

EXHIBIT 1

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ORDINANCE NO. 2013-088

AN ORDINANCE OF THE CITY COUNCIL OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENGAGEMENT ARRANGEMENT WITH BURFORD & RYBURN, L.L.P. FOR LEGAL SERVICES REGARDING CONDEMNATION MATTERS RELATED TO THE MAYHILL ROAD WIDENING AND IMPROVEMENTS PROJECT; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council deems that it is in the public interest to engage Burford & Ryburn, L.L.P. (the "Firm"), to provide legal services pertaining to condemnation matters related to the Mayhill Road Widening and Improvements project; and

WHEREAS, the Firm is highly competent in the area of real property transactions, including, without limitation, eminent domain activities and is highly qualified to perform the services prescribed in the engagement arrangement; and

WHEREAS, these services are necessary, and that due to their volume, should be performed by an outside law firm and City Staff has selected this outside law firm because of its high reputation in the legal profession in the area of real property law; and

WHEREAS, the City Council has further determined that the firm is highly competent and the fees under the engagement arrangement are fair and reasonable, and are consistent with other attorneys' fees for such services; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The preamble and recitations to this ordinance are hereby adopted as express findings of the City Council and are incorporated herein for all purposes.

SECTION 2. The City Manager is hereby authorized to execute the engagement arrangement by and between the City and Burford & Ryburn, L.L.P. (the "Agreement") for professional services, as stated in said Agreement; such Agreement in the form of the Agreement attached hereto as Exhibit "A", incorporated herein by reference.

SECTION 3. The award of this Agreement by the City is on the basis of the demonstrated competence, knowledge, and qualifications of the Firm and the demonstrated ability of the Firm to timely perform the services needed by the City for fair and reasonable fees.

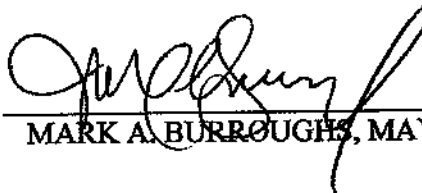
SECTION 4. The expenditure of funds as provided in the attached Agreement is hereby limited to an amount not to exceed Seven Hundred Eighteen Thousand and No/100 Dollars (\$718,000.00).

EXHIBIT 1

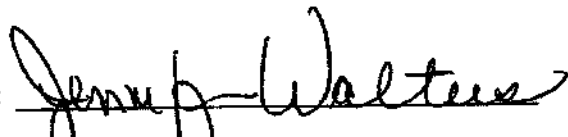
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SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 2nd day of April, 2013.


MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

By: 


BURFORD & RYBURN, L.L.P.

Attorneys and Counselors at Law

DALLAS • FORT WORTH

SCOTT T. DOGGETT

RECEIVED MAR 20 2013

 WRITER'S DIRECT DIAL:
(214) 740-3138

 WRITER'S FACSIMILE:
(214) 740-3817

 WRITER'S EMAIL ADDRESS:
sdoggett@brlaw.com

 WEB SITE:
www.brlaw.com

March 18, 2013

Via First Class Mail

 Anita Burgess
City Attorney
City of Denton
215 East McKinney Street
Denton, Texas 76201

 Re: Engagement for Legal Services for the City of Denton
Condemnation/Acquisitions for Mayhill Road Paving and Drainage Improvement Project.

Dear Ms. Burgess:

My firm appreciates the opportunity to submit this proposal for legal services to be rendered for the condemnation / acquisition of the right of way and necessary easements for the construction and use of the MAYHILL ROAD PAVING AND DRAINAGE IMPROVEMENTS project.

Project Overview

From discussions with City staff, Frank Payne and Paul Williamson, it is my understanding that they anticipate approximately 14 parcels will require eminent domain proceedings for this project. The uses of the properties to be acquired vary from single-family residential tracts to undeveloped residential and commercial prospect land. As you are aware, Senate Bill 18 posed a few changes to the current eminent domain procedures; however, we see little change to the manner and procedure for municipalities and other governmental entities. The notable changes are the timing between initial offers and final offers and the production of a certified appraisal prior to the final offer. Other than the additional time in the negotiation stage and added procedures for the appointment of special commissioners, there is no radical change to the eminent domain law for cities. The proposed Scope of Services incorporates our consideration of SB 18 laws that took effect on September 1, 2011.

