

# **APPENDIX B**

# **EXHIBIT 1**

PHILLIPS, GARDILL, KAISER & ALTMAYER, PLLC  
LAWYERS

61 FOURTEENTH STREET  
WHEELING, WEST VIRGINIA 26003

November 30, 2010

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Kelle Strickland, Esq.  
Counsel to the Ranking Republican Member  
Committee on Standards of Official Conduct  
HOUSE OF REPRESENTATIVES  
Washington, DC  
Via E-Mail

RE: McKINLEY & ASSOCIATES, INC.

Dear Kelle:

Thank you for taking my call earlier today.

I represent McKinley & Associates, Inc. which is a West Virginia corporation that engages in the businesses of professional engineering and architecture through its employed professionals who hold licenses to practice professional engineering and architecture in a number of states including West Virginia. The stock in the corporation is owned principally (approximately 70%) by David B. McKinley, the newly elected Member of the House of Representatives from the First Congressional District of West Virginia. The other thirty percent of the stock in the company is owned by an ESOP for the employees of McKinley & Associates, Inc., both the licensed professionals and others. Congressman-elect McKinley is the founder of the business and a licensed professional engineer himself.

We have been reviewing the House Ethics Manual in order to advise Congressman-elect McKinley regarding his options concerning the business and his relationship with it while he remains a Member of Congress. Under West Virginia law we must file with the WV Board of Architects and the West Virginia Professional Engineers Board when there is a change in the supervising professional for the firm. Accordingly, this should be done prior to the time that Congressman-elect McKinley is sworn into office in Washington.

To the best of my knowledge McKinley & Associates, Inc. does not contract directly with the federal government or any federal agencies. However, many construction projects that McKinley & Associates, Inc. designs or supervises may be with state or local governments or boards that may receive federal funds either directly or indirectly.

What concerns us specifically is the language of the Ethics Reform Act and the related House Ethics Rules as they apply to professionals and specifically the definition of "professions

(89009.1)



Kelle Strickland, Esq.

November 30, 2010

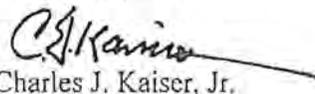
Page 2

that provide services involving a fiduciary relationship". On page 215 of the House Ethics Manual, there is the statement that this definition includes the practice of law, the sale of insurance, and the sale of real estate. On page 216 it is stated that the ban is intended to reach services such as legal, real estate, consulting and advising, insurance, medicine, architectural or financial. There are three specific prohibitions that apply to professions involving a fiduciary relationship: (1) the prohibition against receiving compensation from the practice of a covered profession; (2) the prohibition against receiving compensation for affiliating with an entity that provides covered professional services; and (3) the prohibition against permitting one's name to be used by an entity that provides covered professional services. Congressman-elect McKinley is currently the supervising professional engineer for McKinley & Associates, Inc., the President, member of the Board of Directors and majority shareholder. Congressman-elect McKinley is not a licensed architect but rather a licensed professional engineer, but the business of McKinley & Associates, Inc. is both the practice of architecture and professional engineering through its duly-licensed employees.

Paramount among our concerns is the future use of the name: McKinley & Associates, Inc. Over more than twenty years in the region considerable goodwill and name-recognition has accrued to this name. Moreover, Congressman-elect McKinley's deceased father, though not associated with the current firm, was also a licensed professional engineer and had a long career in the area. Much of the company's goodwill that has accrued as a result of the name would be lost if the name must be changed. Accordingly, we would like to explore the possibility of retaining the name McKinley & Associates, Inc. if Congressman-elect McKinley would sever his other relationships with the business by for example: (a) selling his stock to the ESOP in return for a note payable over a period of years; (b) alternately giving or selling his stock to his wife or children; (c) resigning as an officer and director; and (d) having the company designate other professionals as its supervising architect and supervising professional engineer. If you believe that McKinley & Associates, Inc. can escape being designated as engaging in a "profession that involves a fiduciary relationship" by requesting a waiver or clarification of the definition, please advise as to the best way to go about that process. Obviously, if we could simply keep the status quo so far as the name and stock ownership of the business is concerned that would be most desirable to Congressman-elect McKinley, even if he must take a sabbatical so far as his employment and other responsibilities toward the firm while a Member.

In the event you would like to discuss these matters further, please do not hesitate to contact me. Thank you for your assistance.

Very truly yours,



Charles J. Kaiser, Jr.

CJK/sls

cc: Congressman-elect David B. McKinley

(80009.1)

# **EXHIBIT 2**

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From: David Carenbauer [REDACTED]@mckinleyassoc.com>  
Sent: Wednesday, September 05, 2012 2:43 PM  
To: 'David B McKinley'  
Subject: Johnson B. McKinley names

Mr. McKinley,

I saw drawings from around 1954 through 1992, and these are the variations of the names I saw (the one in bold is the one I saw the most):

ENGINEER—J.B. McKINLEY

ENG'R—J.B. McKINLEY

J.B. McKINLEY, ENG'R

J.B. McKINLEY, P.E.

J.B. McKINLEY ENGINEERS

JOHNSON B. McKINLEY

JOHNSON B. McKINLEY, P.E.

JOHNSON B. McKINLEY, CONSULTING ENGINEER

JOHNSON McKINLEY CONSULTING ENG'R

JOHNSON McKINLEY CONSULTING ENGINEER

Thanks,

David



# **EXHIBIT 3**

PHILLIPS, GARDILL, KAISER & ALTMAYER, PLLC  
LAWYERS

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CHARLES J. KAISER, JR.  
H. BRANN ALTMAYER \*  
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EDWARD M. GEORGE, III  
DENISE KNOUSE-SNYDER  
TODD M. KILDOW \*\*  
RICHARD N. BEAVER  
J. CHRISTOPHER GARDILL  
ROBERT D. PLUMBY \*  
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61 FOURTEENTH STREET  
WHEELING, WEST VIRGINIA 26003

January 3, 2011

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Committee on Standards of Official Conduct  
U.S. HOUSE OF REPRESENTATIVES  
HT-2, The Capitol  
Washington, DC 20515

RE: Member-elect David B. McKinley (1<sup>st</sup> Dist. W. Va.)  
McKINLEY & ASSOCIATES, INC.

Greetings:

Please be advised that we represent McKinley & Associates, Inc., a West Virginia corporation (hereafter often referred to as the "Company") that provides professional engineering and architectural services through its employees who are professional engineers and licensed architects under the laws of West Virginia, Ohio, and Pennsylvania. The Company is controlled by David B. McKinley, a licensed professional engineer, who was recently elected as a Member of the U.S. House of Representatives for the First Congressional District of West Virginia. Congressman-elect McKinley has directed us to submit this letter to the Committee in order to advise the Committee concerning the steps that he has taken to comply with the House Ethics Manual and to seek a waiver of the application of certain Rules which we believe should not be applied to the Company.

Approximately 70% of the common stock of McKinley & Associates, Inc. is owned by Congressman-elect McKinley. The remaining common stock (approximately 30%) is owned by an Employee Stock Ownership Plan ("ESOP") whose beneficiaries include the employees of McKinley & Associates, Inc. who are licensed as engineers and architects as well as those additional non-licensed employees of the Company. The Company has approximately 40 employees located in offices in Wheeling and Charleston, West Virginia, and in Washington, Pennsylvania, and is believed to be one of the largest architectural/engineering firms in the State of West Virginia.

McKinley & Associates, Inc. and its predecessor McKinley Engineering were the outgrowth of two licensed professional engineers that have worked in the Wheeling area since approximately 1950. Johnson B. McKinley, David B. McKinley's father, was a licensed professional engineer who maintained an office as consulting engineer in Wheeling for nearly 40 years. During most of those years Johnson B. McKinley maintained a one-person office, but David B. McKinley and Johnson B. McKinley worked together for 2 years prior to Johnson B. McKinley's retirement, and McKinley & Associates, Inc. is the custodian of all of the drawings,



files, and other assets accumulated by Johnson B. McKinley over his career as a licensed professional engineer. McKinley & Associates, Inc. also assumed many of the same clients and businesses after his father's retirement in the 1980s. Until recently, West Virginia law required engineering and architectural firms to be owned in large part by licensed engineers and architects themselves. Ownership restrictions remain in place for other states where the Company provides these services. Congressman-elect McKinley in addition holds the promissory note by which the ESOP purchased its stock in the Company from him and is also guarantor on the Company's bank loans that are used for its operations.

