A guide to proceedings in the Grand Court of the Cayman Islands for people without a legal representative

Enhancing and promoting community access to justice

Foreword

Ideally, all disputes would be resolved without the need for court intervention but, when that is not possible, the courts must ensure that its processes and procedures can be understood by all litigants, whether represented or not. The aim of this guide, therefore, is to provide information about court rules and procedures using language that is easily understood by anyone who may not have access to legal representation for whatever reason. In addition to providing this information in accessible language, this guide also explains that voluntary and other free-of-cost resources are available in the Cayman Islands. The primary objective of this guide, nevertheless, is to provide the public with a resource that is essentially a how-to guide to accessing the courts.

Access to justice is a right, not a privilege, and subject to the law for controlling vexatious litigants, any person that has the capacity to do so is entitled to be heard by any court or tribunal. This right already informs the functioning of Cayman's courts where a party is unrepresented. For example, the courts assist unrepresented persons appearing in court in the way they make allowances for the lack of formal legal training, particularly in complex cases. An unrepresented person will usually be afforded some latitude and Judges may even, for example, give assistance to unrepresented persons in reframing their questions of witnesses.

Notwithstanding these considerations by the courts, individuals who lack formal legal training do take on the full responsibility of their case if they choose to bring a case or to defend their position in court themselves. There are several reasons why individuals may choose to represent themselves, including: not being able to afford legal representation; mistrust of lawyers; not qualifying for legal aid either financially or because of the nature of the case; or the belief that they are best qualified to put their case to the court.

Ultimately, however, the Judge must be even-handed in weighing the case made by each side and in coming to an unbiased decision. Persons who opt to bring their case to court without legal representation must therefore ensure that they prepare themselves as best as they can and, to this end, they should utilise all available resources, including but not necessarily limited to this guide.

In that regard, this guide should not be considered an alternative for appropriate legal advice. To the contrary, the guide is designed to familiarise persons wishing to bring a case to court with basic terms and procedures, although it is assumed that users will consult the referenced primary sources and other recommended resources. For example, the relevant references to Practice Directions or procedural rules or protocols of court should be accessed and carefully reviewed.

In preparing yourself for your case, you may wish to secure and sign for a printed copy of this guide. Once you have read it, you should seek advice from an attorney before making the final decision on bringing your case to court independent of legal representation.

While the Cayman Islands Judicial Administration does not provide legal advice itself, it does facilitate free-of-cost advice through a Legal Aid Clinic, which is operated jointly by Judicial Administration, the Truman Bodden Law School, and the Cayman Islands Legal Practitioners Association (CILPA). The clinic is located on the second floor of Court Building C (the former Bank of Nova Scotia Building). It must be emphasised, however, that in the majority of cases the Legal Aid Clinic is not a scheme to provide legal representation. In most instances, the advice offered by the Legal Aid Clinic is therefore limited to practice and procedure. More information may be obtained about the Legal Aid Clinic at https://cilac.ky .

As a final note, while this guide aims to avoid legal terms, referencing them is at times unavoidable – and may indeed be helpful – because of how frequently they are used in court settings. To assist users of this guide in decoding meanings, we have defined these regularly used legal terms in plain and more familiar language.

This Guide is adopted and adapted, with thanks, from the Guide published by the High Court of Northern Ireland, whose rules of court continue, like the Grand Court of the Cayman Islands, to be based on the pre-2000 Practice of the Supreme Court of England and Wales.

This Guide has also been informed by the Handbook for Civil Litigants in Person produced in Bermuda, and thanks are accordingly extended to the Supreme Court of Bermuda.

The Hon. Sir Anthony Smellie
Chief Justice
The Cayman Islands
10 October 2022

Glossary

Advocacy – The skills of arguing and explaining a client's case in court.

Adversarial – When two or more parties are putting their case and the judge's role is like that of an impartial decider.

Affidavit – A statement in writing, made by swearing or affirming before a Justice of the Peace or Notary Public, which court rules allow to be used in some cases instead of having a witness come to court.

Attorney-at-Law – A qualified lawyer who is licensed to provide legal advice and who has the right to represent clients in courts.

Case – The proceedings, arguments and evidence in court and the court hearing.

Certificate of readiness – A document jointly prepared by all the parties to a case, confirming that all the necessary steps have been taken for the case to be heard.

Civil case – Any type of case which is not a criminal case.

Close of Pleadings – Pleadings are deemed to be closed 21 days after service of the reply, or, if there is no reply, after service of the defence to any counterclaim.

Clinical negligence case – A civil claim for damages where negligence by a doctor, dentist or other healthcare professional is alleged.

Court Order – The enforceable decision of the court.

Creditor – A person who is owed money by a debtor.

Criminal case – A case about whether someone is guilty of a crime and, if so, how they should be punished.

Cross-examination – Asking questions of a witness in court.

Counterclaim – A claim for damages or another remedy by a defendant against a person who has sued him or her.

Damages – Money paid to one party by the other to compensate for a wrong. Damages are referred to as liquidated, where they are easily calculated, such as a debt owed or the cost of repairing a car, or unliquidated, where they are less easily calculated, for example compensation for pain, suffering and injury.

Debtor – A person who owes money to a creditor.

Defence – The pleading setting out a defendant's position in response to a statement of claim or particulars of claim.

Defendant – The party against whom a case has been brought.

Disclosure – Giving access to a document or other evidence relevant to a case to other parties in advance of the hearing.

Discovery – Notifying the other parties about a list of the documents (including paper and electronic documents, maps and photographs, sound and video recordings, and information stored in any other way) which are or have been in your possession, custody, or control, and which are relevant to the case and are

not protected by privilege. The duty to make discovery is continuous, so if further relevant documents come into your possession after the exchange of lists, you need to notify other parties about them too.

Enforcement – The processes for making sure that a court order is obeyed.

Evidence – The statements of witnesses, documents, opinions of experts and other facts which support a party's case.

Ex-parte application – An application made to a judge by a party to a case without the other parties being required to be there.

Expert Report – A report about medical, accounting, engineering or other specialist technical subject, prepared by a professional with expertise on the particular subject. Experts are the only type of witnesses who can give evidence about their opinion.

File documents – Send documents to the Courts Office.

Guardian ad litem – A relative or friend who defends a case on behalf of a person under a disability named as a defendant or third party. In the Family Division, guardian ad litem is also the name for the independent person appointed by the Court who represents the interests of the child in difficult cases.

Hearing – The trial of a case or preliminary issue in court.

Hearsay evidence – Evidence of a statement someone made which is presented in court in some other way than by their direct spoken evidence or affidavit. A previous written statement or a description by someone else of what that person told them would both be hearsay. Hearsay evidence is usually allowed in civil cases – though not always – and it may have less weight than a statement given by someone in court whose evidence can be tested by cross-examination.

Interested party – Someone who is not a party but whom the court decides has a proper interest in the proceedings and should be notified about the hearing so that he or she can ask the judge's permission to participate.

Interlocutory application – A procedural matter which must be decided by a judge before the final decision can be made in a case. For example, a challenge to one party's refusal to give discovery, or an application for substituted service are interlocutory applications.

Judgment – The judge's statement of the court order and reasons for making it. A judgment can be delivered orally or in writing.

Listing or setting down – The process by which the Courts Office is notified that a case is ready for hearing and arrangements are made for the case to be heard.

Litigant – A person who is a party in a case.

Litigant in person – A person who is a party in a case and does not have a lawyer (also referred to as a personal litigant).

Lodge documents – Send documents to the Courts Office.

McKenzie friend – A person who supports and advises personal litigants in court but does not speak on their behalf.

Minors – People who are younger than 18 years old.

