

# **BOARD OF SUPERVISORS WORK SESSION**

## **GOVERNMENT CENTER BOARD ROOM**

**AUGUST 12, 2008 - 4 P.M.**

**A. Call to Order**

**B. Roll Call**

**C. Board Discussions**

1. James City County Code of Ethics ([Memorandum](#)) ([Attachment 1](#)) ([Attachment 2](#))
2. 2008 Comprehensive Plan Update Steering Committee Appointments

**D. Closed Session**

1. Consideration of a personnel matter, the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
  - a. Historical Commission
2. Consideration of a personnel matter involving the annual performance evaluation of the County Attorney, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia

**E. Break**

## MEMORANDUM

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: Leo P. Rogers, County Attorney

SUBJECT: Code of Ethics Update

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On March 28, 2006, the Board of Supervisors (“Board”) adopted the Code of Ethics. The Code of Ethics was adopted after years of discussion between the Board and staff. The Code of Ethics was reviewed by all members of the Board, the County Administrator, and the County Attorney. The Code of Ethics sets forth guidelines which exceed the requirements in the State Code for the conduct of business by public bodies. An example of such State Code requirements is the Virginia Conflict of Interest Act (“COIA”). COIA deals with the disclosure of economic interests and the recusal of decision makers where narrowly defined conflicts exist in order to make sure that public officers and employees decisions will not be compromised by competing financial interests. As opposed to the Code of Ethics, COIA sets forth specific circumstances where conflicts exist, a method of determining whether a conflict exists and criminal enforcement procedures for violations. On the other hand, the Code of Ethics sets out broad standards for conduct and behavior which by their very nature can be subject to interpretation. In addition, the Code of Ethics does not have a clear procedure for enforcement and merely references sanctions which the Board may impose.

The Code of Ethics provides for the Board to perform a review annually and to consider recommendations from boards, commissions, and committees. The Board may then update the Code of Ethics as it deems appropriate. Liaisons to the various County boards, commissions and committees polled the members individually or in groups to get feedback on the Code of Ethics. Of the 89 appointed members of the 16 boards, commissions and committees subject to the Code of Ethics, 40 had no response, 41 responded with no changes being requested, and 8 responded with comments. Three of the boards, commissions or committees made discussion of the Code of Ethics an agenda item for their meeting. Attached is a spreadsheet which identifies the comments received. In addition, below is a summary of the comments made by members of other boards, commissions and committees, suggestions made by members of the Board of Supervisors, and suggestions of the County Administrator and County Attorney.

- **Paragraph 3. Conduct of Members**

- Include the words “including but not limited to.” (Suggested by the Cable Communications Advisory Committee)

Response: “Members shall refrain from abusive conduct, abusive conduct, *including but not limited to* personal charges...”

- Reword the last sentence to move up the word “public” in the sequence to give the citizens the message that they are the most important. (Suggested by the Parks & Recreation Advisory Commission)

Response: “Members shall refrain from abusive conduct, abusive conduct, personal charges or verbal attacks upon the character or motives of *the public*, other members of the Board of Supervisors, boards, commissions, and committees *or* the staff ~~or public~~.”

- Clarify the phrase "...and avoid even the appearance of impropriety..." or remove it because it can mean different things to different people. (Suggested by the Historical Commission)

Response: This phrase is intended to be broad to capture a wide variety of behavior that would otherwise be difficult to specify. It is possible to identify examples of the appearance of impropriety, but not an exhaustive list. This goes to the heart of the purpose of having an ethical code. Is it intended to have clear cut standards such as COIA or is it intended to apply more broadly?

- **Paragraph 7. Communication**

- Add the words “and promptly” after the word “publicly.” (Suggested by Cable Communications Advisory Committee)

Response: “Members shall publicly *and promptly* share substantive information that is relevant to a matter under consideration by the Board of Supervisors or boards, committees, and commissions

- **Paragraph 8. Conflict of Interest**

- Clarify what is meant by “material financial interest.” Make the whole second paragraph more explicit. Expand the definition of conflict of interest to include non-financial relationship such as present/past employment, connections to a neighborhood or HOA or social relationships. (Suggested by the Parks & Recreation Advisory Commission)

Response: This is more appropriately handled under COIA. It will be difficult to define all the personal relationships that would fit into this category. Also, social and neighborhood connections may give the public official better insight into the issue presented without having a personal stake in the transaction.