West Virginia law requires a licensed professional engineer to supervise the engineering work of the Company. Tim Mizer, P.E. has been registered with the West Virginia Board of Professional Engineers as the supervisor for all of the employees of the firm engaged in licensed professional engineering. Likewise, the West Virginia Board of Architecture requires that companies conducting such business in the State register a licensed architect with the Board to be the supervisor for all employees of the firm involved in the practice of architecture. Mr. Gregg Dorfner, A.I.A. has been registered as the supervisor of architects for McKinley & Associates, Inc. Except for the fact that these gentlemen are employees of the Company and beneficiaries of the ESOP, neither of them have any relationship to David B. McKinley.

Prior to being sworn in as a Member of the House of Representatives, David B. McKinley will resign as an officer and director of McKinley & Associates, Inc. and place his stock in a blind trust that will be held for so long as he remains a Member of the House of Representatives or otherwise holds an elected federal office. Congressman McKinley will of course know that the trust holds his stock, unless and until sold; however, Congressman McKinley will receive no compensation from McKinley & Associates, Inc. and will not be entitled to exercise voting rights. The promissory note payable to David B. McKinley by which the ESOP purchased the stock that it holds in the Company will continue to be paid in accordance with its terms. The terms of this note were arrived at through a third-party appraisal of the Company on behalf of the ESOP and predates by many years Mr. McKinley's election to the House of Representatives.

We are seeking an advisory opinion and, depending upon the outcome of the advisory opinion, two specific waivers related to the House Ethics Manual as it applies to Congressman-elect McKinley and McKinley & Associates, Inc. The advisory opinion has to do with the operations of McKinley & Associates, Inc. not being considered to be "professions that provide services involving a fiduciary relationship".

We assert that the professional engineering and architectural services provided by McKinley & Associates, Inc. are not the type of professional services that involve a fiduciary relationship and are, therefore, not of the kind of professional services that were intended to be prohibited under the House Ethics Manual and Title 5 – Appendix 4 – section 502 of the United States Code. The language "fiduciary relationship" is not defined in either the federal law or the House Ethics Manual. Generally however, a fiduciary relationship is one that connotes a high level of trust between the parties such that a fiduciary is required to act in a manner that makes

the other party's interests paramount to that of the fiduciary. While this may apply with respect to lawyers, real estate brokers, and insurance representatives, the same cannot be said for engineers and architects. To the contrary, an engineer and an architect are duty bound to protect the public from poor designs and improper construction methods. While a lawyer is legally required to keep his communications and in some cases even his relationship with a client strictly confidential, this is not the case with respect to an engineer or an architect. In most cases the services of an engineer or an architect are only engaged after a public bidding contest seeking the lowest bid for the work. Moreover, the engineer's or architect's workproducts, the drawings, are generally submitted to public authorities – that is, state and county building inspectors and licensing bureaus – in order to obtain the appropriate governmental authority and necessary permits to proceed with the construction work. Thus, nearly all of the work of an architect or an engineer is within the purview of the public, unlike that of a lawyer or a business consultant where most of their work occurs outside of the public view.

If the Committee agrees with our assertion that McKinley & Associates, Inc. is not a firm that provides professional services involving a fiduciary relationship, then Member-elect David B. McKinley's resignation as an officer and director of the Company, placing the stock titled in his name in a blind trust, and rejecting any form of compensation from the Company other than the continued payment of principal and interest on a pre-existing promissory note from the ESOP which acquired the Company stock should eliminate any potential violation of the Rules by isolating Congressman McKinley from the Company.

If the Committee on Standards of Official Conduct is not persuaded that McKinley & Associates, Inc. is a firm that does not provide professional services involving a fiduciary relationship; we believe that the Company can nonetheless continue to use its existing name despite the fact that David B. McKinley is a Member of the U.S. House of Representatives because the Company qualifies for the family name exception. As previously noted, David B. McKinley is the second generation of his family to be licensed as a professional engineer in the State of West Virginia and to practice his profession using the name McKinley associated with engineering in the City of Wheeling. Thus the company's name is as much related to the reputation of Johnson B. McKinley as it is to David B. McKinley. The company's inability to use its existing name would also create a severe hardship for all of the current employees of the firm, both its professional employees and its other employees. Because of the McKinley & Associates, Inc. ESOP, the employees are dependent upon the continued success of the firm not only for their compensation but also for their retirement savings. Accordingly, if McKinley & Associates, Inc. is deemed to be a firm that provides professional services involving a fiduciary relationship (and it should not be), McKinley & Associates, Inc. should nevertheless be permitted to retain its existing name under the well-recognized family name exception.

The final waiver that is being sought for McKinley & Associates, Inc. is the continued affiliation of David B. McKinley as personal guarantor of the Company's existing lines of credit. McKinley & Associates, Inc. has an existing line of credit with Wesbanco Bank, Inc. in the amount of \$350,000. This line of credit is used to support the Company's on-going cash requirements for salaries and other operating expenses and is essential for the Company's

continued operation. Congressman-elect McKinley as the largest shareholder of the Company has personally guaranteed the line of credit, and it is unlikely that the existing loan can continue without his personal guarantee. Nevertheless, Congressman-elect McKinley is willing to keep his personal guarantee in place after he has transferred his interest in the Company to a blind trust and resigned as an officer and director. This will allow the Company time to make other financial arrangements and not threaten the employment of the approximately 40 employees who rely upon the Company for their livelihood. The only other shareholder of the Company, the ESOP, is unable to guarantee the Company's bank loans. However, it is expected that McKinley & Associates, Inc. itself will be able to generate sufficient cash internally so that it can both reduce the need for its lines of credit and so that it can, over time, accumulate financial assets that can substitute for Congressman-elect McKinley's personal guarantee. Accordingly, this waiver would permit David B. McKinley to continue to act as the personal guarantor of the existing loans of McKinley & Associates, Inc. indefinitely and such personal guarantee would not be considered an "improper affiliation" between the Member and the Company since Congressman-elect McKinley would have no authority to direct the Company's activities.

In the event you would like additional facts or would care to confer further regarding these matters, please do not hesitate to contact me. A copy of the Trust created to hold Congressman-elect McKinley's stock in McKinley & Associates, Inc. is enclosed. Thank you for your assistance and cooperation.

Very truly yours,



Charles J. Kaiser, Jr.

CJK/sls  
Enclosure

cc: Congressman-elect David B. McKinley

# **EXHIBIT 4**

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From: Dixon, Carol <Carol.Dixon@mail.house.gov>  
Sent: Friday, November 05, 2010 5:04 PM  
To: dmckinley@[REDACTED]  
Cc: Chisam, Blake  
Subject: House outside employment restrictions

Mr. McKinley-

Per our conversation earlier today, following is additional information regarding the outside employment restrictions applicable to Members of the House. For the sake of completeness, I am attaching the link to the entire *House Ethics Manual*, and the relevant chapter is Chapter 5, entitled "Outside Employment and Income," pages 185-246. While the entire chapter provides useful guidance, the pages specifically dealing with the fiduciary restrictions are pages 213-223. In particular, pages 221-222 cover the issue of the name of the firm. The informal opinion of the Committee staff is that these restrictions would necessitate changing the name of your firm, since it is one that provides fiduciary services and currently utilizes your name. You can seek a formal determination on that question from the Chair & Ranking Member of the Committee by written request, should you choose to do so.

I am happy to address any questions you have about your business as you prepare to take office, including more specific details on submitting a written request to the Committee. Feel free to have your attorney contact me directly if that is more convenient.

[http://ethics.house.gov/Media/PDF/2008\\_House\\_Ethics\\_Manual.pdf](http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf)

- Carol

Carol E. Dixon, Counsel  
Committee on Standards of Official Conduct  
HVC-227, Capitol Visitor Center  
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No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 10.0.1153 / Virus Database: 424/3239 - Release Date: 11/05/10



# **EXHIBIT 5**

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rom: David B McKinley <[REDACTED]@mckinleyassoc.com>  
Sent: Saturday, November 06, 2010 12:51 AM  
To: 'mbaker@[REDACTED]'  
Cc: 'Tim Garon'  
Subject: FW: House outside employment restrictions

How absurd is that advice. They expect me to change the name of my company!!! Does she really expect me to believe that every lawyer or CPA in Congress has changed the name of their firm if they wish to continue doing business with government? I told her that her advice was BS and we'll start again but with our corporate attorney the next time. Think about it: hiding behind a name change makes it OK to do business with the Federal government. Unbelievable..... I have not read the manual as yet but her "informal opinion" is disturbing.