Money in court – Money is paid into court when, for example, a party makes a payment of a sum they believe is reasonable to settle a case, or where the person to whom damages should be paid is a person under a disability.

Next friend – A relative or friend who brings a case on behalf of a person under a disability.

Order 53 Statement – The document which starts a judicial review case. It is named after Order 53 of the Grand Court Rules (GCR), which states what must be in an Order 53 Statement.

Originating motion – A document which starts some kinds of Grand Court cases, described in the GCR Order 5, rule 5, and Order 8.

Originating summons – A document which starts some kinds of Grand Court cases, described in the GCR Order 5, rule 3, and Order 8.

Party – The plaintiff, defendant or third or other party in a court case.

Payment into court – Payment of money into court which the payer believes is a reasonable figure to settle a case, but which the other party will not accept. If the other party does not "beat the payment in" by being awarded a higher sum by the judge, they may not have all their costs paid by the losing party and may have to pay the costs of the other party arising after the date of the payment of "money in court".

Person under a disability – A person under 18 years old or a person with mental incapacity, who cannot be a party in a court case without the help of a "next friend" or guardian ad litem.

Petition – The document which starts a divorce or civil partnership dissolution case, and some other kinds of cases, described in the GCR, Order 9. and the Matrimonial Causes Rules.

Personal litigant – A person who is a party in a case and does not have a lawyer (also referred to a litigant in person).

Plaint – The document setting out the claim in a Summary Court civil case.

Plaintiff – The party who initiates a case.

Pleadings – A series of documents setting out the facts and legal submission issues, and including statutory duties, relied on in a case in the Grand Court.

Pre-action Protocol – A court document setting out the steps the court expects the parties to take before a court case is started.

Privilege – Rules of law which protect a document, recording, or other information from being disclosed to the other party to proceedings, for example, correspondence between a lawyer and his client.

Proceedings – a shorthand term for all the court procedures and documents before the final court order.

Process server – A professional who serves documents.

Prohibit – Prevent.

Proof beyond reasonable doubt – The standard of proof in a criminal case – not proof beyond the shadow of a doubt but leaving the judge or jury without the sort of doubt that would affect their decisions in their ordinary life.

Proof on the balance of probabilities – The standard of proof in a civil case – "more likely than not", or more than 50% likely.

Rebuttal – Evidence, or a pleading, which tries to show that the other party's evidence and arguments are not accurate.

Review or case management hearing – A hearing at which a judge or magistrate will ensure that the case is proceeding as efficiently and proactively as it should and will help the parties define what work still needs to be done (also sometimes referred to as a directions hearing).

Reply – A pleading setting out the plaintiff's response to the defendant's defence.

Right of audience – The right to speak in a particular court.

Rules – Rules of the Grand Court 1995 (as revised), which set out the procedural rules for most civil proceedings in the Grand Court.

Serve – Court documents or "process" are served when they are sent to a person or company in a way required by court rules, so that it can be proved to the judge that the person to whom they are addressed actually received them.

Set off – A claim by a defendant that the person who sued them owes them an amount of money which should be "set off" against the sum the person is suing them for.

Settlement – A solution to a case agreed by the parties before the hearing, usually involving the payment of damages.

Skeleton argument – A summary of the arguments a party will make before the court.

Statement of claim – The pleading in which the person bringing a claim in the Grand Court sets out in detailed summary the claim they are making.

Stay of enforcement – Part of a court order which stops it coming into effect as long as a condition (such as making regular payments of a debt) continues to be met.

Submissions – The speeches that lawyers or personal litigants make to the court.

Subpoena – An order from the court requiring a person to attend for a case, either as a witness or in order to bring a specific document to court.

Substituted service – A method of serving documents which the court directs where service by ordinary means is impossible, for example, where a party cannot be found or is evading service.

Taxation – The process whereby the court assesses the reasonable amount of costs payable under an order for costs.

Vexatious litigant – A person who persistently takes legal action against others in cases without any merit, and who as a result may be forbidden by order of the court from starting civil cases in courts without permission.

Witness – Someone who has personally seen, heard, or otherwise experienced the events which the case is about, such as someone who saw a car crash. A witness can only report what they saw, heard, or experienced and the inferences they draw from those facts. They cannot give evidence of their opinion.

Witness (expert) – A person with professional qualifications and expertise such as a doctor, engineer, accountant, or forensic scientist who can carry out tests, give an expert opinion, or otherwise help the judge to understand what happened, and why it happened. An expert witness can give opinion evidence.

Writ – A document which starts a civil case in the Grand Court.

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Applicant's Litigation Timetable Checklist (Judicial Review)

Appendix B

Further resources

1. What help is available to me?

The Court must remain independent to ensure a fair trial; therefore, legal advice is not offered by the Court or by Court officials. Court officials are not practising lawyers. They can offer you general information but cannot advise you about your particular case. If you are not entirely confident that you understand the proceedings in which you are involved, there are some organisations, such as the Legal Aid Clinic and Legal Befrienders, who can provide you with help free of charge. Some attorneys-at-law will also advise you free of charge, particularly for an initial consultation. If you are unable to find an attorney-at-law to help you, the voluntary organisations will be an invaluable resource. The help that voluntary organisations can give you may depend on the situation. In addition to advice, these organisations may also be able to provide a McKenzie friend service (this is described below) in court. In some courts they are allowed to provide representation and the organisation you go to will be able to tell you if this is possible.

(a) Legal Aid Clinic

The Legal Aid Clinic offers free, impartial, confidential and independent advice and direction to members of the public for a wide range of issues and can sometimes represent clients in court. The Clinic is located at the Courts Building C and can be contacted at: https://www.judicial.ky/general-public/applying-for-civil-legal-aid and at https://cilac.ky .

(b) Legal Befrienders

The Legal Befrienders offer free confidential advice on matters pertaining to domestic violence, immigration, maintenance, and matrimonial property. The Legal Befrienders clinic, which is located at the Family Resource Centre, on 87 Mary Street, Apollo House West, 2nd floor, operates every Thursday, from 5 pm to 6:30 pm, and can be contacted at: 945-8869; or by visiting: https://cilac.ky .

(c) Attorneys-at-Law

If you feel that bringing your claim is too complicated and requires professional help, on a legal aid or paying basis, there are firms of attorneys-at-law and sole practitioners available across Grand Cayman and especially around George Town. A list of attorneys is available on the Courts' website, https://www.judicial.ky/general-public/. It is also sometimes useful to ask friends who have had similar cases if there is an attorney they would recommend. The List of Legal Aid Attorneys is also available at: https://cilac.ky/whos-who/.

(d) Help from a friend or other person (McKenzie Friend)

A McKenzie friend, named after the case in which they were first used, is a friend, relative or other person who has no personal interest in the outcome of your case, but who attends court to offer you support and advice.

A McKenzie friend is permitted to sit beside you in court and to offer you quiet advice. He or she is not permitted to speak for you except in exceptional circumstances. More information on the rights and obligation of McKenzie friends is contained in Practice Direction 7 of 2022, which can be found at: www.judicial.ky.

2. What do I need to know before going to Court

Before commencing an action in court, you should consider whether there are other routes that you might pursue in order to achieve the desired result. Issuing proceedings in court should be considered as a last

resort and the court expects that people involved in court proceedings have made efforts to resolve matters before coming to court.

(a) What are the alternatives to proceedings?

- Informal discussions – As a first step, you should try and speak to the person or representative of the company about the dispute. It may be possible to resolve some, if not all, issues just simply by having a conversation. If you are unhappy with a service or work being carried out, you may wish to give the service provider a reasonable chance to address your issues.

