 reporting of the charge or evidence. There are no precedents. I have applied the
18 general common law approach. Is it necessary in the interests of justice? Is there
19 prejudice to either side?

20 9. I have heard submissions from both sides. The lawyer concerned is a well-known
21 Attorney in this small community. If it were known that he was to be tried for
22 disciplinary matters then, whatever the outcome, his practice would likely be damaged

1 and financial hardship follow. I am satisfied that I have the power to direct that these
2 proceedings be conducted in private and have so directed.

3 **THE CHARGE**

4 10. The Charge against Mr. A is set out in the AG's Statement of Disciplinary Charge
5 dated 30th March 2017. It states:

6 *“Mr. A engaged in conduct which is unbecoming of an Attorney at Law and Officer*
7 *of the Court and that the totality of the material before the Grand Court discloses*
8 *that there has been professional misconduct on the part of the Attorney”.*

9 11. The *Legal Practitioners Act* (2015 Revision), by s.2 defines ‘a Judge’ as a person
10 appointed under the *Cayman Islands Constitution Order 2009* to act in the capacity of
11 Judge in the Cayman Islands. By s.7(1) such Judge shall have power, “for reasonable
12 cause shown”, to suspend any Attorney from practising as such during any specific
13 period or to be struck off the Court Roll. By s.7(2) before a Judge takes such action as
14 is laid down in s.7(1) he shall communicate or cause to be communicated in writing to
15 the attorney-at-law concerned, the nature of the complaint against him and such
16 attorney-at-law shall be entitled to call witnesses and to be heard. Section 8 provides
17 for a right of appeal to the (Cayman Islands) Court of Appeal (CICA).

18 12. There is helpful guidance to be gleaned from the authorities as to what amounts to
19 ‘conduct unbecoming’.



1 13. In *Myers v Elman*¹ Lord Wright said:

2 *“It would perhaps be more accurate to describe it as conduct which involves a*
3 *failure on the part of a solicitor to fulfil his duties to the Court and to realize his*
4 *duty to aid in promoting in his own sphere the cause of justice.”*

5

6 14. In the Cayman case of *AG v Carbonneau & Hartog*² Sanderson J said:

7 *“It is accepted that the Court has jurisdiction to control the officers of the Court*
8 *and to do so in a summary way. It is also agreed that the Court may do so when*
9 *the remedy sought is disciplinary in nature.”*

10

11 15. In the context of medical misconduct it was said in *Roylance v GMC No 2*³

12 *“Misconduct is a word of general effect, involving some act or omission which*
13 *falls short of what would be proper in the circumstances.”*

14

15 16. *In re H A Grey*⁴ Lord Esher said:

16 *“If a solicitor obtains money by process of law for his client, quite irrespective of*
17 *any legal liability which may be enforced against him by the client, he is bound, in*
18 *performance of his duty as a solicitor, to hand it over to the client unless he has a*
19 *valid claim against it.”*

20

21 17. Guidance is also to be found in the *Code of Conduct for Cayman Attorneys*:



¹ [1940] AC 282 at 318

² [2003] CILR 129

³ [2000] 1AC 311

⁴ [1892] 2QB 440

1 (a) Rule 1.01.3 obliges an attorney to refrain from conducting himself in a manner
2 which is unbecoming to the profession or otherwise may be deemed
3 unprofessional.

4 (b) Rule 1.01.4 obliges an attorney not to conduct himself inconsistently with the
5 interests of his client.

6 (c) Rule 3.03 requires an attorney to keep accounts which clearly distinguish the
7 financial position between himself and his client. He must ensure that he is at all
8 times able to account, without delay, to clients for all money held or paid by him
9 on behalf of the client. Furthermore he is obliged to preserve, for at least 6 years
10 from the date of the last entry therein, all accounts, books, ledgers and records
11 maintained in relation to the client's affairs.

12 18. The Code incorporates the *IBA⁵ Principles on Conduct for the Legal Profession*
13 namely 'honesty, integrity and fairness'

14 19. In *Bolton v The Law Society*⁶ the Master of the Rolls said:

15 *"Any solicitor who is shown to have discharged his professional duties with*
16 *anything less than complete integrity, probity and trustworthiness must expect*
17 *severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal".*

18

19 20. Mr. A accepts that if the AG's allegations are proved, the Court would be entitled to
20 conclude that he acted unprofessionally.

⁵ International Bar Association

⁶ [1994] 1 WLR 512



1 **BURDEN AND STANDARD OF PROOF**

2 21. There is no question that the burden of proving the allegation rests upon the AG who
3 lays the charges. But what is the standard of proof?

4 22. There are, as I have observed, no precedents in this field. I have considered the *UK*
5 *BSB Consultation Paper* of May 2017 which canvassed views on amending the
6 regulatory arrangements to allow the civil standard of proof to be applied. This would
7 be in line with many other professional regulators.