The Scope of Services presented herein is organized as follows:

- a. Pre-Petition Services
- b. Condemnation- Administrative Phase (thru Special Commissioners' hearing)

3100 LINCOLN PLAZA • 500 N. AKARD • DALLAS, TEXAS 75201-6697 • (214) 740-3100

Est. 1907

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c. Condemnation- Judicial Phase (if Commissioners' Award is appealed)

a. Pre-Petition Services

Our firm ("B&R") will review and analyze the title information provided to us and will provide assistance with any title curative matter and pre-condemnation entries for remaining surveys or inspections that may be needed on parcels within the designed right-of-way.

b. Condemnation-Administrative Phase

Once negotiations have expired and authorization is obtained to proceed to condemnation, our firm will prepare the condemnation petitions, Notice of Lis Pendens and all pleadings and notices necessary for the condemnation of the affected properties. For each parcel turned over to us for condemnation, we will need a run sheet from a title company identifying all interest holders of the land, including lien holders and easement holders who hold an interest in the identified parcels. If there are additional parties in possession, we may recommend and join them as necessary parties to the condemnation. We will be responsible for the filing the pleadings in the appropriate court, securing the appointment of Special Commissioners, scheduling the commissioners' hearings, issuing and serving notices of the hearing upon the owners, and presenting evidence at the special commissioners' hearings. We will oversee the filing of the Award of Special Commissioners and their statement of costs for approval by the judge.

Thereafter, we will make the necessary deposits and secure Orders Approving Deposits Granting Possession of the condemned land to the City. We will also coordinate with the court clerks to ensure that Notice of the Decision is properly delivered to the named condemnees as required by the Property Code, which precludes any limitations from being tolled for the deadline to appeal the decision.

In order to file the condemnation petitions, we will need copies of the following:

1. All negotiation correspondences and official offers;
2. Evidence of delivery of the Bill of Rights Statement to the owner;
3. Any and all appraisal reports reviewed or considered in formulating an official offer to the owner;
4. City Council Resolutions authorizing the condemnations;
5. Legal descriptions and plats for the acquisition;
6. Easement or Right of Way instruments; and,
7. Title Report with accompanying title instruments.

I have had several discussions with Paul Williamson regarding cost-effective ways to manage the legal services costs for the administrative portion of the condemnation. For these services I propose that Burford & Ryburn be compensated based upon the following parameters:

1. B& R will be paid based upon hourly rates attached hereto for all services rendered in this phase; the City will reimburse B&R for all filing fees, court costs, expert fees and travel expenses. The billing will be monthly as usual with other matters;

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2. B&R recommends budgeting an average fee of \$17,000.00 per file or parcel that is sent to B&R for condemnation. The compensation for B&R representation at this level will be based upon the hourly fee schedule attached and will be itemized and invoiced in regular periodic intervals. B&R will represent the City and defend against any motion or plea that may be urged prior to the trial court obtaining jurisdiction on appeal. As condemnation is ordered for each parcel or tract, the City will advance to B&R \$500.00 to be applied against filing fees and court costs. Expert witness fees will be paid separately by the City. Expenses related to this phase of the engagement will include but not necessarily be limited to travel and office expenses for copying, telephone, communications, online research and any other out of pocket expenses through the end of the Special Commissioners' hearing, as well as any additional costs such as citation by publication, or service of process or notices for non-residents of Denton County. For this Phase of the Engagement, assuming fourteen (14) condemned tracts (as provided by the City) and a \$17,000 budgetary fee amount per tract, I recommend budgeting \$238,000.

c. Condemnation-Judicial Phase

In the event that either party files objections to an Award of Special Commissioners, Burford & Ryburn proposes to represent the City in the judicial phase which includes the trial de novo and any resulting appeal from a judgment until the dispute is resolved. The compensation for B&R representation at this level will be based upon the hourly fee schedule attached and will be itemized and invoiced in regular periodic intervals. As the complexity of the litigation can vary greatly, sometimes depending upon the level of sophistication by the opposition and the quality of experts bannered, it is difficult to forecast the total expense budget for this phase. Nevertheless, based upon information provided to me by Paul Williamson and Frank Payne, it appears that 5 of the 14 condemnation cases from the Administrative Phase will be appealed, with two of these proceeding through trial. A portion of the appealed cases may settle within 180 days of the appeal, but most require extensive discovery and wrangling with experts before being resolved, and only a few actually make it to trial. To try the more complex condemnation cases with multiple experts, the attorneys' fees alone may extend beyond \$150,000. On the other hand, some may be resolved short of trial and no more than \$50,000-\$70,000 expended. From staff feedback, it appears that five out of the 14 cases that go to eminent domain will be appealed, with two of those potentially going all the way through civil trial. For this phase of the Engagement, assuming a \$60,000 average fee per case on the appeals, I recommend budgeting \$480,000.00 as a maximum "not to exceed" without prior written authorization.