- Letter before action – If these conversations fail, provided the time for commencing your claim is not about to expire, you may consider setting out your position in writing to the person or company. Even if they do not agree with your position, their response may assist you to determine what further steps you may wish to take. If you do choose to start court proceedings, you may eventually give this letter to the Judge in order to show the efforts you made to resolve the issues before coming to court.

- Regulatory and investigatory bodies – There are different regulatory and investigative bodies that could deal with your complaint or issues more appropriately. For example, if your issue relates to your employment, you may benefit from consulting the Department of Labour and Pensions. The Office of the Ombudsman and the Human Rights Commission are also bodies that may assist depending on the nature of your complaint. The Office of the Ombudsman now deals with a range of issues, including maladministration by public bodies, freedom of information, data protection and complaints against the police.

- Alternative dispute resolution – Rather than going to court, there are other mechanisms for settling disputes, which can be less expensive. These alternative dispute resolution (ADR) mechanisms include arbitration and mediation. If you think ADR may be useful in your case, you can contact the Cayman Islands Association of Mediators and Arbitrators via their website at: http://ciama.ky. Alternatively, you can ask the Courts Office to give you a list of contact addresses for private mediation.

- Arbitration – Parties to a commercial contract, for example, may agree that an independent person (an arbitrator) can decide the matter.

- Mediation is now regularly used in a range of matters, such as family disputes, clinical negligence, some personal injury cases, and could be available even in a judicial review. It is generally less expensive than legal proceedings and usually swifter as well. Mediators use their professional skills to create a neutral environment for parties to find common ground, often with the benefit of solutions which are not open to the court. Judiciary-led mediation is encouraged and available for family cases and for many civil cases – see: www.judicial.ky/mediation.

(b) What relief can I seek from the court?

When weighing up whether to bring a claim, you should consider what relief the court can order. There is little point in going to court if you cannot obtain the result that you seek. The main forms of relief available are:

- Damages – An order for money to be paid compensating the person bringing the case to court.

- Specific performance – An order requiring the opposing party to carry out contractual promises or obligations.

- Injunction – An order requiring a person to take a certain step (a mandatory injunction) or preventing him or her from doing something (a prohibitory injunction).

- Declaration – An order setting out the rights of the parties.

- Statutory remedies – some pieces of legislation also provide for specialist orders.

(c) Will I be expected to know the law and procedures that apply to my case?

Whilst some allowance can be made for the fact that you are not a lawyer, you will be expected to have a good basic grasp of the relevant law and procedure. Initial advice from an attorney or advice agency should be obtained if at all possible if you are unsure of anything.

Legislation and case law are available on-line and these useful websites are referenced in the "Further Resources" section of this guide. Rules of procedure are set out in the Grand Court and Summary Court Rules, Practice Directions, Practice Notes and Protocols. They can be found at www.judicial.ky . All of these terms are explained in the glossary at the beginning of this guide.

(d) What is the main aim of the courts in dealing with cases?

The overriding objectives of the Courts in the administration of justice are found in the Preamble to the GCR , which refer to:

- Ensuring that the parties are on an equal footing;
- Saving expense; and
- Dealing with a case in the ways which are proportionate to –
  - (i) the amount of money involved;
  - (ii) the importance of the case;
  - (iii) the complexity of the issues; and
  - (iv) the financial position of each party.
- Ensuring that it is dealt with efficiently, promptly and fairly;
- Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

(e) Have I the right parties?

- Remember that you must refer to everyone who should be a party to your case in the court documents and serve documents on them all. If you find out part-way through preparing for the hearing that someone else should be added to the case, you can usually apply to the court for this to be done.
- A person bringing the case is usually called the plaintiff, except in divorce and civil partnership dissolution cases where he/she is called the petitioner, and, in judicial review, the applicant. A person bringing an appeal is an appellant or, if leave to appeal is needed, the applicant.

- The defendant is usually the person against whom the claim is brought except in divorce and civil partnership dissolution, judicial review and appeals where he/she is called the respondent.
- If more than one defendant is liable, they should all be named in the court documents.
- If the defendant wishes to add another party whom the defendant believes is involved in the subject of the case, that party becomes a third party. The third party may also join a fourth party, and so on.
- In judicial review "a notice party" is someone so closely affected by the decision that they have a right to be represented.

(f) Am I in the correct court?

(i) **Higher Courts**

- The Grand Court is the court that hears the most serious cases in Cayman and is divided into specialist divisions; namely the Financial Services Division, the Family Division, the General Civil Division, the Criminal Division, and the Admiralty Division (see paragraph 5 below). Before starting a case in the Grand Court, make sure that the Summary Court would not be more appropriate.
- The Court of Appeal hears appeals from all divisions of the Grand Court. All courts sit in the Court Buildings in central George Town. The Summary Court sits once per month in Cayman Brac, and the Grand Court and Court of Appeal may also sit in Cayman Brac on occasion, as arranged by the Chief Justice.
- The Criminal Division of the Grand Court hears more serious criminal cases.
- In the Grand Court, a wrong choice of division can sometimes be altered although extra costs may be incurred, so it is best not to do this.

(ii) **Summary Courts**

- The Summary Courts deal with civil cases with a value up to $20,000, and disputes involving land or family matters. Summary Courts also deal with less serious criminal charges and some serious drug charges, as well as some family cases.
- The Summary Courts also have specialist divisions: Coroners, Drug Treatment, Mental Health, and Domestic Violence Diversionary Courts.
- A separate Small Claims Handbook has been prepared by the Office of the Ombudsman and this can be accessed via the Judicial Administration website at: https://www.judicial.ky/general-public/instituting-small-claims.

(g) What are the different Divisions of the Grand Court?

The different divisions of the Grand Court are set out below.

For further information on the Division under which your claim may fall, see the GCR Explanatory Memorandum, which is available at: https://www.judicial.ky/wp-content/uploads/pdf/court-rules-in-force/Grand_Court_Rules(Revised)October_2013.pdf .

(i) The Financial Services Division (FSD)

The FSD Division hears cases involving, for example –

- Bankruptcies and winding up of companies;
- Charges;
- Trusts;
- Companies, partnerships, copyright, or intellectual property;
- Wills and administration of estates;
- Contentious Probates of wills and the distribution of deceased persons estates.

As FSD cases have very specific rules and procedures, this guide does not apply to them. FSD cases can be complex. Sources of help in Part 1 will be of use to you.

(ii) The General Civil Division

The General Civil Division hears civil cases which are normally worth more than $20,000 and include actions on:

- Tort including personal injury claims, accidents at work, false imprisonment and medical negligence;
- Breach of contract;
- Defamation;
- Appeals from the Summary Courts in civil matters; and
- Judicial review of decisions of public authorities.

(iii) The Family Division

This division hears cases dealing with the following:

- Divorce, civil partnership dissolution, nullity of marriage/civil partnership and judicial separation including financial and childcare arrangements;
- Adoption;
- Patients suffering from mental incapacity;
- Care of children at risk; and
- Orders for protection from domestic violence can be granted alongside any of these applications as well as in the Summary Courts.

More detailed guidance and information about matrimonial and children's proceedings is available at: https://www.judicial.ky/courts/grand-court/family-division .

(iv) Admiralty Division

This division hears cases involving maritime disputes, including disputes over titles of ships registered on the Cayman Islands Shipping Registry.

(h) Have I brought my claim within time?

Limitation periods

Proceedings must be started within a certain period of time under the Limitation Act. Thus, proceedings must be started:

- For personal injuries, within three years of the injury or the date when plaintiffs knew or should have known of their injury.
- For defamation, within twelve months.
- For breach of contract, within six years.
- For judicial review, the case must be brought promptly and, in any event, not later than three months.
- For minors and persons under a disability, there is often an extension of time to allow a case to be brought up to six years after a minor has reached 18 years old; or up to six years after any other reason they are under a disability ceases to apply.