8 23. The standard used in disciplinary proceedings for professional misconduct brought
9 against attorneys has long been the criminal standard. Following the *Shipman Inquiry*
10 in 2009 in the UK all the medical professions have moved to the civil standard. That
11 standard has also been adopted by non-medical regulators such as the Financial
12 Conduct Authority. But the observations of Lord Lane LCJ in *Campbell v Howlett*⁷, an
13 appeal by a Trinidadian lawyer, are particularly to the point where he said:

14 *“That the criminal standard of proof is the correct standard to be applied in all*
15 *disciplinary proceedings concerning the legal profession, their Lordships entertain*
16 *no doubt.”*

17
18 24. I have heard representations from both sides in this case and it is agreed that it is the
19 criminal burden and standard which should apply in disciplinary hearings in the
20 Cayman Islands and, consequently, that is the burden and standard I shall apply in this
21 case. In my judgement it is not sufficient to found the charge that the Court has regard

⁷ [2005] UKPC 19



1 to the cumulative effect of the heads of evidence which are only made out to the civil
2 standard of proof. Each Head must be considered separately and only if proved to the
3 requisite criminal standard can it be used as evidence of conduct unbecoming.

4 **THE ORIGINAL ACTION**

5 25. On 24th August 2001 Mr. Keith Wilson and Mrs Karlene Wilson were holidaying in the
6 Cayman Islands when both were injured by a car which struck them as it overtook a
7 line of cars. Mr. Wilson was a 41 year old computer hardware specialist. He sustained
8 life changing brain injuries and thereafter could only work in a menial capacity. His
9 wife suffered injury to her shoulder. Liability was never seriously in dispute. Mr.
10 Wilson's brother, Police Chief Gene Wilson, assumed the conduct of the case for his
11 injured brother and on 13th January 2002 signed a Retainer with the law firm
12 *Woodward Terry & Co*, retaining Mr. A to conduct the case on their behalf.

13 26. In an undated document Mr. A submitted a Schedule of Loss claiming damages for Mr.
14 Wilson of \$3,049,379.80 including \$45,000 for Mrs Wilson's injuries.

15 27. The Chief Justice gave Judgment on 14th June 2011 for damages in the sum of
16 \$1,551,224 for Keith and \$37,500 for his wife, together with an order that the
17 Defendants pay the Plaintiffs' costs to be taxed if not agreed. Delay in payment of the
18 full sum took so long that complaint was made by the Wilsons as well as by an
19 American lawyer and doctor retained by the Wilsons who had not been paid their fees.
20 That complaint was made to the Chief Justice who wrote to Mr. A six times in an effort
21 to get a response to his concerns.



1 **THE ALLEGATIONS AGAINST MR A**

2 28. The AG put the case of ‘conduct unbecoming’ under 6 distinct Heads:

3 i. Failure to pursue an expeditious resolution of the Plaintiffs’ case

4 ii. Failure to respond satisfactorily to the Plaintiffs’ requests for information

5 iii. Failure to pay the entirety of the awarded monies to the Plaintiffs and 3rd
6 Parties working on their behalf

7 iv. Failure properly to account to the Plaintiffs for all monies awarded to them

8 v. Failure adequately to safeguard his records and information relating to the
9 case

10 vi. Repeated failure to respond to requests by the Chief Justice relating to the
11 conduct of the case

12 29. When it became clear that the Wilsons were not prepared after this passage of time to
13 play any further part in the proceedings the Court of its own motion decided that it
14 would be unfair to proceed against Mr. A on Head 2 where the witnesses would not be
15 available for questioning. Their account could not fairly be tested in their absence. The
16 dismissal of this head has no bearing on the other allegations.



1 THE CHRONOLOGY

2 30. The Chronology of events is as follows:

- 3 i. 24th August 2001: The Plaintiffs’ accident;
- 4 ii. 13th January 2002: Mr. A was retained as the Attorney by signed
5 agreement. Thereafter a claim for \$3m was filed against the Defendants.
- 6 iii. 20th October 2004: The Plaintiffs were granted Judgment with damages to
7 be assessed: Over a period of time \$707K from the Defendants was
8 advanced by way of interim payments to the Plaintiffs.
- 9 iv. In 2004: US Attorney Jakes was appointed to assist on explaining legal
10 and tax implications to the Plaintiffs.
- 11 v. By November 2006: A total of 15 medical reports on the Plaintiff had been
12 obtained and made available to the Defendants. Dr Godsall,
13 Neuropsychologist, completed his 1st report indicating that no further
14 improvement in the Plaintiff’s condition was likely and that “maximal
15 recovery’ had been reached.” He notes that he had not had sight of
16 college records.
- 17 vi. 11th December 2006: Medical Record Disclosure Authorisations were sent
18 to the Defendants. Mr. A wrote “My client has reached a stage where his
19 condition has stabilized”.
- 20 vii. 20th April 2007: The Plaintiffs threatened to withdraw retainer if claim not
21 resolved by 1/7/07.