We have briefly discussed the properties and ownership with City staff and are unaware of any conflicts with our representation; however, we will perform conflict checks on each parcel as they are presented to us by City staff. As we represent many gas and electric utilities in North Texas, there is a potential for the conflict when dealing with competing interests in real estate, regardless how remote the conflict might be. In the event that such a conflict or dispute arises between the City and one of these clients, we would immediately notify the City of the conflict and may have to decline representation against these current clients, or possibly withdraw from

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representing the City if the circumstances warranted. Since the potential conflict exists, we want to fully disclose that fact.

This letter sets forth our proposal for our professional legal services and an estimate of charges for the engagement. Please read this letter carefully. It describes the terms and conditions under which we will undertake to represent the City of Denton, Texas in the legal work for the condemnation/acquisition for the right of way and easements for MAYHILL ROAD PAVING AND DRAINAGE IMPROVEMENTS project. The scope of our employment does not include any criminal proceedings, tax matters, or bankruptcy proceedings.

The terms and conditions of our engagement are as follows:

1. Our fees for legal services are based upon the hourly rates in effect on this matter for each lawyer and legal assistant in our firm at the time the services are rendered. Our initial hourly rates are stated on page 8 of this letter. We periodically review these hourly rates and adjust them if appropriate. We will notify you in advance of any changes in these rates. Scott T. Doggett will be the attorney responsible for the legal services, with the assistance of Preston Dobbs and other qualified attorneys and staff of the firm.
2. We bill clients monthly for fees and expenses, such as copying, postage, travel, computer-assisted research charges, facsimile transmission, etc. Each lawyer and legal assistant contemporaneously records the time required to perform services, and these time records are put into a computer that generates a monthly bill that we try to send out around the 15th of the following month. This monthly bill describes services performed and expenses incurred.
3. Our hourly rates do not include any interest factor for slow payment. Because of this and the additional fact that we do not include a service charge for late payments, we must insist that our clients pay their bills promptly. It is our usual practice to send to our clients for direct payment by them invoices we receive from third parties such as court reporters, process servers, expert witnesses, and reproduction services. You will be expected to pay such invoices promptly upon receipt. If outside experts or consultants are required for the matters, we will obtain your approval prior to engaging those persons.
4. If during our representation we anticipate a significant increase in the level of our activity on your behalf, e.g., the commencement of trial preparation or trial, we will notify you in advance and may request the ability to bill you on a basis more frequently than monthly. If such billing is approved, we will expect such statements to be paid promptly also.

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5. We usually require an advance of fees before we commence work for a client. However, we will waive those for the City, save and except the expense retainer identified in the Condemnation- Administrative Phase, section (b)(2), above.
6. During our discussion with you and your agents about handling these matters, we may provide you with certain estimates of the magnitude of the fees and expenses that will be required at certain stages. Please understand that such estimates are just that and that fees and expenses are ultimately a function of many conditions over which we have little or no control, particularly the extent to which the opposition files pretrial motions and engages in its own discovery. The reason we submit our clients bills monthly shortly after the services are rendered is so they will have a ready means of monitoring and controlling the expenses they are incurring. If you believe that the expenses are mounting too rapidly, please contact us immediately so that we can help in evaluating how they might be curtailed in the future.
7. As we may have discussed with you, we represent TXU Electric Delivery Company, Oncor Electric Delivery Company LLC, CrossTex Pipeline, Energy Transfer, Chief Oil and Gas (Eagle Mountain Pipeline), Atmos Energy, Antero Resources, Devon (Acacia and Southwestern Gas Pipeline, Inc.), Empire Pipeline Corporation, Momentum /MEG, Chesapeake/ Texas Midstream, Lonestar Midstream, Enterprise and DCP Midstream in eminent domain proceedings. While no conflict of interest exists presently, in the event such a conflict arises, we will notify you immediately so that any such conflict can be resolved. Potentially, we might have to withdraw from our representation of the City of Denton if any such conflict cannot be resolved.
8. We shall maintain and shall be caused to be in force at all times during the term of this Contract, a legally binding policy of professional liability insurance, issued by an insurance carrier approved to do business in the State of Texas by the State Insurance Commission, which carrier must be rated by Best Rated Carriers, with a rating of "A-" or higher. Such coverage shall cover any claim hereunder occasioned by our negligent professional acts and/or errors or omissions, in an amount not less than \$500,000 combined single limit coverage occurrence. In the event of change or cancellation of the policy by the insurer, we hereby covenant to immediately advise City thereof; and in such event, we shall, prior to the effective date of change or cancellation, serve a substitute policy furnishing the same coverage to City. We shall provide a copy of such declarations page of the existing policy to City through its City Attorney, simultaneously with the execution of this Contract. Upon request by City,

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further information regarding our liability insurance limits and coverage may be provided.