If a person wishes to bring a claim that is outside the limitation period, an application must be made to the court. The court will consider such matters as:

- The length of delay.
- The reason for delay.
- The prejudice if any to the other parties.
- The degree, if any, to which the other side has assisted or hindered the person taking the case in identifying the relevant facts.
- The duration of any disability affecting the person taking the case after the cause of action accrued.
- Whether the person taking the case has acted promptly and reasonably.
- The extent to which medical or other expert advice has been taken.

(i) What steps will the court expect me to take before starting my case?

If you are considering litigation the courts have produced pre-action protocols setting out the steps which each party will be reasonably expected to take before proceedings are commenced. It is very important that you consult the appropriate pre-action protocols which exist or will in due course be published in areas such as:

- Personal injury proceedings.
  Pre-action Protocol (To be published)
- Clinical negligence.
  Pre-action Protocol (To be published)

- Judicial review.
  Pre-action Protocol (See https://www.judicial.ky/wp-content/uploads/practice-directions/PracticeDirection4of2013-Pre-actionProtocolforJudicialReview.pdf).

- Defamation.
  Pre-action Protocol (To be published)

- Repossession proceedings.
- Pre-action Protocol (To be published but see Practice Direction 5 of 2012: https://judicial.ky/wp-content/uploads/practice-directions/No5-12PracticeDirectiononApplicationsunders7275&77ofRegisteredLandLaw.pdf)

(j) What are the time limits once my case has started?

Once proceedings have started, there are time limits within which procedural steps must be taken. Although the court often has a power to extend or shorten the time within which the steps are to be taken, it is also open to the court to strike out the entire case where there has been a failure to comply with the time limits or to make an order for costs against a persistently late party. Such time limits include:

- In the case of Road Traffic Accidents, a person taking a case must serve a notice to a defendant's insurance company (if there is one) within seven days of serving the writ which informs the defendant's insurers that the case is pending. Without it, judgments against defendants are not enforceable directly against their insurer.
- A defendant must file an acknowledgment of service within fourteen days of the service of the writ using GCR Form No. 12.
- In the absence of an appearance or defence, judgment can be applied for by the plaintiff.
- The Statement of Claim is the legal document setting out the details of the claim. It must be served within six weeks of receipt of the acknowledgement of service.
- The defence must be served within six weeks of the Statement of Claim setting out the defence case, dealing with each allegation in the Statement of Claim. A set off or counterclaim should be lodged with the defence if such a claim is to be made.
- The plaintiff must reply to the defence within 21 days although this is not compulsory.
- The close of this process (the pleadings) is 21 days after the last pleading is lodged.
- Appeals must be brought within a specified period, usually set out in the governing statute. Any application for an extension of time must be made to the Court of Appeal directly.

(k) Will I have to pay court fees?

To process your civil court proceedings, the Courts Administration has to carry out procedural work at each stage for which a fee usually has to be paid. You may obtain a list of civil court fees from the Courts Office or from our website: www.judicial.ky. Fees are often significant. For example, currently it costs $150 to lodge a writ or notice of appeal; claims for liquidated amounts or damages will attract ad valorem fees of up to ½ % of the amount claimed, and fees may increase.

In some situations, help may be available in paying fees when a person is in receipt of legal aid. An application for a fee exemption may be made in writing to the Clerk of Court. If you do not provide the details or the evidence required in the form, your application to avoid paying fees or to have the cost of fees remitted may be delayed or refused.

(l) Will I have to pay the costs of the case?

Once your case is finished the normal rule is that the person who loses pays the costs of all the successful parties, and this will apply even if you have not employed a legal representative. If you lose, this will normally mean that you must pay, after taxation, the fees of all the attorneys and expert witnesses, and all their expenses.

Even if a party has been successful the Judge may order costs against them if they have behaved unreasonably during the case.

3. The Pre-Hearing stages

(a) How do I start my case?

(i) Most civil cases are commenced in the Grand or Summary Court by preparing one of the following documents:

- Writ of summons, typically in civil cases.
- Originating summons, typically in certain civil cases seeking a statutory form of relief.
- Originating motion or petition, such as in divorce or civil partnership dissolution cases.
- Plaint in the Summary Court civil cases.

(ii) Judicial review cases are begun using a special procedure set out in the GCR Order 53 accompanied by sworn statements (affidavits) setting out the facts on which the claim is based. The pre-action protocol requires among things sending a letter before action. Remember that judicial review proceedings must be commenced promptly and not later than three months after the decision about which there is a complaint. It is a two-stage process. A first application is made for leave permission to bring the case. At this stage, the applicant must show an arguable case in order to proceed to a full hearing. This is often done without the other side being represented. This is called an ex parte application.

(iii) The Rules of the Grand Court of Judicature at Orders 6-9 explain which form or pleading is appropriate in each type of case. The Summary Court Rules 2004 explain how to commence proceedings in those Courts. Once ready, the document must be lodged in the Courts Office and served on all the other parties.

(iv) Templates for each type of document are found at Volume 2 of the GCR or in the Appendix to the Summary Court Rules. The Rules are available at: https://www.judicial.ky/guidance-information.

If you have begun a case using the wrong form, in some circumstances it can be changed to the right form by making an application to a judge or magistrate.

(b) How do I serve documents?

The writ or other originating document, as well as pleadings, affidavits and other documents in the case must be served on all the other parties. Service simply means that they are sent to the parties in a way required by court rules, so that it can be proved that the person to whom the document is addressed actually received it. The requirements for most cases are in the GCR, Orders 10, 11, and 65 (substitute service). For divorce petitions and petitions for dissolution of civil partnership, the requirements are in the Matrimonial Causes Rules. For applications relating to the care, custody, or conflict of children, the requirements are in the Children Act GCR 2013. For bankruptcy, you should consult the Clerk of Courts. For Summary Court cases, the requirements are in the Summary Court Rules, Rules 4 and 5.

The main methods of service are postal service and personal service, but some specified documents must be served personally. For example, a court document requiring someone to attend the court hearing as a witness (a subpoena) cannot be served by post. Service by e-mail is not permitted for any type of documents except with the leave of the courts or in the case of e-service through the Caribbean Agency for Justice Solutions (CAJS) Curia e-filing platform for which registration is required at: https://efile.judicial.ky/Account/Login.

If serving documents by post, you don't need to use recorded delivery. First-class post is acceptable, but it is sensible to get a certificate of posting from your Post Office rather than just putting it in a letterbox. A legal document sworn before an attorney (an affidavit) by the person who posted the documents is usually enough to prove service, but, where that person is not an attorney and so is unused to court procedures, it is sensible to have some extra evidence of exactly when and where the document was posted.

Personal service is carried out by handing the document to the person, at their home or some other place where they are known to be. Again, it is proved by an affidavit made by the person who served the documents. Personal service may be by a process server (a professional who serves documents), who can be contacted through the Courts Office and who may charge a fee.

If you do not know how to get in touch with the person to be served with the document, and cannot find out by making reasonable inquiries, you can apply to the Judge or Magistrate for an order for substituted service or for service to be deemed good where it is impossible to serve the documents. You will need to provide evidence in an affidavit of the steps you have taken to find the person's address.

(c) What happens if I am served with documents?

If you are served with a writ, originating summons, originating motion or petition and you are named as a party, then you must decide how to respond. It is very important not to ignore service of legal documents.

In the case of a writ or if required by an originating summons, a defendant must complete and file the acknowledgment of service within 14 days calculated from the date of service. In the absence of an acknowledgement of service, the plaintiff can apply for a judgment against the defendant without going to a hearing. Such a judgement is known as a "default judgment". You can apply to set aside a default judgment, but the application must be made promptly and by application to a judge.