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From: Dixon, Carol [mailto:Carol.Dixon@mail.house.gov]  
Sent: Friday, November 05, 2010 5:04 PM  
To: dmckinley@[REDACTED]  
Cc: Chisam, Blake  
Subject: House outside employment restrictions

Mr. McKinley-

Per our conversation earlier today, following is additional information regarding the outside employment restrictions applicable to Members of the House. For the sake of completeness, I am attaching the link to the entire *House Ethics Manual*, and the relevant chapter is Chapter 5, entitled "Outside Employment and Income," pages 185-246. While the entire chapter provides useful guidance, the pages specifically dealing with the fiduciary restrictions are pages 213-223. In particular, pages 221-222 cover the issue of the name of the firm. The informal opinion of the Committee staff is that these restrictions would necessitate changing the name of your firm, since it is one that provides fiduciary services and currently utilizes your name. You can seek a formal determination on that question from the Chair & Ranking Member of the Committee by written request, should you choose to do so.

I am happy to address any questions you have about your business as you prepare to take office, including more specific details on submitting a written request to the Committee. Feel free to have your attorney contact me directly if that is more convenient.

[http://ethics.house.gov/Media/PDF/2008\\_House\\_Ethics\\_Manual.pdf](http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf)

- Carol

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Version: 10.0.1153 / Virus Database: 424/3239 - Release Date: 11/05/10

# **EXHIBIT 6**



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www.wileyrein.com

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2013 MAY -1 PM 2 00

COMMITTEE ON ETHICS

May 1, 2013

Jan Witold Baran  
202.719. [REDACTED]  
[REDACTED]@wileyrein.com

The Honorable K. Michael Conaway, Chairman  
The Honorable Linda T. Sanchez, Ranking Member  
Committee on Ethics  
U. S. House of Representatives  
1015 Longworth House Office Building  
Washington, DC 20515

Re: *Committee Request for Information, March 18, 2013*

Dear Chairman Conaway and Ranking Member Sanchez:

Congressman David B. McKinley, through counsel, respectfully submits to the Committee on Ethics his responses to the requests for information set forth by the Committee in its March 18, 2013 letter. Documentary materials responsive to the Committee's requests are included on an accompanying disk at Bates Numbers DBM00000001 through DBM00000554.

Rep. McKinley did not knowingly or intentionally violate any law, standard of conduct, or Committee directive with respect to use of the name McKinley & Associates by his now former firm. Indeed, as the Committee will see from the responses and materials provided, based on his understanding of the relevant standards and legal compliance options as explained to him by attorney Charles J. Kaiser, Rep. McKinley believed that he had resolved ethics concerns with respect to the name of McKinley & Associates when he entered into a Memorandum of Understanding ("MOU") with the company's Employee Stock Ownership Plan ("ESOP") on April 11, 2011. Through this MOU, Rep. McKinley 1) committed to the sale of all his remaining stock in the company to the ESOP and 2) agreed that he had "no further control over the ownership and operations of McKinley & Associates, Inc." Previously, attorney Kaiser had advised then Congressman-elect McKinley consistently that there were two compliance options with respect to the House ethics restrictions on providing professional services involving a fiduciary relationship: either change the name of the company or divest his interest in the company.

By entering into the MOU with the McKinley & Associates ESOP on April 11, 2011, then Congressman-elect McKinley believed that he had taken satisfactory good faith steps to effectuate this second compliance option as described by attorney Kaiser, that is, divestment of his interest in the company. As to what representatives of McKinley & Associates knew of Committee guidance at that time, prior to signing and entering into the MOU on behalf of the McKinley &





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The Honorable Linda T. Sanchez, Ranking Member  
May 1, 2013  
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Associates ESOP on April 11, 2011, ESOP Trustee Ernest Dellatorre (also a member of the company's management team) had been informed of recent guidance from Committee staff counsel that she was going to recommend that the Committee determine that the name "McKinley" would have to be removed from the company's name; other representatives of McKinley & Associates also knew of this guidance at that time. (In January 2011, McKinley & Associates personnel had also been apprised of Committee Counsel Stan Simpson's guidance that McKinley & Associates would not need to change its name because the company qualified as a "family business.")

Notwithstanding his good faith belief that he had resolved ethics concerns over the use of the name McKinley & Associates by his former company by entering into the MOU with the ESOP in April 2011, Rep. McKinley regrets that he did not respond more formally at the time to the Committee's letter to him dated June 24, 2011 (but received June 27, 2011), in which the Committee informed him that "a name change [of the company] is required under current rules . . ." In considering the question of Rep. McKinley's responsiveness, the Committee should keep a number of important factors in mind.

First, as summarized above and explained in more detail below, as of June 24, 2011, Rep. McKinley believed that he had taken appropriate and satisfactory ethics compliance steps with respect to McKinley & Associates when he entered into the MOU with the ESOP more than two months earlier.

Second, within a few days of receiving the letter from the Committee on June 27, 2011, Rep. McKinley told then Ethics Committee Chairman Jo Bonner on the House floor that he had already sold the company to which Chairman Bonner replied, in substance, that he wished it had not come to that. Through this exchange with the Chairman, Rep. McKinley believed that he had effectively provided notice to the Committee of his action and of the status of the company.

Third, by the time he received the Committee's letter on June 27, 2011, Rep. McKinley had not been treated well by the Committee process. In January 2011, a Committee counsel informed his attorney that he agreed that "McKinley & Associates qualified as a 'family business' and so the name would not need to be changed." More than two months later, another Committee counsel informed the attorney that, in a potential total reversal of the Committee's apparent position, she



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was going to recommend that the Committee determine that the name "McKinley" would have to be removed from the company's name. The Committee did not provide its formal written guidance on this matter to Rep. McKinley – via the June 24, 2011, Committee letter – until almost six full months after Rep. McKinley's attorney submitted his letter requesting written Committee guidance.

For these and other reasons discussed below, the Committee's process regarding and handling of this matter was seriously flawed. Rep. McKinley was concerned and upset by this process. However, Rep. McKinley believes that he may have allowed these understandable concerns to affect his responsiveness to the Committee and, if he did, he regrets having done so. He believes he should have responded in a more formal manner to the Committee's June 24, 2011, letter to inform the Committee of the good faith compliance steps he had already taken.

This letter incorporates all arguments supporting the continued use of the name "McKinley & Associates" by Rep. McKinley's former firm that were previously made to the Committee through undersigned counsels' September 14, 2012, letter submitted on behalf of Rep. McKinley. (Bates Numbers DMB00000527-38.) Although the Committee's March 18, 2013, letter seeks information and documents as part of an investigation, Rep. McKinley urges the Committee not to lose sight of the important advisory question underlying this whole matter, that is, whether "McKinley & Associates" is a "family name" under a long-recognized exception to the restrictions on providing fiduciary services imposed by the Ethics in Government Act. The Committee's implicit determination in June 2011 that "McKinley & Associates" is not a "family name" was not required by the facts, by the relevant laws and standards, by legislative history, or by policy. Indeed, all of these factors – the facts, laws and standards, legislative history, policy – provide substantial and sound support for a different, *de novo* determination by the Committee, a determination that "McKinley & Associates" is a "family name" or that its use by the company is otherwise permissible under the relevant fiduciary profession restrictions.

We urge the Committee to review Rep. McKinley's September 14, 2012, letter in its entirety. However, the following quoted paragraphs from that letter provide a summary of the substantial basis for determining that use of the McKinley & Associates name is not contrary to the restrictions relating to fiduciary professions:



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[A] number of factors support your approval of continued use of the name "McKinley & Associates" by Rep. McKinley's former firm. "McKinley" is a well-known family and historical name in West Virginia. The "McKinley" name in engineering and building design was originally established in West Virginia by Rep. McKinley's father, Johnson B. McKinley, and was reinforced by him through his long, public Association with McKinley & Associates. Entirely independent of Rep. McKinley's status as a Member of Congress, "McKinley & Associates" has long been – and remains – an established brand name in the provision of the highest-quality engineering, architecture, and interior design services.

As the legislative history of the Ethics in Government Act makes clear, the Act's restrictions (and the parallel restrictions under House Rule XXV) on the use of a "Member's name" are intended to address "cases where outside interests attempt to trade on the prestige of Members of Congress." This concern does not exist with McKinley & Associates. The company trades on the "McKinley" name as an historical name in West Virginia and as a "family name" in engineering and building design. The company trades on – indeed, relies upon – the name "McKinley & Associates" as an established and well-known brand name in its field.