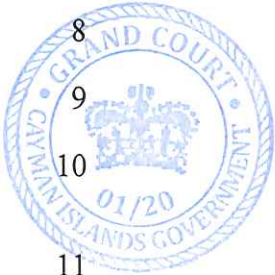




- 1 viii. 2007: Application was made to set the case down for hearing.
- 2 ix. 19th March 2008: Mr. A went into practice on his own account. He took
- 3 the case with him from the original firm Woodward Terry & Co.
- 4 x. 25th July 2008: Mr. A produces to WT & Co with a detailed Fee Note with
- 5 incorrect hourly rates – at least \$5,000 discrepancy. Thereafter in
- 6 accordance with that detailed fee note, the firm paid to Mr. A the \$60K it
- 7 had received on behalf of the Plaintiffs.
- 8 xi. 21st March 2008: Dr Godsall produces his 2nd Report: “maximal
- 9 improvement” again recorded.
- 10 xii. September 2008: Jakes produces the Plaintiff’s college records.
- 11 xiii. 28th September 2009: Dr Godsall produces his 3rd report.
- 12 xiv. 26th May 2011: The case came before the Chief Justice for assessment of
- 13 damages.
- 14 xv. 14th June 2011: Judgment was delivered and \$1,588K awarded to the
- 15 Plaintiffs.
- 16 xvi. 1st September 2011: The Plaintiffs ask for release of all funds.
- 17 xvii. 5th October 2011: Mr A indicated to the Plaintiffs that \$822k was being
- 18 transferred to their bank account. That day the Plaintiffs queried a missing
- 19 \$59k. **No response was received.**
- 20 xviii. 28th October 2011: The Order relating to the award was sealed.

- 1 xix. 22nd November 2011: The Plaintiffs requested a Final Account of damages
2 Mr. A had received on their behalf.
- 3 xx. 28th November 2011: Mr. A responded that he was “doing the figures as
4 we speak as I want to get that matter concluded.”
- 5 xxi. 12th Jan 2012: Mr. A wrote to the Plaintiffs “the fees for our experts and
6 the advice in the States are being paid by the Defendant and so I will press
7 them for payment”.
- 8 xxii. 17th Feb 2012: Mr. A emailed the Plaintiffs to say he had transferred \$30k
9 to their account. Mrs W immediately responded with the new account
10 number to which the funds should be transferred. Mr. A states “Invoicing
11 at my end is taking a little longer due simply to volume of work.”
- 12 xxiii. 19th June 2012: Mr. Jakes the US Attorney and Dr Godsall sent a letter to
13 the Chief Justice complaining they had not been paid.
- 14 xxiv. 11th July 2012: The Chief Justice required a response from Mr. A within
15 14 days. **No response came.**
- 16 xxv. 29th August 2012: The Plaintiffs again inquired of Mr A about the \$30k
17 and again gave the account number.
- 18 xxvi. 1st Nov 2012 & 24th May 2013: Requests were repeated and account
19 number given again
- 20 xxvii. 30th April 2014: The Plaintiffs emailed the Court seeking help in
21 recovering outstanding funds.





1 xxviii. 5th May 2014: The Chief Justice demanded an immediate response [letter
2 of Tabitha Philander]: **no response.**

3 xxix. 12th June 2014: Mr. A was given a deadline to respond by 17th June, failing
4 which the Chief Justice would be ‘obliged to consider this a disciplinary
5 matter’. **No response;**

6 xxx. 26th September 2014: A follow up email was sent;

7 xxxi. 28th October 2014: Mr. A emailed the Plaintiffs stating his hard drive had
8 crashed “I had to reconstitute my hard drive as it crashed and I lost a lot
9 of information. I am now completing the invoices. Kindly send me a list of
10 any expenses and any receipts”.

11 xxxii. 19th Nov 2014: The Court wrote to Mr. A seeking a response to complaints
12 that he had failed to account to the Plaintiffs and pay over all outstanding
13 monies. **No response:**

14 xxxiii. 14th July 2015; Chief Justice wrote to Mr. A giving 7 days to respond as to
15 why disciplinary proceedings should not be instituted against him.

16 xxxiv. 22nd July 2015: He said he was “too busy to respond.”

17 xxxv. 5th August 2015: To the Chief Justice “I have now almost completed the
18 Invoice. I should be finished by next week”.

19 xxxvi. 9th October 2015: The Chief Justice gave till 1st November to respond.

20 xxxvii. 22nd October 2015: The Chief Justice wrote noting no response.

- 1 xxxviii. 23rd October 2015: Mr. A said he would reply ‘shortly’.
- 2 xxxix. 2nd November 2015: Mr. A wrote back stating “I am now reconciling all of
3 the accounts”. He said he was completing a provisional fee note by next
4 week. He said further “At no time were any funds that I sent to Keith ever
5 sent back to me”. He refers to his computer crashing and states: “I have
6 now reviewed the files and the fee note is now being completed as I lost all
7 of the information.”
- 8 xl. 20th Nov 2015: Mr. A wrote to Plaintiffs seeking any information held by
9 them on outstanding fees and or expenses including medical expenses. “I
10 wish to complete the invoice in this case.”
- 11 xli. 23rd November 2015: Plaintiffs responded and still queried the missing
12 \$30k.
- 13 xlii. 24th Nov 2015: Mr. A wrote that he would apply to recover the sums paid
14 to the US Attorney and doctor. ‘From memory’ he had paid for flights and
15 accommodation and transport and asked if the Plaintiffs had met any of the
16 travel costs and said he was ‘not aware’ that the \$30k had never arrived
17 and would check with the bank.
- 18 xliii. 24th November 2015: Mr. A checked with the bank and sent the \$30k to the
19 correct account. There were repeated requests for a final Account to show
20 how the monies had been distributed.