If you are served with a document that requires your attendance in court, then you should determine where the proceedings are taking place and make the necessary arrangements to attend.

(d) What are pleadings and how do I use them?

- Once the document of commencement has been served, the parties in most cases in the Grand Court must go on to provide pleadings, which are a series of documents setting out the facts and legal submissions, including legislative duties relied on in the case.
- Pleadings allow the other side to be informed in advance of the nature of the case they have to meet and if you fail to plead a fact, the likelihood is that it cannot be used at the hearing, which may fatally undermine your case. It is therefore very important to ensure that the documents you send to the court are accurate.
- Pleadings must be as concise and clear as possible and avoid irrelevant detail and repetition, using ordinary language. You should separate your points into short, numbered paragraphs.
- In family cases (apart from Divorce where a petition and affidavit as proof are required), parties are required to set out their case in writing although there are no formal pleadings.
- A person taking the case or plaintiff should set out every remedy sought and should set out the facts which the court will take into account in assessing any damages, such as any loss of earnings (special damages); and any factors relevant to general damages, for example, an inability to play sport.
- The other side must set out the facts and law intended to be relied upon in order to defeat the claim of the plaintiff and perhaps to establish any right to a counterclaim.
- This stage is important, and all documents must be accurate and contain all relevant information. You will not be allowed to raise in court matters which you have not set out in these documents.

(e) When may a court strike out a case?

If there is no reasonable basis for taking the case, the proceedings or parts of it may be struck out by the court. This may also happen if the case is frivolous or an abuse of the court process. Likewise, if the pleadings show no reasonable basis for defending the case, the person taking the case may apply for judgment to be given against the defendant at an early stage.

(f) When do I need to disclose materials and documents relating to the case?

In all cases the overriding objective requires that the parties use a "cards on the table" approach, letting each other know about all the documents which relate to the case in advance of the hearing. This is known as discovery and is dealt with in the GCR Order 24. Discovery applies to—

- All relevant documents and materials whether adverse or favourable to the party.
- It includes words, numbers, images, or other information stored in any medium such as a USB stick, microfiche, x-ray, emails, or DVD, etc.
- Discovery is given first by way of a list of relevant documents. The list of documents has two schedules. The first has two parts, part one containing those documents the party is willing to disclose and part two those which the party objects to disclosing.

- The second schedule should list documents that are no longer in the party's possession but once were.

- Each document should be described without identifying the contents. If you object to discovery on the ground of privilege, you must specify the ground of privilege, such as the document containing the advice of your attorney to you on your case.

- A list of such documents must be served within 14 days of the close of pleadings.

- The duty to provide discovery is a continuing one to be fulfilled at any stage when you come into possession of further relevant documents.

- Disclosure may be obtained against a person who is not a party to the proceedings by applying to the court.

- Failure to comply with Order 24 can lead to cost sanctions and even your case being struck out.

- If the other party does not provide discovery you can apply to the Judge for an order requiring them to do so.

If the documents in the first schedule of your discovery list are not too numerous you should provide copies of them to the other parties as a courtesy. If they are too numerous you should specify a time and place when the other parties can inspect them and take copies.

(g) Are there special rules about medical evidence?

Disclosure of medical reports is dealt with separately in Order 25 Rule 8 of the GCR . Medical evidence must be served with a Statement of Claim in all personal injury actions except contested clinical negligence cases where they will be simultaneously exchanged by both parties.

- Medical reports prepared for the purposes of proceedings must be disclosed at the latest ten weeks after the close of pleadings or, if they come into existence after that date, within 21 days of receiving the report and in any event not after the first day of the hearing.

- In clinical negligence cases, the deadline for disclosure of medical reports prepared for the purpose of proceedings is 20 weeks after the close of pleadings and you should read carefully Order 25 Rule 8 with reference to such cases.

(h) Are there special rules about other types of evidence?

Expert evidence of all kinds must be shared with the other party at the latest 3 weeks before the trial starts.

Maps, plans, drawings, photographs, or models must also be disclosed to the other parties at the latest 3 weeks before the case is heard.

(i) How many experts can I have in my case?

The court rules say that unless you have the court's permission you cannot have more than two medical experts in your case and one expert of any other kind. Permission is usually obtained by applying to the Judge well in advance of trial.

(j) What do I do when my case is ready for hearing?

Either party can apply for the case to be set down for hearing in the Grand Court six weeks after the pleadings have been completed. Discovery should take place within 14 days of pleadings being completed. The appropriate notice must be lodged in the Courts Office together with a Certificate of Readiness (in Grand Court cases) which is a document that has to be completed by all the parties, setting out the steps already taken for preparation for trial. Once this has been done, the parties will then be invited to agree a date for hearing. If they are unable to do this, then this is one reason that the case may be referred to the Judge to review or case manage the case and fix a date for hearing. You should take careful note of the date at the review.

If you send any correspondence to the Courts Office about your case, such as for an adjournment, you must send a copy to the other side first and seek their views about it. It is important that the Courts Office knows that the other party is informed about your letter and, if possible, that they know what the other party thinks about things you are proposing.

4. Attendance at Court prior to a hearing

(a) What is a case management or review hearing?

- This is a review to make sure the case is progressing efficiently. The Judge will want to ensure the parties are taking all necessary steps, such as obtaining experts such as doctors, accountants, engineers, architects, care experts' reports, applying for any relevant interlocutory orders (such as Orders for Discovery), fixing timetables for various steps to be taken and, if necessary, arranging a further review.
- In the Grand Court, in all civil cases where an appearance was entered, there is a review hearing before a judge six months after the case was commenced.
- The exception to this is in the Financial Services Division list where all applications and reviews are dealt with by the Assigned Commercial Judge.
- Cases that the Assigned FSD Judge decides are not ready to be listed for hearing, together with all cases of clinical negligence and involving persons under a disability, will come back in front of the Judge to organise the case to get to court.
- Review hearings are the norm in all Divisions.

(b) Might there be applications about the case before the final hearing?

- In addition to the set reviews, there may be applications by one or other party to the court for a hearing before a judge to secure an order to ensure compliance with court procedures. Such matters need to be resolved to ensure the case can proceed. There may be a small fee (except in the FSD where the hearing fee is $750) for such applications.

- Interlocutory orders may be made at review hearings or at a separate hearing before the Judge and occur well before the final hearing. Examples include orders:

  i. To force the other side to give discovery of documents.

  ii. To obtain necessary further particulars of the claim.

  iii. To remit the case to the Summary Court because it is less than $20,000 in value.

(c) What happens if I want to stop my case?

- A person taking a case or a defendant who has a counterclaim can withdraw the case up to 14 days after the service of the defence without obtaining the permission of the court.

- After that stage, the permission of the court would be required although the party doing so may still be liable to pay the other party's costs.

(d) What if I agree to settle out of court?

- In many cases the parties reach an agreement before the case is heard. Settling the case allows the parties to get on with their lives, limits the costs of the case and, where there is an on-going relationship, for example, between two businesspeople, can lessen the damage to that relationship that legal proceedings can cause.

- An unrepresented person can negotiate directly with the opposing party to reach a settlement on appropriate terms. Those terms may be announced to the court or kept private. If they are kept private, the settlement is announced to the court as "settlement on terms agreed" and a written agreement which sets them out is made between the parties. If this is done, you must under no circumstances disclose the terms of the agreement to anyone. To do so could be a breach of the agreement.

- It is important to ensure that every settlement deals with costs and the disposal of any money that has been lodged in the court.

- If settlement is achieved, the Courts Office must be informed immediately, especially if there is money in court.

- Once you have agreed to settle and the settlement is announced in court you cannot change your mind and re-open your case.