As explained above and supported in detail below, at the time Rep. McKinley received the Committee's June 24, 2011, letter, he believed that he had already taken sufficient good faith steps to resolve any ethics concerns arising in connection with McKinley & Associates such that the company's continued use of that name was permissible. Rep. McKinley did not act with any bad intent in this matter, including in not responding more formally to the Committee's June 24, 2011, letter. However, regardless of any position the Committee may take with respect to Rep. McKinley's responsiveness to its June 24 letter, the Committee may and should reconsider its previous determination with respect to use of the name McKinley & Associates by Rep. McKinley's former company. The Committee may now make a more fully informed determination. The Committee should determine that continued use of the name "McKinley & Associates" by the company is not contrary to law, rule, or regulation and is, therefore, permissible.



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Although submitted by counsel on his behalf, the responses and materials provided with this letter were thoroughly reviewed by Rep. McKinley, were authorized and confirmed by him as accurate to the best of his knowledge, recollection, and belief at this time, and were approved and authorized by him for submission to the Committee, as was this letter. It should be noted that the Committee's request for details on conversations and interactions covers a period of two and half years; the request for information regarding Rep. McKinley's father goes back decades. Understandably, there may have been communications and there may be information responsive to the Committee's request which the Congressman does not recall at this time. With respect specifically to his wife and other members of his family, including his four adult children, Rep. McKinley believes he had numerous communications or discussions with them on matters relevant to the Committee's request which he does not now specifically recall. He also believes that he likely complained to other individuals, including other Members, about some of the matters covered in this letter, but he does not recall specific conversations.

Note that, to the extent that discussion and documentation in the following responses of communications between Rep. McKinley and attorney Charles J. Kaiser may be viewed as constituting a waiver by the Congressman of attorney-client privilege with respect to communications with Mr. Kaiser, with respect to any other communications between Rep. McKinley and any other counsel, no such waiver is intended to be implied, and none should be inferred.

With respect to the log of privileged or protected communications requested in Committee Request 1, please note that, as previously discussed with and agreed to by Committee Counsel, communications with undersigned counsel – who were initially retained by the Congressman to assist in responding to the Committee's August 24, 2012, letter – and communications in connection with obtaining information in response to the Committee's March 18, 2012, letter, are attorney-client privileged and/or work product protected and are not separately entered or noted on a log. A privilege log is provided herewith at Exhibit A with respect to withheld communications involving other counsel.

Thank you for your careful consideration of the information and documents provided by Rep. McKinley in response to the Committee's requests.



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#### Response to Committee Requests 1 and 4

In Request 1 of its March 18, 2013, letter to Rep. McKinley, the Committee asked the Congressman to provide it with “any and all details of meetings, conversations, or other interactions . . . after your election to the U.S. House of Representatives regarding the use of your name by the Firm.” In Request 4, the Committee asked the Congressman to “state the steps you took, if any, in response to the Committee’s letter dated June 24, 2011” and asked related questions. Committee Requests 1 and 4 are both addressed in the discussion below.

Rep. McKinley first became aware of possible concerns regarding the continued use of his name by the firm McKinley & Associates in communications with Ms. Carol E. Dixon, Counsel to the Committee, on November 5, 2010. In an email of that date to the Congressman (Bates Number DMB00000003), Ms. Dixon referenced a related call earlier that same day and stated: “The informal opinion of the Committee staff is that these [fiduciary] restrictions would necessitate changing the name of your firm, since it is one that provides fiduciary services and currently utilizes your name.”

Rep. McKinley’s understandably strong response to this “informal opinion” on the use of his name by the firm can be seen by his November 6, 2010, email to Martin Baker, a direct mail consultant to his campaign: “How absurd is that advice. They expect me to change the name of my company . . . I have not read the manual as yet, but her ‘informal opinion’ is disturbing.” (Bates Numbers DMB00000004-05.) Rep. McKinley explained what he viewed as “absurd” at this time when he wrote in this email: “hiding behind a name change makes it OK to do business with the Federal government. Unbelievable.” Note that the Tim Garon “cc’d” on this email was the Political Director of the National Republican Congressional Committee (“NRCC”) at the time.

On the morning of November 9, 2010, Andy Sere – then Regional Press Secretary for the NRCC and soon thereafter to become Rep. McKinley’s first congressional chief of staff – reached out to the Congressman by email to say that Tim Garon had mentioned the Committee “lawyer’s opinion on your company’s name” and to ask if there had “been any further developments.” Mr. Sere stated that he was going to make a few calls to see “how this issue has been handled in the past with other members in similar situations.” Later that day, Mr. Sere emailed Rep. McKinley to



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let him know that he had spoken with two people on the issue: John Tosch, apparently a corporate attorney for Rep. Vern Buchanan; and Todd Ungerecht, who had been counsel to Rep. Doc Hastings during his tenure as Chairman of the Ethics Committee. (Bates Numbers DMB00000020-22.)

On November 10, 2013, Andy Sere followed up with an email to Rep. McKinley into which he appears to have "cut and pasted" the content of an email from "a GOP lawyer who used to work on the ethics committee, to whom I previously referred." (Bates Number DMB00000023.) It appears that this "GOP lawyer" may have been Todd Ungerecht, but Rep. McKinley does not know if it was he. In this email, the "GOP lawyer" discussed whether "engineering consulting" is covered by the restrictions on "fiduciary professions" and provided his thoughts on how the Congressman's divestment of his interest in the firm could affect any necessity to change the name of the firm, depending on to whom he divested his interest.

Rep. McKinley recalls that orientation activities for his class of new Members began on about November 14, 2010. During this orientation period, Rep. McKinley recalls speaking about his business holdings with a young woman from the Ethics Committee staff after the ethics presentation. The Committee staffer stated that it was possible that Rep. McKinley would have to sell his company and might have to change the name of the company as well. Rep. McKinley asked the staffer what he was supposed to do if he was a one-term congressman and had no business to return to. Rep. McKinley recalls that the staffer responded by asking, either naively or cavalierly, "Wouldn't you just start a new business?" Rep. McKinley told the staffer that the next time she heard from him it would be through his attorney. The Congressman recalls that Mary McKinley, his wife, was part of this discussion. (Materials that appear to have been provided to Congressman-elect McKinley at, or in connection with, orientation are included at Bates Numbers DMB00000006-19.)

Sometime during the new Member orientation period in 2010, Rep. McKinley spoke in person with Rep. Jo Bonner, then Ranking Member and soon to become Chairman of the Ethics Committee, about the informal opinion of Committee staff that he might have to change the name of McKinley & Associates and/or sell his interest in the company. Rep. McKinley recalls Rep. Bonner saying there was a possibility of his receiving a waiver with respect to matters concerning McKinley & Associates, including with respect to the name of the company. Rep. McKinley



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also recalls Rep. Bonner advising him to get in touch with Kelle Strickland, his Counsel for Ethics Committee matters.

On their drive back to West Virginia after orientation, Rep. McKinley and his wife talked about the opinions provided by Ethics Committee staff regarding McKinley & Associates. Sometime after he arrived back in West Virginia, Rep. McKinley contacted attorney Charles J. Kaiser.<sup>1</sup> On November 17, 2010, attorney Kaiser wrote to Rep. McKinley at McKinley & Associates. This letter was headed "Business Restructuring" and in it Mr. Kaiser provided a brief overview of "a series of Rules that apply to professional businesses." (Bates Numbers DMB00000025-26.) From the documents collected and provided with this response, it appears that Rep. McKinley and Mr. Kaiser spoke about the House ethics issues on November 22, 2010, although Rep. McKinley does not recall if that was the date on which he first spoke to Mr. Kaiser about these matters. (Bates Numbers DMB00000027-28.) Rep. McKinley recalls that Mr. Kaiser was surprised by the ethics restrictions as applied to McKinley & Associates.

On November 23, 2010, Rep. McKinley followed up with an email to Mr. Kaiser, forwarding Andy Sere's November 10 email (referenced above) and summarizing points and questions covered in their discussion the previous day, including: "Keeping the name McKinley as the corporate identity is a huge and over-riding priority"; "Would simply selling to the ESOP make this [moot]?"; and "What is the waiver that has been discussed by Bonner?" (Bates Numbers DMB00000027-28.) Later on November 23, Rep. McKinley forwarded to Mr. Kaiser the November 9 emails from Andy Sere, discussed above. (Bates Numbers DMB00000029-30.)