- **Paragraph 9. Gifts and Favors**

- Change “should never accept” to “shall not accept”.

Response: “A member ~~should never accept~~ *shall not accept* for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.”

- **Paragraph 12. Representation of Private Interests**

- Clarify that members of boards, commissions and committees have the ability to appear before the Board or other boards, commissions and committees to discuss matter of public business related to their role as a public official even if it relates to a private person, business or interest. (Suggested by the Economic Development Authority and requested by a Board member)

Response: “In keeping with their roles as stewards of the public interest, members of the Board shall not appear on behalf of private interests of third parties before the Board of Supervisors or any board, ~~committee, commission~~ *commission, committee*, or proceeding ~~involving~~ *of* the County, nor shall members of boards, ~~committees, or commissions~~ *commissions, or committees* appear before their own bodies or before the Board of Supervisors on behalf of the private interests of third parties ~~on matters related to the areas of the service of their bodies.~~ *Except that members of boards, commissions and committees may appear before other public bodies, including the Board of Supervisors, to advocate for a particular application or other matter of public business related to their role as a public official, when authorized to do so by their public body.*

- **Paragraph 17. Implementation**

- Delete the requirement that each member of boards, commissions and committee sign a statement affirming they have read and understood the Code of Ethics. The Board could adopt a motion or resolution indicating that all appointees to boards, commissions and committees shall follow the Code of Ethics. (Suggested by Staff)

Response: “~~Members entering office shall sign a statement affirming they have read and understood the James City County Code of Ethics.~~”

- Instead of reviewing the Code of Ethics every year, schedule a review every other year, occurring on each even numbered year following the installation of members of the Board of Supervisors after an election. (Suggested by Staff)

Response: “In addition, the Board of Supervisors, boards, ~~committees, and commissions~~ **commissions and committees** shall ~~annually~~ biennially review the Code of Ethics . . .”

- **Paragraph 18. Compliance and Enforcement.**

- Revise the enforcement mechanism which provides that the chair of the Board of Supervisors or other boards, commissions and committees have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics are brought to their attention. (Suggested by a Board member)

Response: Staff agrees that it is a difficult spot for the Board Chair or other chairs to be required to intervene and enforce the Code of Ethics. Staff proposes two alternative methods of enforcement:

1. Make the Code of Ethics something to which individuals can aspire. The Code of Ethics would still set the standard for public officials. Each public official would need to make his/her own determination of whether an action was ethical. The Code of Ethics could still be used to guide the conduct of public officials, but would not be used as a tool to punish public officials based on others judgment of the ethical standards.
2. Create an enforcement procedure that is removed from the affected public body, limits individual opinions of ethics and requires unanimous support for any sanction. For alleged violations by officials appointed to County boards, commissions and committee, the Board of Supervisors could consider the allegation and hear evidence or argument by the public official. In order to find a violation and/or impose any sanction, the Board of Supervisors would need make a unanimous decision. If an ethical violation was alleged against a member of the Board of Supervisors, the remaining members of the Board would need to unanimously vote to refer the allegation to an independent decision maker. That decision maker would hear the allegation, consider evidence and hear argument. At the end of a hearing, the decision maker would decide if an ethical violation exists and make a recommendation for a sanction, if any, to the Board. The Board would then need to unanimously vote to impose the sanction. Attached is information from the McCammon Group which could serve as such a third party decision maker.