5. Preparation for the hearing

- The only witnesses who can give evidence of their opinion are experts. For instance, only a doctor can give evidence of his opinion that a certain course of treatment for a medical condition was not what a normally competent doctor would have provided, and only a structural engineer can give evidence as

to why a building collapsed, or a motor vehicle collision reconstructionist as to how a collision occurred. Other witnesses may only give evidence as to things they themselves heard, saw, or experienced, and the inferences they draw from those perceptions.

- A person taking the case, in order to succeed, must prove his case in a civil court on the balance of probabilities (that is, on the basis of more than a 50% chance that his/her version is correct). This is different from the Criminal Courts, where the judge or jury has to be certain beyond reasonable doubt that the accused person is guilty.
- It is important to think about how convincing your evidence is and whether you will be able to prove your case before you issue proceedings.
- Except in cases such as Matrimonial proceedings and Judicial Review where evidence is usually given by way of sworn statements (affidavits), oral evidence must be given by the witnesses, or the documents containing the evidence must be shown to the court. In the absence of agreement or order to the contrary, evidence by a person not in court, whether reported by others or in documentary form (known as hearsay evidence), is not admissible.

(a) What evidence will I need?

You will need evidence to support every relevant part of your case on which you are relying. Common items of evidence to support a case include:

- Witnesses' evidence in court;
- medical reports;
- health and safety report;
- a written contract;
- correspondence between the parties;
- bills and invoices;
- photographs or maps of the scene of an accident;
- receipts to show that money was paid.

Documents such as receipts and invoices should be the original, although in limited circumstances a photocopy of the original may be acceptable. The fact that it is a photocopy should be drawn to the court's attention.

(b) What do I need to know about my witnesses?

If you need to ask potential witnesses to give evidence, do so well in advance. If a witness is unwilling to attend, you can apply to the court for a document (a subpoena) to force the person to come to court under Order 38 Part II of the GCR.

A subpoena can also require a witness to bring a specified document to court. Apply for this well in advance of the hearing.

Witnesses may give their evidence after swearing an oath on the Bible or another holy book or may choose to affirm instead of swearing an oath. Whether they swear or affirm, failure to tell the truth when giving evidence may result in a criminal investigation and conviction for perjury.

Witnesses can normally only give evidence of what they saw, heard, or experienced or the inferences they drew from their perceptions.

(c) Are there special rules about medical evidence?

If the case involves allegations of personal injury, the plaintiff or claimant will need to provide medical evidence from a medical professional to support all personal injuries alleged.

Medical professionals will be aware of their duty to the court to give their expert opinion objectively and not to skew it to help the case of the party who has asked for the report. A statement of their duty as expert witnesses must be included in their reports.

Medical evidence must be served on the other parties with the signed Statement of Claim as otherwise it will not be permitted in evidence.

Unless a judge has given permission for more, only two medical witnesses are usually allowed for each party and one other expert (see in this regard Order 38 Rule 4 of the GCR).

(d) Are there special rules about experts?

The report from experts containing their evidence should at least include:

- The expert's academic and professional qualifications.
- A statement outlining the purpose of the evidence.
- A timeline (chronology) of the relevant events.
- Details of documents or evidence relied on in the report.
- Relevant extracts of any expert or technical literature relied on.
- A history from the party instructing the expert.
- A summary of the conclusions reached.

As with medical reports, a statement of any expert's duty as an expert witness must be included in the report.

(e) Do I need to remember anything about maps, plans, drawings, photographs, or models?

No map, plan or other drawing, photograph, or model can be received in evidence at the hearing unless at least 10 days before the hearing the other parties have been given an opportunity to inspect it and to agree to its admission without the need for it to be formally proved to the trial (see Order 38 Rule 5 of the GCR).

(f) What is the trial bundle and book of authorities?

It is very important that the plaintiff provides, hopefully with the agreement of the defendant, a bundle of all the relevant documents necessary for the hearing that have been indexed, put together and

numbered chronologically in a lever arch file. Guidelines on the preparation of bundles are set out in Practice Direction 5 of 2022 and [1] of 1999.

If you are relying on legislation, case law, and sections of legal textbooks, copies should be provided to the court and the other parties in a booklet form appropriately indexed and each page numbered so that everyone can find the documents easily in court.

This book of legal cases can be sent in as an electronic document in PDF or Word format. For further details see Practice Direction 1 of 1999, read with Practice Direction 5 of 2020 and 11 2020:

i) https://www.judicial.ky/wp-content/uploads/practice-directions/PracticeDirections-No.1of1999.pd

ii)https://www.judicial.ky/wp-content/uploads/practice-directions/PracticeDirectiron5of2020-Theuseofe-mailsforfilingandelectronicsignatures.._.pdf

iii) https://judicial.ky/wp-content/uploads/practice-directions/PracticeDirectiron11of2020.pdf

The general rule is that the plaintiff must ensure that a judge receives a copy of a properly prepared bundle and book of authorities, and that they are delivered to the Courts Office not less than three days before the hearing.

(g) What is a skeleton argument?

- All parties in the case, including those without legal representation, are expected to prepare a written summary of their argument which is called a skeleton argument.
- Exceptions are where the application is so short that a skeleton argument is not required or where the application is so urgent that its preparation would not be practicable.
- The skeleton argument is not a substitute for oral argument at trial, but it will help the parties to focus on the relevant issues.
- A skeleton argument should at least:

  (i) Concisely identify the nature of the case and the relevant background facts.
  (ii) Identify the law to be relied on, including references to relevant case law.
  (iii) Briefly refer to the facts in the context of the evidence to be called.
  (iv) Be short and in no circumstances more than 15 pages of double-spaced A4 paper.
  (v) Contain numbered paragraphs and headings
  (vi) Avoid arguing the case in great detail. It is a skeleton argument and no more.

(h) What if I have special needs?

- If you have special needs in relation to mobility or communication you should let the Courts Office know as soon as possible and certainly before the case is listed for hearing.
- If you let the Courts Office know in advance, your case can be allocated to a courtroom that best suits your needs for amenities, such as wheelchair access, induction loops for hearing aids, or live television links.
- If you need an interpreter for sign language or a language other than English, or have any other special requirements, you should also let the Courts Office know before the case is listed for hearing so that provision can be made.

(i) How am I expected to behave in court?

- Arrive early for your case. Ensure you make your way to the correct court.
- Assistance will be given by the court security receptionist and the court clerk.
- You must inform the court clerk in attendance that you have arrived.
- If your case has not been called and you have had to wait more than 30 minutes then please ask for information from the security receptionist, court clerk or other member of court staff.
- Grand Court Judges should be addressed as "My Lord" or "My Lady".
- No smoking, eating, drinking, or chewing gum is allowed in court although advocates and witnesses have access to a glass of water if required.
- Note-taking may be done with the court's permission only. No audio or video recording or photography is allowed.
- Mobile phones must be switched off. You may not connect to the internet on your phone or computer during the hearing, and the use of Twitter in court is permitted only with the express permission of the Judge hearing the case.
- In the Court buildings staff can direct you to a special children's waiting area but no supervised crèche facilities are available, and children must not be left unsupervised.
- Children under the age of 14 are not normally allowed in the courtroom unless they are giving evidence or have the court's prior approval.
- If your children must accompany you to the Court, you should bring someone with you to look after them during the hearing.
- There are no strict rules on dress code, but your appearance must show respect for the court. If you have a particular religious or cultural dress requirement, the court will respect it wherever possible.
- Parties must remain quiet so as not to disturb the hearing. Disrupting court hearings is a contempt of court and can result in punishment.

(j) When will the hearing take place and how long will it be?