1 xliv. 25th November 2015: The Plaintiffs sent details of expenses to Mr. A. No
2 **response.**

3 xlv. 30th March 2017: Disciplinary Hearing notice served on Mr. A & various
4 Directions Hearings.

5 xlvi. 6th April 2017: First Directions Hearing.

6 xlvii. 22nd February 2021: The Hearing commenced. To date no Final Account
7 has been produced nor Fee Note served.

8 **THE FIVE HEADS OF COMPLAINT**

9 31. ***Failure to pursue an expeditious resolution of the Plaintiffs' case***

10 (a) From 2005 when the Plaintiff's condition had settled (according to the medical
11 evidence) there was no good reason why the case was not set down for hearing.
12 From Judgment in 2011 until 2021 the details of fees, amounts paid and costs had
13 still not been finalised. In the absence of any reasonable explanation the lack of
14 final resolution after 15 years is unconscionable and brings the administration of
15 justice into disrepute.

16 32. ***Failure to pay the entirety of the awarded monies to the Plaintiffs and 3rd Parties***
17 ***working on their behalf.***

18 (a) Of the total damages awarded in June 2011 (\$1,588,724.00), \$707,142.86 had
19 already been paid to Mr. A as interim payments before May 2011.



1 (b) On 4th November 2011 the outstanding balance of \$881,588.14 was paid to Mr. A,
2 who thereafter made a series of payments to the Plaintiffs which in all totalled
3 \$1,270,131.53, thus leaving \$318,592.47 outstanding. Mr. A claimed he had paid
4 out sums totalling \$250,118.42 to medical expenses, to B Davenport PC and for
5 disbursements.

6 (c) That left \$68,474.91 outstanding as at 30th March 2017. The figures differ slightly
7 depending on CI or US dollar rates.

8 33. ***Failure properly to account to the Plaintiffs for all monies awarded***

9 (a) By email of 22nd November 2011 the Plaintiffs requested a Final Account of the
10 damages and costs awarded to them. Mr. A provided an Invoice to 25/7/2008
11 which set out incorrect hourly rates and produced an incorrect total. Mr. A
12 responded in 2012 and 2014 but to date has never provided a complete breakdown
13 of the monies paid to him to cover their medical expenses.

14 (b) The Plaintiffs have received no clear information as to what sums were received by
15 way of damages as distinct from costs. No breakdown of the medical bills has been
16 provided nor any indication as to whether payment for such is to come from
17 damages or from costs. Despite repeated requests the Plaintiffs have still not
18 received an Invoice accounting for Mr. A's fees and his disbursements or a Final
19 Account of all monies received by him.



1 34. *Failure adequately to safeguard his records and information relating to the case*

2 (a) Mr. A was required to maintain and preserve records relating to the Plaintiffs’
3 Action so that costs incurred and time sheets justifying fees could be identified.

4 (b) To justify delays in responding to requests he said records had been ‘lost’ - not
5 rendered temporarily unavailable. Thus indicating that he failed to keep secure
6 records.

7 35. *Repeated failure to respond to requests by the Chief Justice relating to the conduct*
8 *of the case*

9 (a) He has failed, satisfactorily or promptly, to respond to repeated requests from the
10 Head of the Judiciary.

11 **MR A’s RESPONSE**

12 36. Below are summary points composing Mr. A’s response:

13 i. He has provided a 23-page document ‘Response to Charge’.

14 ii. Personal injury cases can typically take several years to resolve. The
15 Plaintiff prolonged that period by providing misleading information about
16 himself.

17 iii. American Counsel was additionally instructed in order to obtain records in
18 the US who would also advise the Wilsons on tax implications from the
19 award of damages.

20 iv. The original Defendants delayed payment of damages.



- 1 v. The Wilsons did not make repeated requests about the slow progress of the
2 case.
- 3 vi. On 20/10/05 Dr Godsall completed his first Neuropsychological Report.
- 4 vii. In January 2006 Mr. A secured an advance of CI\$210,000 from the
5 Defendants for the Wilsons.
- 6 viii. In December 2006 medical records of the Wilsons were released to the
7 Defendants.
- 8 ix. In 2007 the Wilsons were threatening to terminate Mr. A's retainer as
9 progress was too slow.
- 10 x. Mr. A listed the trial for April 2008. In January the Defendants promised
11 to provide funds. At that time Mr. A explained that his fees would increase
12 to \$450 per hour to reflect his handling of the case.
- 13 xi. In an effort to settle matters the trial date was moved back to a date after
14 September 2008. The Defendants were not ready to proceed at this time.
15 There was a Directions Hearing to that effect before Foster J. on 7/4/08.
- 16 xii. In May 2008 it became clear that Mr. Wilson had misled parties about his
17 qualifications and on 22/5/08 Mr. A provided the correct information to Dr
18 Godsall. Mr. A reviewed his position as to whether he should withdraw
19 from the case. He did not do so. [He had set up on his own on 19th March
20 2008 and taken the case with him when he left Woodward Terry & Co.