On Wednesday, November 24, 2010 – the day before Thanksgiving – at 5:04 PM, Mr. Kaiser sent a highly significant email to Rep. McKinley in which, as the attorney advising Rep. McKinley on complying with House ethics requirements, Mr. Kaiser framed for Rep. McKinley the issues and the options for action

<sup>1</sup> With respect to the legal and ethics issues raised by Mr. McKinley's election to Congress, Mr. McKinley understands that, through early to mid-April 2011, Mr. Kaiser was providing legal advice and counsel to both Mr. McKinley and McKinley & Associates (which, until April 11, 2011 – as explained below – was both 70% owned by and controlled by Mr. McKinley). McKinley & Associates paid for these legal services.



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available to him. With regard to the "company name change," Mr. Kaiser wrote and advised Rep. McKinley as follows:

The question as to the change of name boils down to whether McKinley & Associates is considered to be a firm "providing professional services involving a fiduciary relationship." An example of this definition in the Rules is a company providing architectural services, but we can certainly ask for a ruling and argue that it does not apply to you because you are not an architect. If the ruling comes back favorable, you can keep your interest in the company, but not work or receive earned income from it. If McKinley & Associates is considered to be a firm providing professional services involving a fiduciary relationship, then it appears that you are left with two choices: (1) change the name, or (2) completely divest yourself of your interest in the company (this appears to include Mary as well). Please understand that your situation is different than family businesses that do not provide professional services (i.e. car dealerships), though I think the logic got lost when this Rule/law was formulated. In addition, it is important for you to understand that this is not simply a House Rule, but a federal statute.

(Bates Numbers DMB00000033-34.) (Emphasis added.)

This clearly stated analysis from Mr. Kaiser – either change the company name or divest yourself of your interest in the company – established a firm framework of understanding for Rep. McKinley through which he viewed his obligations under House ethics standards with respect to McKinley & Associates. This framework, to a very significant and persistent extent, guided his subsequent actions regarding his interest in McKinley & Associates, regarding the use of that name by the company, and regarding his understanding of, and steps taken in response to, Ethics Committee communications on these issues in 2010 and 2011.

The extent to which Mr. Kaiser's email of November 24, 2010, both galvanized Rep. McKinley's understanding of the options for compliance available to him and prompted him to preliminary action to effectuate one of these options can be seen in two emails from November 29, 2010. In the first email – sent by Rep. McKinley



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to his cousin Jon in response to a congratulatory message – Rep. McKinley talked about orientation, his House office assignment and swearing in, and then added: “In the meantime I apparently have to wrap up ownership of my A/E practice to comply with the Federal ethics rules.” (Bates Number DMB00000044.)

In the second email of November 29, Lynn Adams, Office Manager for McKinley & Associates and a member of the company management team, forwarded to Rep. McKinley the agenda for the upcoming company management meeting. Item 2 on this agenda is “ESOP buyout,” that is, discussion of having the McKinley & Associates ESOP – which already owned 30% of the company’s stock – purchase the remaining 70% of shares owned by Rep. McKinley. (Bates Number DMB00000057.) As this second email indicates, in November 2010, Rep. McKinley spoke to personnel of McKinley & Associates – including Lynn Adams, Ernie Dellatorre and, likely, others – about company-related issues arising from House ethics standards, but he does not recall specific conversations.

Also on the morning of November 29, 2010, Mr. McKinley had an exchange of emails with Andy Sere and Mr. Kaiser in the morning in which Rep. McKinley forwarded Mr. Kaiser’s November 24 email to Mr. Sere and asked Mr. Kaiser to “coordinate” with Mr. Sere, who by that time had become Rep. McKinley’s Chief of Staff. On November 29, by email, Mr. Sere also asked Rep. McKinley if he had “talked to Jo Bonner’s staffer” and recalled that “NRCC Counsel Jessica Furst” had given Rep. McKinley a “name and contact info” for this purpose. (As discussed below, Rep. McKinley met and spoke with Ms. Furst about ethics-related issues during the orientation period in Washington, D.C.) Mr. Sere stated to Rep. McKinley in this same email: “It does seem like we’ll have to ask for a ruling.” And, by email later that morning, Mr. Sere told Rep. McKinley: “Just talked with CJ [Kaiser]. We discussed possible next steps . . . will advise later today. (Bates Numbers DMB00000035-43, 45-51.)

It appears that Mr. Sere and Mr. Kaiser then talked on the phone on the morning of November 29, 2010. Based on a summary email about that call from Mr. Kaiser to Mr. Sere, copied to Rep. McKinley, Mr. Kaiser provided Mr. Sere with essentially the same analysis and the same two compliance options he presented to Rep. McKinley in the November 24, 2010, email discussed above: “If McKinley & Associates is considered to be a firm providing professional services involving a fiduciary relationship, it appears that there are two choices: (1) change the



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name; or (2) completely divest DBMcK's interest in the company (this appears to include David's wife as well)." (Bates Number DMB00000052.) (Emphasis added.) Mr. Sere followed up later that day with two more emails, sent to Mr. Kaiser and Rep. McKinley, relating to his apparent notification to NRCC "in-house counsel [Jessica Furst] of the issue." Mr. Sere also refers to a proposed discussion on the issue with NRCC "outside counsel," but it appears that this discussion did not occur that day and Rep. McKinley does not specifically recall if it did occur at some later time. (Bates Numbers DMB00000053-56.) In closing out this particular email exchange on the morning of November 30, 2010, Rep. McKinley, in an email to Mr. Sere and Mr. Kaiser, turned the focus of his attorney's steps to "[Mr.] Bonner's staff," noting: "Bonner had confidently suggested that something could be worked out and not to worry; he then turned me over to Kelle, his committee counsel. I am anxious to hear what Bonner's people have to add to this discussion." (Bates Numbers DMB00000058-59.)

As the emails included at Bates Numbers DMB00000061-63 show, Mr. Kaiser spoke with both Jessica Furst and Kelle Strickland on November 30, 2010. Before reviewing more information about these discussions, however, it is worth noting the strength and urgency of Rep. McKinley's concern at this time about the future of the company to which he had devoted 30 years of his life. In an email to Mr. Sere and Mr. Kaiser sent at 11:46 AM on November 30, 2010, Rep. McKinley wrote: "Think about it: if a member-elect were 40 years old and had started his own firm 15 years previously, forcing him to divest himself of the company ownership and changing the name leaves him with what to return to if he were defeated two years later? Bonner said there is a solution; what is it." (Bates Number DMB00000060.)

According to the December 1, 2010, email from Mr. Kaiser to Rep. McKinley (Bates Number DMB00000068), when Mr. Kaiser spoke to Ms. Furst on November 30, after she "reviewed all of the email traffic," Ms. Furst "confirmed [his] concerns," presumably about the stark choice facing Rep. McKinley: either change the name of the company or divest his interest in it. In this same email, Mr. Kaiser notes that he also spoke to Kelle Strickland on November 30, telling Rep. McKinley, "I explained the issues and the background and told her that I would place all of this in a letter to her so that she could advise the best way to proceed."



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Mr. Kaiser attached the letter to Ms. Strickland to his email to Rep. McKinley, which is discussed below. (Bates Numbers DMB00000069-70.)

In concluding his December 1 email to Rep. McKinley, Mr. Kaiser makes a point about the restrictions on the practice of the designated "fiduciary professions" that explains and underscores the frustration of many non-lawyer Members and Senators covered by these restrictions: "Adding architects and engineers to a legal prohibition that was clearly intended to apply to lawyers and business advisers makes no logical sense – if a lobbyist is intending to curry favor with a Congressman he can do it just as easily by purchasing a car from the car dealership as he can by hiring the architect to design his house." As an historical observation, Mr. Kaiser's statement is pretty close to the mark. There is certainly support for the conclusion that the drafters of the "fiduciary profession" restrictions – many of whom were lawyers – did not want to single out the legal profession as being singularly susceptible to creating the potential for a financial conflict, so the restrictions were made to apply to a category created and defined more broadly, the "professions that provide services involving a fiduciary relationship." But, importantly and as Mr. Kaiser further notes in this email: "Nonetheless, the law is the law; and we must find a way to comply with it." That is what Rep. McKinley tried to do, and believed he did, following his understanding of the law as it had been explained to him.