In addition to specific comments discussed above, below are general comments which do not currently apply to any specific provision of the Code of Ethics:

- Make the Code of Ethics applicable to staff or at least senior level staff. (Suggested by the Economic Development Authority)

Response: Guidelines for the conduct of County staff are found in the County's Personnel Policies and Procedures Manual ("Personnel Manual") which is adopted by the Board of Supervisors. The Personnel Manual has standards that every employee must meet, provides for levels of discipline and has a grievance procedure which is required by State Code. In addition, County employees are under the direction and control of the County Administrator rather than the Board of Supervisors.

- In order to avoid undue and inappropriate influence and/or the public's perception of same, do not appoint any citizen to any County board, commission or committee who has provided financial and/or volunteer support to the campaigns of any of the sitting member of the Board of Supervisors. (Suggested by the Planning Commission)

Response: Staff believes this would unduly restrict the discretion of the Board. Certainly no person should be appointed to a public position who used undue influence, either financially or otherwise, to obtain that position. However, the contribution of time or money to a political campaign should not disqualify a person for serving as an appointed official.

After discussion of the comments and recommendation above, and any additional comment from the Board's work session, I will make appropriate revisions to the Code of Ethics for the Board of Supervisors to review and consider.

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Leo P. Rogers

BOARD/ COMMISSION/ COMMITTEE	STAFF REPRESENTATIVE(S)	# Members	# No response	# No Change	# Comments
<b>Agricultural and Forestal District Advisory Committee</b>	<b>Marvin Sowers/ Jason Purse</b>	<b>8</b>	<b>0</b>	<b>8</b>	<b>0</b>
Discussed at meeting - no changes needed					
<b>Board of Buliding Adjustments &amp; Appeals</b>	<b>Doug Murrow/ Pat Wilkerson</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>0</b>
<b>Cable Communications Advisory Committee</b>	<b>Jody Puckett</b>	<b>7</b>	<b>5</b>	<b>0</b>	<b>2</b>
<ul style="list-style-type: none"> <li>■ In #9. Gifts and Favors. "A member should never accept for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties."</li> </ul> <p>Change “should never accept” to “shall not accept”</p>					
<ul style="list-style-type: none"> <li>■ In #3, Conduct of Members. Include the words "including but not limited to" : ...abusive conduct, including but not limited to personal charges...</li> <li>■ In #7, Communication. Add "promptly": " ... publicly and promptly share... "</li> </ul>					
<b>Chesapeake Bay Board/ Wetlands</b>	<b>Scott Thomas/ Melanie Davis</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>0</b>
<b>Clean County Commission</b>	<b>Jennifer Privette</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>0</b>

BOARD/ COMMISSION/ COMMITTEE	STAFF REPRESENTATIVE(S)	# Members	# No response	# No Change	# Comments
<b>Economic Development Authority</b>	<b>Keith Taylor/ Stevn Yavorsky</b>	<b>7</b>	<b>6</b>	<b>0</b>	<b>1</b>
<p>■ I continue to have the same concerns I did when this first came out. Specifically, paragraph 12 could be construed to question the EDA’s ability to stand before the PC or BOS as advocate for a particular business or class of business or matter of interest to the business community. While we have appeared before these bodies on many occasions, the rancor that characterizes the public discussion of cases before the PC and BOS has risen to a level recently where it would not be hard to imagine someone making such an allegation against the EDA or its member(s). I would again request some clarity in this paragraph to address that which the PC and BOS have come to expect as a customary role and function of the EDA in support of business interests in the County.</p> <p>■ As to applicability, I do not read that the Code of Ethics applies to Staff. At a minimum, I would propose that the Code apply to all senior level staff and to those staff who regularly deal with the public in matters of regulatory control or authority.</p>	<p>EDA OFFICIAL STATEMENT:The statement from the EDA is as follows:</p> <p>“The EDA has a concern with the Code of Ethics, specifically; paragraph 12 could be construed to question the EDA’s ability to stand before the PC or BOS as advocate for a particular business or class of business or matter of interest to the business community. While we have appeared before these bodies on many occasions, the rancor that characterizes the public discussion of cases before the PC and BOS has risen to a level recently where it would not be hard to imagine someone making such an allegation against the EDA or its member(s). The EDA would again request some clarity in this paragraph to address that which the PC and BOS have come to expect as a customary role and function of the EDA in support of business interests in the County.”</p>				
<b>Farmer's Advisory Committee</b>	<b>Doris Heath</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Historical Commission</b>	<b>Jason Purse</b>	<b>15</b>	<b>0</b>	<b>14</b>	<b>1</b>
"and avoid even the appearance of impropriety." - This statement means different things to different Citizens and cannot be fully complied with in the characteration of the way it was written - it needs to be revised or removed.					
Discussed at meeting - no other changes needed					
<b>Local Enterprise Zone</b>	<b>Doug Powell</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>