- 1 xiii. Dr Godsall's Report of 21/3/08 indicated the Mr. Wilson had reached
2 maximum medical recovery. His final Report was concluded on 28/9/09.
3 The Defendants' Experts Report of Dr McCasland was dated 13/3/08.
- 4 xiv. On 30/10/09 consent to release Mr. Wilson's medical records was given to
5 the Defendants.
- 6 xv. In December 2009 there was a threat by the Wilsons to sack Mr. A if
7 progress was not made in the conduct of the case. They did not carry out
8 the threat.
- 9 xvi. On 2/2/10 Mr. A filed a Notice to Fix Trial Date.
- 10 xvii. In April 2010 the respective Plaintiff and Defence experts met. A
11 Vocational Expert's Report was eventually obtained dated 4/5/11.
- 12 xviii. In 2011 there was concern over the stability of the marriage of the
13 Wilsons. Mr. A met with the Wilsons. The trial came on in May 2011.
- 14 xix. The trial was listed to be heard in February 2011 but was adjourned
15 because of late disclosure by Mr. A of the Report of Emily Cade.
- 16 xx. Judgment was signed on 4/10/11. Damages of \$822,239.29 were sent to
17 the Wilsons. They refused to pay the fees of Jakes and Godsall as they had
18 agreed. That caused the unjustified letter of complaint to go to the Chief
19 Justice. In 2011 it was agreed that some funds from the damages awarded
20 would be retained by Mr. A to cover his legal fees. As Mr. A received the

1 damages awarded he paid those amounts to the Wilsons. Funds were not
2 received until October 2011.

3 xxi. On 5/10/11 Mr. A sent funds received from the Defendants of \$881,581.20
4 and wired \$822,139.39 to the Wilsons indicating that \$49,740.04 had been
5 retained for remaining medical expenses.

6 xxii. On 17/2/12 \$30,000 was sent to the Wilsons' last known account. The
7 account had been changed and the \$30,000 eventually reached the Wilsons
8 in November 2015 when Mr. A was notified by his bank that the \$30,000
9 had been returned to his account some time before as the recipient account
10 was closed.

11 xxiii. Apart from a portion of his legal fees Mr. A has withheld no part of the
12 damages awarded.

13 37. It is to be noted that there was no reference to the existence of any Fee Note or
14 production of a Final Account.

15 **THE HEARING: 22nd + 24th to 26th February 2021**

16 38. The Hearing was conducted by Zoom with Judge in the UK and Parties in Cayman.
17 Thanks to the efforts of Miss Suzanne Livingston it ran remarkably smoothly. Mr. A
18 elected to represent himself. He was afforded every assistance in presenting his case. In
19 addition to the 23-page Response to the charge he gave evidence and made
20 submissions over a period of some 3 days.

1 39. The Court did not sit on one day because he said he was feeling unwell. On the other
2 days the Court sat late when required to do so. Although he had been given a strict
3 timetable at the Directions Hearings in 2017, 2018 and as recently as December 2020
4 the Court allowed him to produce new documents at the Hearing.

5 **MR A's EVIDENCE**

6 40. He is now 58 and of good character. He is a highly regarded and very experienced
7 attorney having conducted many large cases.

8 41. He obtained a degree at the prestigious King's College in London and has practised as
9 an attorney in Cayman for over 25 years.

10 42. He cited another Cayman case that had taken 10 years to get to Court and which was
11 not resolved even then - *Bodden v Thompson* in 2011.

12 43. He submitted that 10 years to get to trial is not exceptional in itself.

13 44. The error of not sending \$30k to the Plaintiffs' correct account led to misunderstanding
14 and to an unjustified Complaint against him.

15 45. The Plaintiffs, US Attorney Jakes, Dr Godsall and the Chief Justice have each
16 misunderstood his actions.

17 46. On 12/7/07 I applied to fix a trial date.

18 47. I had obtained the first report of Dr Godsall on 20th October 2005. In it he noted that
19 college records had not been produced by the Plaintiff.

1 48. The trial did not take place in 2007. I listed the case for trial in March 2008. The
2 Defendants were not ready. That turned into a Directions Hearing. The Judge directed
3 exchange of medical reports by April 2008. A final report on Mrs Wilson was not
4 obtained from Dr Jove until 20th March 2008.

5 49. By the time of his second report of 22/5/08 Dr Godsall was still concerned about
6 missing college records.

7 50. Jakes had been instructed as a US Attorney to deal with legal matters in the States
8 which included securing the Plaintiff's college records.

9 51. After 3 ½ years he uncovered where the Plaintiff had attended college and the records
10 showed that the Plaintiff had misrepresented his academic achievements.

11 52. I have no idea why it took so long.

12 53. The 2nd report came from Dr Godsall on 25//5/08. He said that the Plaintiff was
13 unreliable and dishonest. He was trying to show greater mental deterioration than was
14 justified.

15 54. We decided he should produce a 3rd report not relying on the college records. That 3rd
16 report came on 28//9/09. In 2009 Dr Bilsky, a neuropsychologist, examined the
17 Plaintiff.

18 55. By 2010 a Joint Medical Report had been agreed. On 2/2/10 I filed to fix the Trial. The
19 trial took place in May 2011.