In his November 30, 2010, letter to Kelle Strickland (Bates Numbers DMB00000069-70), Mr. Kaiser sought guidance "in order to advise Congressman-elect McKinley regarding his options concerning the business [McKinley & Associates] and his relationship with it while he remains a Member of Congress." As the following quoted paragraph shows, Mr. Kaiser's letter to Ms. Strickland was informed by the same two-option understanding and framework he set out for Rep. McKinley in the November 24 email quoted above – that is, Rep. McKinley could either change the company name or divest his interest in the company – although in the letter to Ms. Strickland Mr. Kaiser also explored the possibility of a "waiver" exempting McKinley & Associates from the fiduciary profession restrictions:

Paramount among our concerns is the future use of the name:  
McKinley & Associates, Inc. Over more than twenty years in the  
region considerable goodwill and name-recognition has accrued to



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this name. Moreover, Congressman-elect McKinley's deceased father, though not associated with the current firm, was also a licensed professional engineer and had a long career in the area. Much of the company's goodwill that has accrued as a result of the name would be lost if the name must be changed. Accordingly, we would like to explore the possibility of retaining the name McKinley & Associates, Inc. if Congressman-elect McKinley would sever his other relationships with the business by for example: (a) selling his stock to the ESOP in return for a note payable over a period of years; (b) alternately giving or selling his stock to his wife or children; (c) resigning as an officer and director; and (d) having the company designate other professionals as its supervising architect and supervising professional engineer. If you believe that McKinley & Associates, Inc. can escape being designated as engaging in a "profession that involves a fiduciary relationship" by requesting a waiver or clarification of the definition, please advise as to the best way to go about that process. Obviously, if we could simply keep the status quo so far as the name and stock ownership of the business is concerned that would be most desirable to Congressman-elect McKinley, even if he must take a sabbatical so far as his employment and other responsibilities toward the firm while a Member.

With regard to Mr. Kaiser's statement in this November 30, 2010, letter that Rep. McKinley's father – Johnson B. McKinley – was "not associated with the current firm," this statement was not accurate. Although the elder McKinley does not appear to have been an on-the-payroll employee of McKinley & Associates, he was "associated" with the firm as a consultant and otherwise, as we have described for the Committee previously in our September 14, 2012, letter (Bates Numbers DMB00000527-38) and as we also describe in our response below to Committee Request 2.

While awaiting a response to the letter to Ms. Strickland – and in conformity with the guidance and framework of understanding provided by Mr. Kaiser – Rep. McKinley continued to take steps preparatory to selling McKinley & Associates, as a legal alternative to changing the company name. Two email exchanges between Lynn Adams, of McKinley & Associates, and George B. Sanders, Jr., attorney for



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the McKinley & Associates ESOP, show Rep. McKinley's increasing focus on selling his remaining 70% interest in the company to the ESOP (or 60% to the company and 10% to another individual) as soon as possible. In a December 2, 2010, exchange of emails with the subject heading "Urgent Question" (Bates Number DMB00000071-73) Ms. Adams wrote to Mr. Sanders, with a copy to Rep. McKinley: "Mr. McKinley would like to know what stock valuation date would be used if he were to sell his remaining 70% of McKinley & Associates, Inc. to the ESOP on 1/5/11 . . . He needs this information to make an informed decision concerning the Company prior to taking office in the U.S. House in early January due to House ethics rules." In his response, Mr. Sanders noted: "If David is going to do this, we need to start ASAP. I am not sure we could get it done by 1/5/2011 but would surely come close."

By December 10, 2010, a plan for Rep. McKinley to resolve potential ethics issues by selling his remaining interest in the company was closer to execution, as Ms. Adams' email to Mr. Sanders, copied to Rep. McKinley, shows: "It appears as though we may be moving toward the sale of the remaining McKinley stock, or at least 60% of it [10% would go to another individual], to the ESOP . . . [U]nderstanding that this transaction and valuation will take time, our local attorney [apparently Mr. Kaiser] has indicated that as long as we can initiate the sale by January 5, 2011, we would be demonstrating good-faith and could complete the sale later in the year." (Bates Numbers DMB00000090.) (Emphasis added.) Attorney Sanders' December 12, 2010, response to Ms. Adams, also copied to Mr. McKinley, may be read as confirming the "local attorney's" point (cited by Ms. Adams in her email) that, even if Rep. McKinley's sale of the company were not completed until later in the year, initiation of the sale by January 5, 2011, would show Rep. McKinley's good faith in the effort to comply with congressional ethics requirements. (Bates Numbers DMB00000093-94.)

A number of other email exchanges during this same period relate to efforts by Rep. McKinley to resolve ethics issues arising in connection with McKinley & Associates before he took office in January 2011. As reflected in an email from Ms. Adams to Rep. McKinley, dated December 3, 2010 (Bates Number DMB00000076), it appears that at a McKinley & Associates management meeting held on December 2, 2010, there was discussion of the possibility of splitting the company to create an engineering company that *could* retain the name McKinley & Associates and an architectural firm with a different name. Ms. Adams asked Mr.



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Kaiser for his opinion on this possibility and inquired about "the prohibitions from putting the company into Mary's name" in a December 7, 2010 email. (Bates Numbers DMB00000077-78.) In a December 10 email to Ms. Adams, copied to Rep. McKinley, Mr. Kaiser discussed the "problem with Mary McKinley being a significant owner of McKinley & Associates." (Bates Number DMB00000092.) In a December 14, 2010, email to Mr. Kaiser, copied to Rep. McKinley, Ms. Adams asked for guidance with respect to whether other steps – closing Rep. McKinley's corporate card, discontinuing use of Mary McKinley's personal card for company purchases, and designating new officers – might be needed to dissociate Rep. McKinley and his wife from McKinley & Associates before he took office. (Bates Numbers DMB00000096-102.)

While Rep. McKinley, attorney Kaiser, and personnel at McKinley & Associates were taking the steps described above for Rep. McKinley and his wife to sell their interests in McKinley & Associates, if necessary, to comply with House ethics standards, Mr. Kaiser heard back from Ms. Strickland in response to his November 30, 2010, letter to her. Mr. Kaiser informed Rep. McKinley, in a December 7, 2010, email that Ms. Strickland had consulted with Carol Dixon and "[t]hey are both of the opinion that while McKinley & Associates, Inc. is providing professional services involving a fiduciary relationship that the company may be able to avoid changing the name under the 'family name exception' based upon the similar name of Johnson B. McKinley, Consulting Engineer. She suggested that we request written advice from the Committee and lodge this letter prior to David being sworn in on January 5, 2011." Mr. Kaiser advised, however, that despite the informal Committee staff guidance that the company "may be able to avoid changing the name," the transfer of the company would likely have to proceed: "Because the 'family name' exception does not eliminate the other two prohibitions (i.e. compensation and management affiliation), I believe that David will have to deal with the management structure and ownership of McKinley & Associates in any event. This will have to be accomplished prior to January 5 and should be done in time so that we can explain the reorganization to the Committee in the letter requesting the opinion on the name." (Bates Number DMB00000079.)

After Ms. Strickland advised Mr. Kaiser to seek written advice from the Committee, Rep. McKinley and Mr. Kaiser communicated on a number of occasions on drafts of the letter and on questions related to the request for Committee guidance on complying with the restrictions on a Member's providing



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professional service involving a fiduciary profession. (Bates Numbers DMB00000095, DMB00000103-63.) Lynn Adams, a member of the management team at McKinley & Associates, participated in or was copied on many of these email communications. As these email communications show, during the process of drafting a letter to the Committee the possibility of Rep. McKinley putting his interest in McKinley & Associates in a blind trust was added to the compliance options to be put before the Committee.

On January 3, 2011, at 3:53 PM, Mr. Kaiser emailed a signed letter to the Ethics Committee seeking an advisory opinion on matters relating to Rep. McKinley's interest in McKinley & Associates and on permitting McKinley & Associates "to retain its existing name under the well-recognized family name exception." (Bates Numbers DMB00000164-78). (Note that, although Mr. Kaiser emailed this signed letter to Kelle Strickland and Daniel Taylor at the Committee on January 3, the copy of the letter in the Committee's files, provided to Rep. McKinley in connection with the Committee's current request for information, bears a date of January 14, 2011.) Mr. Kaiser informed the Committee in this letter that "[p]rior to being sworn in as a Member of the House of Representatives, David B. McKinley will resign as an officer and director of McKinley & Associates, Inc. and place his stock in a blind trust that will be held for as long as he remains a member of the House of Representatives or otherwise holds an elected federal office."