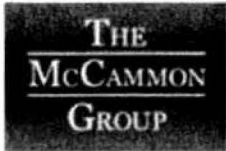
BOARD/ COMMISSION/ COMMITTEE	STAFF REPRESENTATIVE(S)	# Members	# No response	# No Change	# Comments
<b>Parks &amp; Recreation Advisory Commission</b>	<b>Ned Cheeley/ Joan Etchberger</b>	<b>8</b>	<b>5</b>	<b>0</b>	<b>3</b>
<p>■. Item 3 where the groups are listed. I recommend putting the public first, BOS, Boards, Commissions, &amp; committees. This gives the public a message that they are most important in the hierarchy.</p> <p>■ Next, be consistent in the listing of governmental subdivisions. Some items are listed BOS, Boards, Commissions, &amp; committees and in some it is listed BOS, Boards, Committees, &amp; commissions. Choose one format and be consistent throughout the document.</p>					
<p>■ I have some concerns about Section 8 - Conflict of Interest. What is a material financial interest? ...also the 2nd paragraph. Is there some way this whole section can be made more explicit?</p> <p>■ Also with respect to Conflict of Interest, it would appear that if some member of the Board, commission, etc has had significant dealings with someone coming before the Board, commission, etc then this is a Conflict of Interest...even if there is not currently a monetary interest. For example, if a member of the Board, Commission, etc. worked for someone coming before the Board, but doesn't work for them now, that would be a Conflict of Interest. Think it there is an apparent conflict then the Board member, commission member, etc should not participate in the deliberations.</p>					

BOARD/ COMMISSION/ COMMITTEE	STAFF REPRESENTATIVE(S)	# Members	# No response	# No Change	# Comments
<b>Planning Commission</b>	<b>Marvin Sowers/ Terry Costello</b>	<b>7</b>	<b>4</b>	<b>2</b>	<b>1</b>
<div>■ In order to avoid undue and inappropriate influence and/or the public's perception of same, do not appoint any fellow citizen to any JCC Board who has provided financial and/or volunteer support to the campaigns of any of the sitting Supervisors.</div> <div>■ Consider the abolishment of political parties in JCC BOS races and member designations. The City of Williamsburg's Council members are without party affiliations (as are other local cities) - - can JCC follow suit? This would serve to remove unnecessary and unproductive divisions if so.</div>					
<b>Purchase of Development Rights</b>	<b>Ed Overton</b>	<b>5</b>	<b>2</b>	<b>3</b>	<b>0</b>
<b>Setoff Debt Collection Program Appeals Panel</b>	<b>John McDonald</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>Social Services Advisory Board</b>	<b>Diana Hutchens/ Anna Hockaday</b>	<b>6</b>	<b>2</b>	<b>4</b>	<b>0</b>
<b>Water Conservation Committee</b>	<b>Larry Foster/ Beth Davis</b>	<b>6</b>	<b>2</b>	<b>4</b>	<b>0</b>
		<b>89</b>	<b>41</b>	<b>40</b>	<b>8</b>

## Leo Rogers

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**From:** Rich Huffman [rhuffman@mccammongroup.com]  
**Sent:** Friday, August 08, 2008 10:50 AM  
**To:** Leo Rogers  
**Subject:** Code of Ethics - Arbitration  
**Attachments:** TMG Agreement to Arbitrate for Contractors- Long Form (Sept 2007).pdf; Sample Arb Clause September 2007 FINAL.doc; Civil Fee Schedule.pdf