The directions ordered by the court will usually include an estimate of the length of hearing based on the party's submissions and will provide a timeline for the parties to have the case listed for hearing. So far as practicable, parties should work together by identifying dates to avoid in a Listing Form and so that the Listing Officer can schedule the trial at a convenient time.

(k) How do I find where my case is being heard?

- The Court Lists are updated weekly and published on the Courts' website, https://www.judicial.ky/courts/cause-lists-all , and the complete list for the next sitting day is available daily outside the Courtrooms and in the foyer of the Courts.
- The Court Lists published Online allow you to view the court lists for civil and criminal business for any court for up to 7 days ahead.

- In some types of cases, you may have attended a hearing to set a date at which the Courts Office has found a date that suits both parties. In others, the Judge may have fixed a date.
- In any event, as a litigant in person you will always receive an email or a letter stating when your case is to be heard. It is important that you try to keep to this date. Adjournments will only be granted for good reason.
- If you cannot come to court on that date you can apply in writing for another date although you may be required to attend before a judge to explain your need for an adjournment. If you need an adjournment, you should apply as soon as possible.
- Upon arrival in the main hall at the Courts building you will see two wooden notice boards in the middle of the hall containing lists indicating the location of each case.
- Information about how to find the courtroom and other facilities (bathrooms, etc.) will be obtained by reporting to the reception desk or to a member of security staff in the entrance hall.

(l) What if I cannot come on the court date?

If you cannot come to court on the appointed date you can apply in writing for another date, although you may be required to attend before a judge and explain your need for an adjournment. If you need an adjournment, you should apply as soon as possible.

6. The Hearing

The courts in Cayman use a system of adversarial hearings rather than fact-finding hearings where a judge asks most of the questions. This does not mean that a hearing is to be a heated argument but rather a structured procedure permitting the opposing parties to bring evidence to support their argument and to test each other's evidence by cross-examination.

- In an adversarial hearing the judge's role is not to act as an investigator but rather as a neutral referee between the parties.
- Avoid rhetoric and emotion which will not impress the judge.
- Ensure your voice can be heard but do not shout. Being rude to the other side or constantly interrupting is unacceptable and unlikely to help your case.
- Important things to remember about presenting your case include the need to be focused, concise and factual.

(a) How do I start my case?

- At the start of the case you will have an opportunity to briefly summarise to the court what the main points of your case are.
- It may be useful to write down what you want to say in your opening submissions before the hearing. The Judge will have read your skeleton argument in advance, and you should build your opening around that.
- Try to summarise the main points of your argument in around 15 minutes. If you are preparing notes, it is a useful guide to remember that it takes about 3 minutes to read out one A4 page of text typed in the size of the font used in this booklet (that is, in 11-point size).

(b) How do I question my witnesses?

- If you have asked witnesses to attend to give evidence for you, get them to tell their story in court by asking them simple questions – "What happened then?" or "Did you see a person?".
- The Judge will not allow you to ask the witnesses questions which include clues about the right answer, such as: "Did you see John get into the red car?" Once the witness has identified John you would get this information by asking: "What did you see John do then?"; and when they have said "get into a car", ask: "What colour was the car?"
- Do not make statements during your questioning. Your arguments will have been made during your opening submissions and the Judge does not need to be reminded.

(c) Can I question the other witnesses?

You will have the opportunity to cross-examine any witness called by the other parties in order to put your case to them and ask about elements of their evidence which you do not accept. This should be done in a straightforward, low-key manner and will be stopped by the Judge if you are badgering or bullying the witness.

Always be courteous even if the witness is not. You will have an opportunity in your closing statement to explain why the witness's statement is wrong.

(d) Can I ask any final questions to my own witness?

After cross-examination of your witnesses by the other party you will have the opportunity to question them again. This is not an opportunity to bring out new points that you forgot to ask about – this will be stopped by the Judge – but to correct or clarify any points which came up in cross-examination.

(e) Can I make notes?

Keep a careful note of what witnesses say (with the judge's permission) so that you can refer to it later in the case.

(f) How do I sum up my case?

At the end of the hearing each side will have the opportunity to sum up their case. You may base this on your skeleton argument and use your presentation to point out the most important aspects of your case on which you are relying, using the evidence that has been given or shown in court.

The same technique of relying on your skeleton argument will be very useful in the Judicial Review Court or the Court of Appeal where it is not usual to call witnesses.

You should bear in mind, however, that where written sworn statement of evidence called an affidavit has been the basis of the evidence, in certain circumstances you may apply to the Court to call the witness for cross-examination. In Judicial Review cases if you do not accept the content of the other side's sworn statements you should consider applying to have that witness called to give evidence in person.

(g) What will the court decide?

You should have considered what remedies you would like before commencing your case and stated these in the commencement document. In summary, once again, the court can make a number of different kinds of orders, with the main orders being:

- Damages – An order for money to be paid by the other side compensating the plaintiff for loss.
- Specific performance – An order requiring a defendant to carry out promises made in a contract.
- Injunction – An order requiring a person to take a certain step (a mandatory injunction) or preventing him or her from doing something (a prohibitory injunction).
- Declaration – An order which has no immediate legal effect except to state what the result of existing law is, for example, in a declaration that a marriage was void or that a government minister did not have the power to make a certain decision.
- Statutory remedies –Several pieces of legislation, dealing with care and protection of children and domestic violence, provide for specialist orders (such as contact, residence, or non-molestation orders) in different types of cases.

The court's ruling will be reflected in an order. In some cases, the court may draw up the order, but if there is an attorney involved in the case, they will usually undertake the drafting. Whenever an order by an attorney prepares an order, it will be sent to the other side for comments before it is reviewed and signed by the judge. The usual rule is that an order is effective from the time when the Judge pronounced it in court but can be enforced only from the point in time when it is served on the other side.

(h) Will I know the Court's decision?

Sometimes the Judge will give a decision immediately but if he or she needs to decide a difficult point of law he or she will give a written judgment later. The Courts Office will tell you the date when the decision will be read out in court.

(i) A special case – divorce and civil partnership dissolution

The exception to the rule that court orders can be enforced as soon as they are served is the decree of divorce or civil partnership dissolution, which comes in two stages. The Judge at the hearing pronounces a decree nisi (marriage) or conditional dissolution order (civil partnership), which is the first stage in a two-part order. Because the law regards divorce or civil partnership dissolution as an especially serious matter, this period is seen as necessary. The parties cannot remarry or re-enter another civil partnership until a decree absolute (marriage) or final dissolution order (civil partnership) has been made. The person bringing the case is free to apply for one of these final orders, which is granted without a hearing, six weeks and one day after the decree nisi or conditional dissolution order, and the other party may also apply if the person taking the case has not applied for one after a further three months.

(j) Who will pay the costs of the case?

- Costs are dealt with in Order 62 of the GCR. The normal rule is that the party who loses the case pays their own costs and those of the winning party.
- Even if you have no costs because you ran your own case, you may have to pay a substantial amount in this event. If you are not sure that your case will succeed, this is an important factor to bear in mind before commencement.
- Personal litigants who win their case may in some instances receive limited costs for their time. In addition, a claim can be made for other legal expenses (such as court fees) and for other fees incurred (for example, for expert witnesses).

- Even if a party is ultimately successful, if he or she has delayed, failed to obey court rules, acted in such a way as to unnecessarily lengthen proceedings, or been otherwise unreasonable, the court may make a costs order in favour of the other party in relation to all or part of the case.
- Costs in the Grand Court are normally assessed by an independent procedural officer, called the Taxing Master, who is normally the Clerk of Court or other lawyer appointed by the Chief Justice.
- In judicial review cases, on very rare occasions, a court order to limit costs in advance can be sought (a protected costs order) in some categories of cases (such as environmental cases) to limit the liability for costs of an unsuccessful plaintiff where there is a public interest in bringing the case. You should take legal advice and be very sure that a protected costs order is likely in your case before taking a judicial review action in reliance on obtaining such an order.