Rep. McKinley recalls that sometime between his election to Congress and his being sworn in on January 5, 2011, he spoke with former Ohio Congressman Charlie Wilson about the informal guidance he had received from Ethics Committee staff with regard to his relationship with McKinley & Associates. Mr. Wilson – who had two businesses bearing the Wilson name in Ohio during his congressional tenure – told Rep. McKinley he did not think McKinley & Associates would have to change its name. Rep. McKinley also recalls speaking with Rep. Westmoreland at the Members' Retreat in January 2011, about these matters; Rep. McKinley recalls that at some point Rep. Westmoreland recommended that Rep. McKinley might want to confer with attorney Randy Evans.

A January 12, 2011, email indicates that Rep. McKinley had a brief contact with attorney Harry Buch regarding the letter pending before the Ethics Committee. (See entry on privilege log at Exhibit A.) Mr. Buch, in addition to being the



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proposed trustee listed on the materials submitted to the Committee with Mr. Kaiser's January 3, 2011, letter, was also an attorney for Rep. McKinley.

On January 25, 2011, attorney Kaiser received a crucial telephone call from Stan Simpson, Counsel at the Ethics Committee. As Mr. Kaiser informed Rep. McKinley the next day, in an email copied to Ms. Adams of McKinley & Associates management, Mr. Simpson notified Mr. Kaiser in this call "[t]hat the staff agreed with our assertion that McKinley & Associates does not provide professional services involving a fiduciary relationship . . . Mr. Simpson also agreed that McKinley & Associates qualified as a 'family business' and so the name would not need to be changed. He stated that as a result of the first point, there is no need for blind trust to hold your stock in McKinley & Associates." (Bates Numbers DMB00000185-86.) (Emphasis added.) Mr. Simpson's guidance to Mr. Kaiser, although oral and informal, could not have been clearer or more absolute: the name of McKinley & Associates would not need to be changed.

On January 26, 2011, Mr. Kaiser forwarded to Mary McKinley his January 25, 2011, email summarizing his call with Committee Counsel Simpson. It appears that on January 26, Mrs. McKinley and Mr. Kaiser also spoke by phone about Mr. Simpson's guidance. (See Bates Numbers DMB00000187-89 for this email and for what appears to be a page of notes by Mrs. McKinley on a January 26 call with Mr. Kaiser.)

Despite the clarity and specificity of Ethics Committee Counsel Stan Simpson's advice to Mr. Kaiser that McKinley & Associates did not provide professional services involving a fiduciary relationship and that the name McKinley & Associates would not need to be changed, more than two full months later – on March 31, 2011 – Mr. Kaiser received a call from another Committee Counsel, Heather Jones, completely contradicting Mr. Simpson's advice. Mr. Kaiser immediately informed Lynn Adams of the call. Then, in an "urgent" March 31, 2011, email to Mr. McKinley (Bates Number DMB00000216) – and copied to Ernie Dellatorre and Tim Mizer, both of McKinley & Associate management – Ms. Adams summarized the new Ethics Committee guidance from Ms. Jones: "She says that Stan Simpson, who provided the Ethics' position to him on you and the company is no longer with them and that she is going to recommend that the House Committee take a stand that you do have a fiduciary relationship and



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also that the McKinley name must be removed from the company.” (Emphasis added.)

It is well known, based on media reports, that, during this period of time in early 2011, the Ethics Committee was undergoing considerable organizational turmoil, with some Members and staff apparently under suspicion by other Members and staff. To some extent this confusion within the Committee staff appears to be reflected in Chairman Bonner’s reaction when Rep. McKinley spoke with him about Ms. Jones’ call. In an April 2, 2011, email to Mr. Kaiser (Bates Number DMB00000207-08), Rep. McKinley summarized his call with the Ethics Committee Chair:

Lynn [Adams, of the McKinley & Associates management team] has informed me that a different determination may be being considered. Consequently I have already spoken with Congressman Jo Bonner on Friday. He recommended that I get back to him next week because his staff was already gone for the day. He claimed he remembered some of our previous discussions but showed no awareness of an earlier recommendation by his staff. Nevertheless but [sic] he was not particularly pleased that another decision may be forthcoming and one that reversing [sic] an earlier and more encouraging solution.

Whatever was going on internally within the Committee, it is difficult to understand how the Committee could permit two of its staff counsel to provide entirely contradictory advice to a Member on a matter of such vital personal importance to him and of such financial importance not only to the Member, but also to his family, to his company, and to the many people employed by that company and dependent on it for their livelihood. This was not an abstract legal problem for Rep. McKinley or for the management and employees of McKinley & Associates. So it cannot be difficult for the current leadership and Members of the Committee to appreciate how the Committee’s apparent 180 degree turnabout in its advice surprised, shocked, and bewildered Rep. McKinley.

In response to the Committee’s reversal of opinion on the issues of whether McKinley & Associates provides services involving a fiduciary relationship and whether the company could retain its name, Rep. McKinley and members of



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McKinley & Associates management team determined to proceed with the plan for Rep. McKinley to transfer his remaining ownership interest in the company to the McKinley & Associates ESOP. This plan had been abandoned when Committee Counsel Stan Simpson advised on January 25 that the company would not have to change its name. Rep. McKinley cannot recall whether the idea to proceed with this transfer was his or whether it originated with Ernie Dellatorre or someone else at McKinley & Associates; after Ms. Jones's call to Mr. Kaiser on March 31, 2011, Rep. McKinley did discuss this matter with Mr. Dellatorre and others at McKinley & Associates, but he does not recall the details of any specific discussion.

On April 11, 2011, Mr. McKinley and Mr. Dellatorre, as ESOP Trustee, entered into and signed a Memorandum of Understanding ("MOU") on the "ESOP Purchase of Remaining McKinley & Associates Shares." (Bates Number DMB00000217.) Rep. McKinley believes that Mr. Dellatorre drafted this MOU. The MOU provided as follows:

As a result of your resignation as President of McKinley & Associates and our conversation last week regarding the potential for a perceived conflict with your ownership of the company during your term in Congress, this letter will serve as our memorandum of Understanding that the ESOP will purchase your remaining shares in McKinley & Associates. Once the share value is determined and the transferring document is approved, your remaining shares will be purchased by the ESOP. Payment for the shares will be similar to the funding you provided for the purchase of the original ESOP Shares.

Details on the stock valuation, the financing for the ESOP purchase, and the final transaction date will be detailed in a subsequent document to be developed by counsel for both of our signatures.

It is our mutual understanding that by agreeing to this Memorandum of Understanding that you will have no further control over the ownership and operations of McKinley & Associates, Inc.

(Emphasis added.)



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The Committee should recall that, at the time he signed and entered into this MOU with Rep. McKinley, Mr. Dellatorre knew of the Committee's likely reversal of its position on whether the company could maintain the name McKinley & Associates. Mr. Dellatorre had been copied on Lynn Adams March 31, 2011, email in which she stated that Committee Counsel Heather Jones was "going to recommend that the House Committee take a stand that you do have a fiduciary relationship and also that the McKinley name must be removed from the company."

Rep. McKinley entered into the MOU with Mr. Dellatorre and the ESOP on April 11, 2011, with the good faith understanding that – by committing to complete the transfer of his interest when a share value could be determined and by also committing specifically that, as of the date of the MOU, he had "no further control over the ownership and operations of McKinley & Associates, Inc." – he would be in compliance with the advice and framework for understanding previously provided to him by attorney Kaiser. Rep. McKinley believes he did not confer with Mr. Kaiser on the MOU, however. Rep. McKinley recalls that Mr. Kaiser took a "just change the name" stance in response to hearing from Heather Jones on March 31, 2011, that she was going to recommend that the company be required to change its name. Rep. McKinley understood Mr. Kaiser's stance as advocating what Mr. Kaiser saw – as a practical matter – as easiest option to put into effect. Rep. McKinley viewed Mr. Kaiser's practical stance, however, as being entirely consistent with Mr. Kaiser's guidance with respect to the two legal options for compliance – either change the company name or divest his interest – that were available to Rep. McKinley.