Dear Mr. Rogers,

Thank you for the voicemail and interest in our services. We are available to arbitrate issues involving the Board of Supervisors Code of Ethics. Of course, the parties will either need to sign our Agreement to Arbitrate or there needs to be an "external agreement to arbitrate" that meets our requirements. I attach our Agreement to Arbitrate with Rules. Please pay particular attention to the section on "external agreements to arbitrate" as you craft your language. I am also attaching a sample arbitration clause for your consideration. Last but not least, our fee for this type of engagement would be \$300/hour. I am attaching our Fee Schedule to clarify billing and collection issues.

We appreciate your trust and confidence.

**Richard C. Huffman, Jr.**

Vice President of Professional Services

Tel: 804.421.5530

Fax: 804.343.0923

<http://www.mccammongroup.com>



## **ARBITRATION RULES**

### **1. Definition of Arbitration**

Arbitration is a process by which a third party neutral (Arbitrator) decides the outcome of a case based on the facts presented and the governing law.

### **2. Agreements to Arbitrate**

An arbitration under these Rules may proceed in one of two ways:

- A. External Agreement to Arbitrate- Arbitration can be initiated pursuant to an agreement executed before the dispute arises. The McCammon Group (The Group) is available to provide the arbitration service in such situations if the following circumstances are satisfied even where one or more of the parties does not wish to participate.
  - 1) The provision must specify that The Group will provide the arbitration service.
  - 2) The provision must specify that The Group's rules, or some alternative set of rules acceptable to The Group, will govern. (These rules would be the ones in use by The Group at the time the claim is initiated with The Group. The dispute resolution clause should address this.)
  - 3) One of the parties initiates the process by asking us in writing to proceed to administer the arbitration; with a copy of such writing and a copy of the executed pre-dispute agreement to arbitrate provided to the other party or parties involved in the dispute.
  - 4) All parties must have actual notice of the initiation of the arbitration process. If the non-initiating party is not responsive, there must be a showing by the initiating party that there was actual notice provided to the non-initiating party regarding the initiation of the arbitration.
  - 5) There are no known issues or conditions either in the Agreement to Arbitrate or in the surrounding circumstances that would threaten the fundamental fairness of the process.
  - 6) There must be adequate arrangements in place to pay for the services of The Group.
- B. The Group's Agreement to Arbitrate – In the absence of satisfying all the requirements under 2(A), the parties would be required to execute a new agreement to arbitrate satisfactory to The Group.

### **3. Case Management**

Once an arbitration has been initiated, a Case Manager of The Group will handle all administrative matters in processing the dispute.

### **4. Determination of Geographic Locale**

The parties may by agreement select a geographic locale for the hearing of the arbitration. Absent such agreement, the Case Manager will determine a geographic locale based on the convenience to all involved.

### **5. Selection of Arbitrator**

The parties may by agreement select any of the available Members of The Group to serve as the Arbitrator. Information about the Members of The Group available to serve as Arbitrators will be provided by the Case Manager. If the parties are unable to agree on an Arbitrator, The Group will provide several potential Arbitrators and the parties in alternating sequence will strike candidates until only one remains. The remaining person will serve as the Arbitrator for the dispute. The number of potential Arbitrators included in the selection process will be determined by The Group, and they will be selected by The Group based on subject matter

expertise, proximity and availability. The order of striking will be the claimant first and then each listed respondent.

6. Determination of Date, Time and Place

The parties may by agreement determine the date, time and place (specific office) for the arbitration hearing, subject to the availability of the Arbitrator. Absent agreement, the Case Manager will determine these matters or refer these issues to the Arbitrator for resolution.

7. Fees

A. The amount of and the responsibility for paying the fees for the services of the Arbitrator will be determined by the Group's Fee Schedule applying at the time of the initiation of the arbitration. The Group requires that the representing attorney (and that attorney's law firms) shall be responsible for payment of the fees and expenses of The Group incurred on behalf of the client, or a retainer shall be provided by the party. The fees will be allocated equally among the parties in the dispute unless the parties otherwise agree.