20



1 56. Mr. A produced a detailed Fee Note for work carried out up to his departure from
2 Woodward Terry & Co in 2008. That enabled him to secure transfer of the interim
3 damages held by his old firm. He acknowledged that in that document the hourly rates
4 were wrongly charged and the total shown was incorrect. But the Plaintiffs he said
5 were given a corrected document.

6 57. He produced for the first time a document dated 9th February 2015 which he advanced
7 as a Final Account. He acknowledged that it shows nothing paid out or hours billed in
8 2010, it ends on 17th February 2012 and it shows the payment of \$30K on 17/2/12
9 when it was in fact paid on 24/11/14.

10 58. Mr. A said:

11 *“I accept that I have never produced a final Invoice. That was because the*
12 *Plaintiffs never provided information as to their expenses and Jakes failed to*
13 *produce an itemised bill.”*

14 59. Of three (3) computers in his office the one with QuickBooks software crashed. When
15 he told the Plaintiffs and later the Chief Justice that he had *“lost all the information”*
16 on the computers he meant that he had lost the fee note but still retained data to enable
17 a reconstruction of the original documents. His computers he said were appropriately
18 backed up.

19 60. The relationship with the Plaintiff’s family was such that formal written documents
20 were not used. He had orally terminated his retainer in 2012. He never withdrew from
21 the Record and failed to tell the Defendants or later the Chief Justice that he was no



1 longer involved with the case. *'I told the Plaintiffs to find alternative Counsel which*
2 *they failed to do. I do not know why.'*

3 61. Mr. A said: *'Any monies not accounted for to the Plaintiffs will represent fees which I*
4 *am entitled to. I accept that I cannot get my fees until the Plaintiffs authorise them.'*

5 62. He has not been paid for his work which has run up a bill of \$130,000 nor have his fees
6 been taxed or agreed as would be necessary for the Defendants to meet them.

7 63. Jakes and Godsall always knew how they were to be paid. They were wrong to
8 complain to the Chief Justice about non-payment.

9 **FINDINGS**

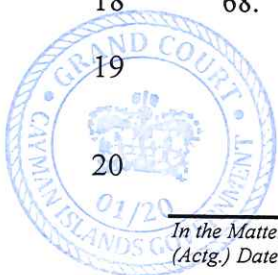
10 64. I accept that matters move more slowly in Cayman than in a large commercial centre
11 equipped with many Court centres available to hear causes.

12 65. I also accept that Attorneys in small practices do not have the luxury of junior partners
13 who can attend to matters in their absence.

14 66. I accept that dishonesty in his handling of the finances is not alleged.

15 67. I have listened to Mr. A's evidence over three days and had the advantage of being
16 able to observe him over the Zoom link. He was tested in cross examination and I
17 taxed him with matters of concern to the Court and noted his responses.

18 68. Overall I find that Mr. A has magnified any inconsistency in the AG's case whilst
19 seeking to downplay the glaring inconsistencies in his own case.



1 69. **Failure to pursue an expeditious resolution of the case**

2 (a) The AG relies on the periods of time:

3 i. from 2002 to final Judgment in 2011.

4 ii. from 2011 to 2015 when the Chief Justice required a final explanation of
5 his conduct.

6 iii. from 2015 to 2021 when there has still been no submission of Final
7 Account or Fee Note.

8 (b) The Retainer of Mr. A was signed at the beginning of 2002. For the next three
9 years Mr. A was involved in filing the claim and obtaining medical reports to
10 substantiate that claim. I accept that time was needed for the preparation of
11 medical reports and for the Plaintiff's condition to settle. On 1st February 2005 a
12 Release of all Medical Records was prepared. By November 2006 fifteen medical
13 reports had been prepared on Mr. Wilson and five on his wife. They were
14 authorised for release to the Defendants.

15 (c) By 2005 severe anxiety was being suffered by the Plaintiff in awaiting the outcome
16 of the case. He had very limited resources. At the request of Mr. A he was to pay
17 for the services of Jakes and Godsall out of his own pocket at this point. A letter
18 from the US Attorney Jakes dated 22nd November 2005 was sent to Mr. A stating
19 that the Plaintiff '*has expressed suicidal thoughts.*' They were '*extremely*
20 '*concerned about Keith's safety.*' There was pressure for a swift resolution. Mr. A
21 had received the medical report of Dr Godsall dated 20 October 2005 which



1 suggested that no further improvement in the condition of the Plaintiff was likely:
2 “Given the time period since his injury Mr Wilson’s current performance is likely
3 represent maximal improvement in his functioning and any further improvements
4 are likely to be subtle refinements”.

5 (d) I conclude that the time for the damages claim to be set down for trial was by
6 2007. The Defendants made an interim payment of CI\$210,000 in January 2006.
7 Liability had been conceded.

8 (e) Mr. A stated that he was very concerned about the absence of college records from
9 20 years earlier showing the Plaintiff’s academic record. If Mr. A had been
10 pursuing this case expeditiously he could easily have ascertained the details of that
11 college from the Plaintiff’s wife or Police Chief Wilson, the brother. It would take
12 a phone call. Mr A claims it was justifiable to allow over 3 ½ years for Attorney
13 Jakes to obtain them. I do not accept that explanation. Mr. A was running the
14 Plaintiffs’ case. It was his job to see matters moved expeditiously, particularly
15 where the Plaintiff was very anxious, where the claim was substantial and where
16 he had sufficient medical evidence.