7. After the Hearing

(a) What happens after the Judge has made a decision?

(i) Think about enforcement at the very start

- The Judge will either make a judgment for or against you.
- If you are suing a person or company for money and are not sure of their financial standing, it is sometimes helpful to ask the Courts Office to allow you to carry out a search to see if there are any outstanding judgments against the proposed defendant in other cases. If you have to "join the queue" of judgment creditors relating to a defendant who has no financial means you may be less likely to get your money. While there is a fee for a judgment search, it can sometimes save you money if it helps you decide if it will be worthwhile to take a court case.

(ii) When a court order has been made

There are several steps to be taken to enforce a court order:

- Obtain an official copy of your court order from the Courts Office.
- If you do not receive payment from the person who owes you money after two weeks of the order, you can file an application for enforcement of the judgment debt.
- Check if there has been a suspension of enforcement (Stay of Enforcement) placed on the order.
- For example, the Judge may have granted a stay of enforcement provided that the debtor pays an agreed amount per week. If the debtor has stopped paying, the stay will have to be removed before enforcing the judgment.

For advice on completing application forms and the costs of applying for enforcement, you may seek assistance from the Legal Aid Clinic at Building C of the Courts Halls of Justice, Albert Panton Street, George Town.

(b) Unreasonable behaviour - contempt of court and vexatious litigants

- It is important to be aware of the powers of the court to enforce compliance with the rules and with the steps the Judge tells each side involved in the case to take (directions). Failure to obey a court order is a contempt of court, which is punishable by a fine or imprisonment.

- Disruptive or disrespectful behaviour in court can also be punished as contempt.
- An important point to remember is that attempting to make a recording or take a photograph of court proceedings (including using a mobile phone for these purposes) is also a contempt of court and can be punished.
- Some kinds of cases, such as cases involving children and those involving allegations of sexual crimes, are held in private to protect the vulnerable subjects of the case, and a judge may make a reporting restriction order in respect of any other cases where the balance between open justice and the rights of the parties requires it. Disobeying a reporting restriction is a serious contempt of court, as it will often breach the rights of other parties to the case.
- If the Judge warns you that a certain step would be contempt of court, the warning should be taken very seriously, as it can have significant consequences for you, including the possibility of imprisonment.
- The right of access to a court is a very important right, but this also means that it is important that it should not be abused. A very small number of people repeatedly bring cases which are referred to as "frivolous and vexatious" – in other words, they have no hope of success and are a waste of the court's, and the parties' time. A court may make an order, stopping a person from pursuing a particular case any further.
- The most serious step which can be taken is for the Attorney General to apply to have a person declared a vexatious litigant. This means that they cannot take a case about any subject without the permission of a judge.

8. Contact Details

Courts Office

Albert Panton Street
George Town
KY1-1106
Phone: 345 949 4296
Website: www.judidical.ky

Opening hours are from 9.30 am to 4.30 pm.

Details of the Cayman Brac office can also be found on the website, www.judicial.ky .

Appendix A

Plaintiff's Litigation Timetable Checklist (Grand Court Civil Division)

ACTION	YES/NO	DATE
Limitation period – is the action within time?		
Start date – writ is served.		
Notice to insurers (within 7 days of start date).		
Receive defendant's acknowledgment of service and notice of appearance (within 14 days of start date).		
Statement of claim (within 6 weeks of memorandum of appearance).		
Receive defence (within 6 weeks of statement of claim or, where statement of claim was issued before 6 January 2010, 21 days). Reply to defence – optional (within 21 days of defence).		
Date of close of pleadings (21 days after service of last pleadings).		
Each party discovers their list of documents to the other party (within 14 days of close of pleadings).		
All medical evidence shared (10 weeks after close of pleadings).		
All expert evidence shared (10 weeks after close of pleadings).		
Skeleton argument submitted if required – plaintiff (3 days before hearing).		
Skeleton argument submitted if required – defendant (8 days before hearing).		
Trial bundle and bundle of authorities lodged 7 working days (Court of Appeal, 13 working days) before hearing).		
Date of hearing.		

Defendant's Litigation Timetable Checklist (Grand Court Civil Division)

ACTION	YES/NO	DATE
Writ received.		
Serve acknowledgment of appearance (within 14 days of receipt of writ). GCR Order 12 Rule 5.		
Receive Statement of claim (within 14 days of notice of intention to defend). Order 18 Rule 1.		
Serve defence (within 14 days of statement of claim or, where statement of claim). Order 18 Rule 2.		
Receive Reply to defence – optional (within 14 days of defence). Order 18 Rule 2		
Date of close of pleadings (14 days after service of last pleadings) Order 18 Rule 20.		
Each party discovers their list of documents to the other party (within 14 days of close of pleadings). Order 24 Rule 2.		
Case set down by plaintiff for trial (within period fixed by order). Order 34 Rule 2.		
All medical evidence shared (10 weeks after close of pleadings).		
All expert evidence shared (10 weeks after close of pleadings).		
Skeleton argument submitted if required – plaintiff (3 days before hearing).		
Skeleton argument submitted if required – defendant (8 days before hearing).		
Trial bundle and book of authorities lodged 14 working days before date of trial. Order 34 Rule 10		
Date of hearing.		

Applicant's Litigation Timetable Checklist (Judicial Review)

ACTION	YES/NO	DATE
Has the applicant complied with the Pre-Action Protocol? (Judicial Review Practice Direction 4 of 2013.)		
Limitation Period. Has the application been lodged as promptly as possible and in any event within 3 months of the decision under challenge? (Order 53 Rule 4 (1).		
Ex-parte docket, Order 53 statement and affidavit. Has the application been lodged with the court and the proposed respondent?		
Leave Hearing (Scheduled by Court).		
If leave is granted, has the Notice of Motion been lodged on the court and the respondent within 14 days of the grant of leave? Order 53 Rule 5(4)		
Skeleton argument and trial bundle to be lodged with the Court and the respondent 14 working days before the date for full hearing.		
Full hearing.		

Appendix B

Further resources

Cayman Islands case law, rules of court, practice directions, and guidance on specific cases can be found on the judicial website – www.judicial.ky .

Legislation and statutory rules (legal regulations) are also available at www.legislation.gov.ky through a link on www.judicial.ky .

Case law from England and Wales and Northern Ireland can be found on www.bailii.org.

Information about the law, practice, and procedure in different types of Grand Court proceedings is available in a range of legal textbooks, available from the Courts' library or at https://ciglawlibraries.org/.

On the legal system of the Cayman Islands, the authoritative text is: Elizabeth Wyn Davies, *The Legal System of the Cayman Islands*, LRI Oxford, 1989.

Further information specifically relating to civil litigation in the Cayman Islands can be found in: Deborah Barker-Roye, *Civil Litigation in the Cayman Islands*, CILS Academic Press, 3rd Edition, 2016. Many of the law firms that practice in the Cayman Islands also publish online information relating to various aspects of civil litigation, which can be accessed through the websites of these firms.

On the particular subject of judicial review, some assistance in local practice may be obtained from the guide entitled "Good Administration and your Rights", which was produced by the Office of the Complaints Commissioner (now part of the Office of the Ombudsman), and can be accessed at: http://www.dlp.gov.ky/portal/pls/portal/docs/1/10776090.PDF.

While this Guide offers assistance for civil proceedings before the Grand Court, assistance for the taking of small claims before the Summary Courts may be found in the Small Claims Handbook developed for the Office of the Ombudsman in collaboration with the Courts and available at http://www.judicial.ky/public.