B. The Arbitrator's fees and expenses shall be paid pursuant to agreements reached by the parties and/or their attorneys. All other expenses, including attorney fees, incurred by the parties in this arbitration shall be borne by the party incurring such expenses and fees. The only exceptions to the foregoing are: \_\_\_\_\_

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8. Pre-arbitration conference

A pre-arbitration conference will be scheduled as soon as is reasonable. The Arbitrator will preside. The participants will include the attorneys representing the respective parties. A party may participate even if a representing attorney is involved, and the party shall participate if there is no representing attorney. It will be necessary that the Agreement to Arbitrate be fully executed and in the possession of the Case Manager prior to the pre-arbitration conference. The agenda for the pre-arbitration conference may include the following:

1. Scheduling of any matters involved in the arbitration including the hearing.
2. Addressing any logistical matters.
3. Review of the substantive issues generally.
4. Review of the order to be followed in the hearing.
5. Any other matters outstanding.

All matters addressed in the pre-arbitration conference will be resolved by agreement of the parties or their counsel; and if not, then by the discretion of the Arbitrator.

9. Discovery

No discovery will be allowed except by the agreement of the parties or by authority of governing law.

10. Hearing

The hearing shall be commenced and conducted by the Arbitrator. All relevant evidence shall be admissible subject to the discretion of the Arbitrator. The general order of these proceedings shall be similar to that used in courts, subject to the discretion of the Arbitrator. Hearings, as well as all other activities, will be convened privately. The Arbitrator may proceed with the hearing if a party is absent without good cause. The Arbitrator shall administer an oath to each witness to tell the truth. Continuances may be granted by the Arbitrator only for good cause as determined by the discretion of the Arbitrator.

11. Recording the Hearing

Any party may at its own expense procure appropriate services to record the proceedings of the arbitration hearing.

12. Venue

The actual or potential venue of the dispute will not be a factor in the Arbitrator's Award unless all parties, or their counsel, agree otherwise.

13. The Award

The Arbitrator shall send to the parties or their counsel by regular mail or facsimile a written Award as soon as is reasonable after the conclusion of the hearing. The award shall be based on the governing law as applied to the facts. The Award of the Arbitrator shall be binding upon the parties without any right of appeal except for any appeal allowed by governing law.

14. Enforcement of the Award

Judgment may be entered on the Award rendered in this case, and such judgment may be enforced pursuant to processes available under governing law.

15. Statute of Limitations

All applicable statutes of limitations shall be tolled for the purposes of this arbitration no later than the day that the claim is received by The Group.

16. Role of Arbitrator

The Arbitrator occupies the role of a neutral. The Arbitrator is an independent contractor of The McCammon Group. The Arbitrator and The Group, including its independent contractors, employees, officers and shareholders, shall not be liable to the parties for any act or omission relating to this arbitration. Nor shall the Arbitrator, The Group, including its independent contractors, employees, officers and shareholders, be subject to subpoena or other process in any judicial or regulatory proceedings relating to this arbitration.

17. Communications with Arbitrator

No private communications with the Arbitrator shall be allowed. All communications with the Arbitrator by any party or by a party's attorney shall be made at a hearing or in a conference call with all opposing parties or their attorneys having been given reasonable opportunity to participate. All such conference calls shall be arranged by the Case Manager of The Group. All written communications with the Arbitrator shall also be made through the Case Manager unless the Arbitrator or the Case Manager directs otherwise. Copies of all written communications shall be sent by a party or their counsel to all other parties, or their counsel, by the same means and at the same time as the original communication is sent to The Group.

18. "High – Low Agreements"

The parties may agree that any Award rendered in the process shall not be enforceable beyond the limits established in a "High-Low" Agreement. Such an agreement may be provided to the Case Manager, but in no event will the existence or the substance of the "High-Low" Agreement be revealed to the Arbitrator before the expiration of thirty days after the issuance of the award. (See sample "High-Low" Agreement.)