17 (f) Mr. A was at this time in touch with Keith Wilson of Solarcom. He employed the
18 Plaintiff for several years before the accident. He could provide a statement as to
19 the Plaintiff’s intellectual functioning as a computer analyst immediately before
20 the accident. Mr. A advanced the claim for damages on the basis that after the
21 accident the Plaintiff could only function for 3 hours a day, 3 days a week at an
22 hourly rate of \$9 as a janitor. Mr. A’s hourly rate (which rose to \$450) puts the
23 matter in stark contrast. Whilst the college records could show that the Plaintiff



1 had misled or lied to Dr Godsall over his academic achievements 20 years earlier it
2 was hardly determinative of the case. If the Defendants sought to delay the case
3 until the records were produced that was for them to justify to the Court.

4 (g) If Mr. A had real concerns that the Plaintiff was acting in bad faith he should have
5 applied to the Court to come off the Record. Otherwise he could be accused of
6 condoning the Plaintiff's stance. He should then have presented his fee note. He
7 did neither.

8 (h) Whatever his concerns about Dr Godsall not having seen the college records Mr. A
9 *did* apply to set the case down for hearing. That was in 2007. Although all relevant
10 medical records were available by the end of 2005 this Court accepts that a
11 resolution of the case in 2007 might not be unprofessional. But the case was not
12 heard in 2007. It was not heard for another 4 years.

13 (i) Mr. A said in evidence that at a Directions Hearing in 2008 the Defendants
14 admitted to having been 'tardy'. It was Mr. A's duty to denounce such tardiness
15 not to compound it. He says he would have been open to criticism if he had not
16 dotted every 'i'. He said he was waiting to see if the female plaintiff was electing
17 to undergo surgery for her 2001 injury. It was not justifiable to allow a vulnerable
18 Plaintiff in a \$3m claim to languish for those reasons.

19 (j) Dr Godsall produced a further report in March 2008 in which he repeated that the
20 Plaintiff had reached '*maximal improvement*'.



1 (k) Mr. A did nothing to expedite the hearing. He allowed Dr Godsall to linger another
2 17 months over producing a third report in late 2009. If reports were not promptly
3 forthcoming Mr. A should have gone elsewhere. He was paying the piper.

4 (l) The Court concludes that the relevant period of time to consider in the Hearing is
5 the period from 2007 when the case should have been set down to the present day.

6 (m) Mrs Valerie Wilson in late 2011 wrote asking “*where was all the money awarded.*”
7 On 28th Nov 2011 Mr. A wrote that he was then “*doing the figures.*”

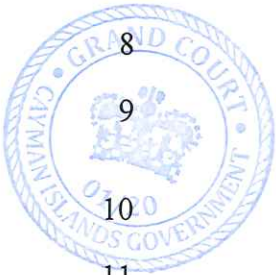
8 (n) According to his eventual response to the Chief Justice he was still “*doing the*
9 *figures*” - 4 years later.

10 (o) Mr. A failed to present an Account for costs to be taxed within 3 months of the
11 Judgment. The Court has seen no document indicating that costs were ever agreed
12 with the Defendants.

13 (p) As late as 24th November 2015 Mr. A was asking his Bank whether a sum of
14 \$30,000 due to the Plaintiffs had been debited from his business account. The
15 Court accepts that there was an initial error as to the account to which the funds
16 should be directed. Nonetheless Mr. A should have checked whether the \$30K had
17 in fact left his account when the matter was repeatedly queried.

18 (q) Delay in concluding the case has extended right up until today since Mr. A has still
19 produced no Final Account nor Fee Invoice.

20 (r) I find that the lack of final resolution of this case has been a period of almost 14
21 years - from 2007 to 2021. It is 14 years in the life of a man who had sustained life



1 changing injuries. It was a cruel delay. Responsibility for that delay, or at least a
2 major part of it, lies fairly and squarely at the door of Mr. A. Such conduct is not
3 excusable and falls far short of the standard required of him as an Attorney.

4 **70. Failure to pay all outstanding monies to the plaintiffs**

5 (a) The 'Final Invoice' dated 9th February 2012 produced at the Hearing by Mr. A
6 purports to show receipts of \$1,588K. Payments out have been made, showing
7 \$70,000 retained. It may be that such sum could go towards Mr. A's fees. But it
8 has never been authorised by the Plaintiffs. Mr. A gave the Court no satisfactory
9 account as to this discrepancy and produced no adequate documentation to explain
10 it. Payment out of all monies received is an essential duty of an Attorney.



11 **71. Failure properly to account for all outstanding monies**

12 (a) Mr. A produced the 2008 Accounts by which he received the monies paid to his
13 erstwhile firm in respect of the Plaintiffs' Claim. Those records upon close
14 scrutiny bear incorrect figures and totals. They are misleading. Mr. A says that the
15 document was shown to the Plaintiffs then withdrawn and a revised hourly rate
16 document served. What is missing is an updated number of billed hours and the
17 work carried out to justify them. He produced for the first time at this hearing a
18 document purporting to be a final Account. It is dated 9th February 2015. The last
19 entry for billing purposes is 4th October 2011. He says he asked Attorney Jakes for
20 an itemised bill which he has never produced. I therefore do not accept the
21 submission that Mr. A has properly accounted for all outstanding monies.