You also need to be aware of the following, which we are required to disclose to you under the Texas Lawyer's Creed:

1. We are bound to follow the Texas Lawyer's Creed, as set forth in this letter.
2. Civility and courtesy to the opposition and their counsel are expected and are not a sign of weakness.
3. From time to time, we may advise you to follow expected norms of proper behavior in various settings.
4. We will not pursue conduct that is intended primarily to harass or drain the financial resources of the opposing party.
5. We will not pursue tactics that are intended primarily for delay.
6. We will not pursue any course of action that is without merit.
7. We reserve the right to decide whether to grant accommodations to opposing counsel in all matters that do not adversely affect your lawful objectives. You have no right to instruct me to refuse reasonable requests made by other counsel.
8. You should be aware that there are measures other than litigation, such as mediation or arbitration, for settling disputes. In some cases, these alternate methods of resolving disputes may resolve the dispute faster and with less expense than litigation. If you wish to discuss some of these methods in more detail, please let us know.

We discuss the terms and conditions of our engagement so candidly because we believe that our clients are entitled to know how these matters will be handled and to avoid any misunderstandings. Please sign a copy of this letter in the space provided below, showing your agreement to the terms and conditions set forth above. Upon your signature of this letter, we will commence our representation of you in the above-described matters.

I will review any additional information or instructions from your office regarding the procedures and protocol as an outside counsel. The foregoing is our proposal for the services anticipated to be rendered for the City of Denton. I will be happy to discuss those terms and conditions with you, the City Manager or anyone else, so that we can proceed with the engagement. Please feel free to call me to discuss any of these matters at your convenience.

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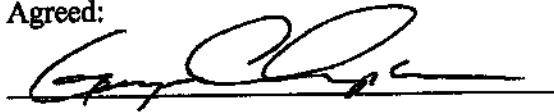
Very truly yours,

BURFORD & RYBURN, L.L.P.



Scott T. Doggett

Agreed:



(Name, Title) GEORGE C. CAMPBELL, CITY MANAGER

Date: 4/2/13

std

Cc: Via Email
Paul Williamson

APPROVED AS TO FORM:
CITY ATTORNEY
CITY OF DENTON, TEXAS

BY: Paul Bensen

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Burford & Ryburn

Fee Schedule for City of Denton
Mayhill Road Paving and Drainage Improvement Project

<u>Attorneys</u>	<u>Proposed Rate</u>
Scott T. Doggett	\$ 295.00
Larry Hallman	\$ 295.00
R. Scott Moran	\$ 295.00
D. Wade Emmert	\$ 295.00
David M. Weaver	\$ 295.00
Jeb Loveless	\$ 295.00
John Baker	\$ 285.00
Preston Dobbs	\$ 285.00
Edwin L. Meador	\$ 285.00
Lance C. Travis	\$ 285.00
Joann N. Wilkins	\$ 285.00
Andy Cox	\$ 275.00
Jennifer King	\$ 275.00
Heather Johnson	\$ 235.00
Michael Ma	\$ 235.00
Nicole Tong	\$ 225.00
Michelle Sheets	\$ 225.00
Jordan Miller	\$ 215.00
Kendall Ray	\$ 215.00
Natasha Fedorov	\$ 200.00
Pamela Sieja	\$ 200.00
Other Associates	\$ 200.00
 John Dugdale * Environmental Specialist	 \$325.00
 Paralegals and Legal Assistants	 \$ 125.00

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THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self interest.

1. I will advise my client of the contents of this creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

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5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

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5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.
9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.
10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.
11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.
12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.
13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.
14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.
15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
16. I will refrain from excessive and abusive discovery.

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17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.
18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.
19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.
3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.
4. I will be punctual.
5. I will not engage in any conduct which offends the dignity and decorum of proceedings.
6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.
7. I will respect the rulings of the Court.
8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.
9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.