19. Modification of Rules

The Rules may be modified by written agreement by all the parties to a dispute subject to the discretion of The Group. The Group may modify the Rules from time to time. The version of the Rules that is in existence at the time of the initiation of the claim shall govern.

20. Interpretation of Rules

The administrative office of The Group will make any administrative interpretation that is needed in applying the Rules. The Arbitrator will make any substantive interpretation that is needed in applying the Rules. The Arbitrator will determine what issues are administrative and what issues are substantive, if any such dispute arises.



## **“High-Low” Agreement**

Caption: \_\_\_\_\_

The parties wish to establish a “high-low” arrangement.

High = \_\_\_\_\_

Low = \_\_\_\_\_

Specifically, this means that if the Award is in an amount between or equal to the high and low stated above, then the Award shall be enforceable in the amount stated in the Award. If the Award exceeds the High, then the enforceability of the Award shall be limited to the amount stated as the High. If the Award is in an amount below the Low, including any Award wherein the claiming party is awarded nothing, then the Award shall be enforceable in the amount stated as the Low.

Claimant or Claimant’s Counsel Signature \_\_\_\_\_

Respondent or Respondent’s Counsel Signature \_\_\_\_\_

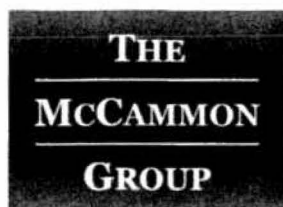
Respondent or Respondent’s Counsel Signature \_\_\_\_\_

Respondent or Respondent’s Counsel Signature \_\_\_\_\_

## SAMPLE ALTERNATIVE DISPUTE RESOLUTION CLAUSES

### **Arbitration Clause** (Arbitration required; Provider, cost sharing specified)

If a dispute arises out of this contract, the parties agree to arbitrate the dispute. The arbitration shall be administered and conducted by (The McCammon Group) according to its standard arbitration rules governing at the time one of the parties initiates a claim. The fees for the arbitration services shall be borne equally by the parties unless otherwise agreed. The law of (state) shall govern. (other provisions can be inserted here)



## CIVIL DISPUTE FEE SCHEDULE

The McCammon Group strives to provide mediation and arbitration services with Quality, Results and Value. To achieve this, we have established a tiered fee schedule that reflects the differences in the size of cases. There are no filing, administrative or cancellation fees. The hourly rate is derived from the schedule below.

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<b>Fee Tier (Mid-Point of the Offer and Demand)</b>	<b>Professional Rate (Usually divided among the parties)</b>
Under \$50,000	\$200/Hour
From \$50,001 - \$100,000	\$300/Hour
From \$100,001 - \$250,000	\$350/Hour
From \$250,001 - \$1,000,000	\$390/Hour
Over \$1,000,000	\$450/Hour

The fee tier is determined by the mid-point of the offer and demand. If no negotiations have occurred, or if the case is not based on monetary values, the professional rate will be assigned based on the available information.

The mid-point and associated fee tier do not suggest the actual or potential value of the case; they are merely used to classify the case.

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The professional rate applies to all of the Professional's time, for example, pre-process conference calls, review of submissions, the process itself and any post-process time including follow-up activities, deliberation and award preparation (arbitration), etc. Travel time is billed at one-half the professional rate, plus travel related expenses. Also, the cost of long distance phone calls will be billed.

Fees will be divided evenly among the parties unless otherwise agreed by the parties and communicated to The McCammon Group Case Manager in advance of the proceeding. For parties represented by a lawyer, the law firm, as well as the lawyer, will be responsible for payment. Alternatively, the lawyer (the law firm) may arrange for the respective client to provide an appropriate retainer due 14 days before the scheduled event. A party is defined as a single client or any number of clients represented by a single law firm.

This schedule does not apply to certain Professionals and it may be adjusted for cases involving more than one Professional.