22 **72. Failure adequately to safeguard Records or Information**

1 (a) It is essential that an attorney take adequate steps to preserve his records relating to
2 the client, the timetable, Expert Reports, evidence, correspondence, billing hours
3 and invoicing. Mr. A gave evidence that he knew that his 3 computers had been
4 susceptible to viruses and on occasions had crashed. They needed to be backed up
5 so that important records were never completely lost. He said he had put in place
6 safeguards to ensure that if a computer crashed the raw data was always preserved
7 elsewhere, from which the records could be reconstructed. On at least 2 occasions
8 he explained that delay on his part had been incurred by his records having been
9 'lost'. This Court is entitled to conclude that Mr. A would choose his words
10 carefully when responding to important requests.

11 (b) On 28th October 2014 he wrote to the Plaintiff who was becoming increasingly
12 anxious about lack of progress to a resolution of the case – indeed suicidal – *“I had*
13 *to reconstitute my hard drive as it crashed and I lost a lot of information. I am now*
14 *completing the invoices.”*

15 (c) After that 'loss' Mr. A should have been on guard. But lightning struck twice
16 according to him. On 2nd November 2015 he wrote to the Chief Justice that his
17 computer had crashed and that *“the fee note is now being completed as I lost all of*
18 *the information.”*

19 (d) The Court accepts that Mr. A would not lie to his client, let alone the Chief Justice.
20 He told them in the clearest terms that the records were 'lost' and therefore that he
21 needed time to gather the requested information from other sources, such as the
22 Plaintiffs themselves. He did this to justify his late responses to their repeated
23 requests. He cites no exceptional circumstances to account for the loss of records,

1 such as hurricane damage. The overwhelming inference therefore is that he failed
2 to take adequate steps to preserve his records. He thereby acted unprofessionally.

3 **73. Failure to respond substantially to requests by the Chief Justice**

4 (a) The Chief Justice wrote to Mr. A after he had received complaints that there was
5 still \$70,488.47 owing to the Plaintiffs. He wrote:

6 i. 15th July 2011

7 ii. 11th July 2012

8 iii. 12th October 2012

9 iv. 19th November 2014

10 v. 14th July 2015 – the Chief Justice points out the serious allegation that 4
11 years after Judgment \$70,000 is said to be owing by Mr. A and he required
12 a response within 7 days. The Chief Justice wrote: *“You have been written
13 to on my behalf about these complaints by the clerk of courts requiring
14 your responses but without response from you. ...A related claim by Sam
15 Jakes and Dr Godsall has apparently been disregarded in like manner by
16 your failure to respond to a letter from me dated 11th July 2012...I
17 consider that the circumstances prima facie warrant the institution of
18 disciplinary proceedings against you.”*

19 (b) On 22nd July 2015 Mr. A wrote that he required a further 14 days *“My fee note has
20 not yet been sent to the Defendants’ Attorney and insurance client. When that is
21 sent off, then any outstanding expense will be paid.”* That was never done. Thus 4



1 years after Judgment and payment of the damages there was no Final Account or
2 Fee Note produced.

3 (c) 23rd July 2015 the Chief Justice allows extra time to respond until 5th August 2015

4 (d) If, as Mr. A contends, he did not owe the sum of \$70,000 all the more reason to
5 respond immediately to put the record straight or at the very least to explain the
6 problems arose from the Plaintiffs' end not his.

7 (e) Mr. A did what he had done in the past. He failed to confront his responsibilities as
8 an Attorney and hoped things would go away. After all, no dire consequences had
9 followed any of the letters from the Plaintiffs or the Chief Justice. However this
10 time the Writing was on the Wall: '*mene mene tekel upharsin*'⁸. The threatened
11 disciplinary proceedings were commenced.

12 **CONCLUSION**

13 74. I find under each of the Heads advanced by the AG that Mr. A has acted
14 unprofessionally. Accordingly I find that he is in breach of the Code.

15 75. I find Mr. A failed to advance his clients' case expeditiously. He failed promptly to pay
16 out all monies received. He failed to produce a Final Account. He failed to preserve
17 essential records. He failed to respond promptly to the Chief Justice.

18 76. I find no justification for his conduct. It has fallen woefully below the standards to be
19 expected of any experienced Attorney at Law practising in the Cayman Islands.

⁸ [Book of Daniel 5.25]

1 77. I lift the ban on publication of the proceedings. The Press are now at liberty to publish
2 the details of the case and in due course the penalty imposed.

3 78. The next stage will be to consider the appropriate penalty and whether a costs order
4 should be considered.

5 79. The Court adjourns this matter for written submissions on penalty to be made by both
6 Parties no later than 12 noon Cayman time on 10th March 2021.

7 80. The Court will announce the penalty in writing at 12 noon Cayman time on 11th March
8 2021.

9

10 **Dated this the 8th day of March 2021**

11 *Paul Worsley*



12
13
14

**The Honourable Mr. Justice Paul Worsley
Acting Judge of the Grand Court**