On April 14, 2011, Mr. Kaiser emailed a signed letter to Ms. Jones at the Committee explaining why the Committee would be in error if it found that McKinley & Associates was a firm providing professional services involving a fiduciary relationship. (Bates Numbers DMB00000222-26.) Mr. Kaiser sent his letter to Ms. Jones on April 14 following an April 13, 2011, email from Ms. Jones to him "reminding" him "that the Committee on Ethics is waiting on your brief regarding whether architects and engineers are fiduciaries under West Virginia law." (Bates Numbers DMB00000476-80.) Mr. Kaiser's argument in this April 14, 2011, letter is summed up in the following paragraph:



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West Virginia imposes fiduciary responsibilities only upon consulting engineers, not professional engineers. Moreover, the House Rules were intended to apply to areas where a professional had fiduciary responsibilities to his or her client which could necessarily conflict with the responsibilities of a Member of Congress. As has been shown, West Virginia law states clearly that the fiduciary responsibility of a licensed professional engineer or licensed architect is to the public, not the client. Thus the dangers that the House Rules were trying to guard against do not apply in this particular instance.

(Emphasis added.)

In this April 14, 2011, letter to Ms. Jones, Mr. Kaiser also reiterated "the history of the professional engineering firm within the McKinley family." By reiterating this history, Mr. Kaiser demonstrated that the name McKinley & Associates is a "family name," subject as such to a recognized Committee exception to the prohibition on a Member "permitting" his name to be used by an entity that provides professional services involving a fiduciary relationship.

By email on April 14, 2011, at 4:52 PM (Bates Numbers DMB00000222-26), Mr. Kaiser forwarded to Rep. McKinley and to Ms. Adams, at McKinley & Associates, a copy of this signed letter to Ms. Jones at the Ethics Committee. In this email, Mr. Kaiser notes that he "added the paragraph at the end reiterating the relationship between the Johnson McKinley engineering practice and the present-day McKinley & Associates." However, Rep. McKinley does not recall discussing drafts of the letter to Ms. Jones with Mr. Kaiser.

On May 2, 2011, apparently at the request of Andy Sere, Ms. Jackie Barber, then Deputy General Counsel at the NRCC, emailed Mr. Sere about laws and standards applicable to participation in a contract with the federal government by a Member or by a corporation with a relationship with a Member. (Bates Number DMB00000233.)

More than two months later, On June 23, 2011, Mr. Kaiser heard again from Ms. Jones at the Committee. Mr. Kaiser described this call in a June 24, 2011, email to Rep. McKinley, copied to Ms. Adams at McKinley & Associates (and included at Bates Number DMB00000235): "While she did not give me any indication as to



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the Committee's decision on this matter, she wanted confirmation from me that you had resigned your position as an officer and director of McKinley & Associates. I told her that your resignation letters were signed and delivered prior to your being sworn into office as a Member of Congress."

On June 27, 2011 – almost *six months* after his counsel submitted a letter to the Committee on January 3, 2011, seeking a formal Committee advisory opinion – Rep. McKinley received word in a phone call from Chairman Bonner that a letter would be forthcoming. In an email that same day at 5:29 PM to Mr. Kaiser, Rep. McKinley summarized the key point of the call with Chairman Bonner: "He says we must change the name of the company to McKinley Engineering." (Bates Number DMB00000237.) Kelle Strickland forwarded the actual letter – dated June 24, 2011 – to Rep. McKinley by email at 5:55 PM on June 27, 2011. (Bates Numbers DMB00000245-51.) As to why, in his June 27 call with Chairman Bonner, Rep. McKinley "countered with the option of selling the company to [his] wife or son" – notwithstanding the fact that the MOU was in place with the McKinley & Associates ESOP regarding transfer of shares and relinquishment of "control over the ownership and operations of the company" – Rep. McKinley believes he mentioned that option to see if the Committee would receive it favorably and in case the MOU could somehow be withdrawn in favor of that option. Rep. McKinley understood at the time, however, that he did not have control over the ownership and operations of McKinley & Associates, or the ESOP, and that the ESOP would have to agree to any modification of the terms of the MOU.

In reviewing the letter, Rep. McKinley quickly focused on a fundamental factual flaw in the Committee's analysis regarding what would qualify as a "family name" for the company, as he pointed out in a June 27, 2011, email to Mr. Kaiser: "This makes no sense. [T]hink about it: McKinley Engineering is OK but McKinley & Associates is a problem. My father's company was not McKinley Engineering and we never represented that it was. That name was the one I used as a sole proprietor for the early years of the company. Let's talk." (Bates Numbers DMB00000238-44.)<sup>2</sup>

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<sup>2</sup> The Committee's letter dated June 24, 2011, letter does state that Rep. McKinley's father, Johnson McKinley, "maintained a one-man office, McKinley Engineering, as a consulting engineer in Wheeling, West Virginia, beginning in 1954 until his retirement in the 1980s." It is not clear



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Rep. McKinley recalls that, within a day or two of receiving the Committee's letter on June 27, 2011, he approached Chairman Bonner before the Speaker's podium on the floor of the House. With regard to the Committee's letter, Rep. McKinley recalls saying to Chairman Bonner, "what the [heck] is this," or some other similarly expressive phrase. Rep. McKinley told Chairman Bonner that "McKinley Engineering" was the original name of *his* firm, not the name of his father's firm (as the Committee's letter incorrectly stated). Rep. McKinley recalls Chairman Bonner responding, in substance, that the Committee was not aware of this but had thought that "McKinley Engineering" was the name of his father's firm; Chairman Bonner said that this could make a difference to the Committee's determination. Rep. McKinley then responded that, in any event, it did not matter anymore because he had already sold his company, by which Rep. McKinley meant the arrangement put in place by the MOU. Chairman Bonner said that he did not know this and that he had hoped it would not come to this.

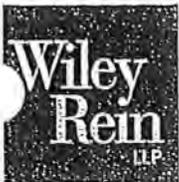
Shortly after receipt, Rep. McKinley shared the Committee's letter dated June 24, 2011, with members of management at McKinley & Associates.

With respect to steps taken in response to the Committee's letter dated June 24, 2011, Rep. McKinley reasonably believed that no such steps were necessary because – first through the MOU and then, at the end of 2011 and as discussed below, through the final redemption of his remaining shares by McKinley & Associates – he believed he had complied with the guidance from Mr. Kaiser that any ethics concerns that would arise for him in connection with the name "McKinley & Associates" would be resolved by either changing the company name or divesting his interest in the company. Rep. McKinley believed that the

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where the Committee got the information – or the incorrect idea – that Rep. McKinley's father called his practice "McKinley Engineering." It does not appear to be in any written submissions that had been made to the Committee by counsel for the Congressman. Given Rep. McKinley's recollection and understanding that his father did *not* call his own practice "McKinley Engineering" and given that "McKinley Engineering" was the original name of McKinley & Associates, there appears to be just as much basis for the Committee to determine that "McKinley & Associates" is a family name as there is for the Committee to determine that "McKinley Engineering" is a family name. Therefore – and for the other reasons in fact, law, and policy set forth in the instant response letter and in the September 14, 2012, letter to the Committee from the undersigned counsel for Rep. McKinley – the Committee should reconsider its guidance on this point and determine that "McKinley & Associates" itself is a "family name."



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MOU represented a satisfactory good faith effort to resolve the matter by complying with this second option. Rep. McKinley also believed that by the terms of the MOU – through which, as of April 11, 2011, he had given control over the ownership and operations of McKinley & Associates to the ESOP – he no longer had the power or authority to direct or control a change in the name of McKinley & Associates. Further, Rep. McKinley considered that, through his brief conversation with Chairman Bonner on the House floor soon after receiving the Committee's letter dated June 24, 2011 – in which he told the Chairman that he had sold the company – he had effectively notified the Committee about the action he had taken.

Nonetheless, Rep. McKinley regrets not having responded to the Committee's letter more formally at that time. Rep. McKinley was concerned and upset at the way the Committee had treated him. As described above, Rep. McKinley's concerns with the Committee's process in this matter included: being asked by Committee counsel why, if he had to sell McKinley & Associates, he could not just start another company when he left Congress; being advised by Committee counsel in January that the company *would not* have to change its name, hearing nothing from the Committee for two months, and, then being advised by a different Committee counsel that the company *would* have to change its name; hearing nothing from the Committee on this for more than another two months; having to wait a total of almost six months for a written response to his January 3, 2011, written request for formal written guidance on a matter of great personal and financial importance to him and to the management and employees of McKinley & Associates; learning that the Committee, in determining a "family name" for the business, relied upon a name for his father's business that did not exist and that, in any case, did not convey the actual business of McKinley & Associates. These are serious concerns that should not be minimized. However, Rep. McKinley believes that he may have allowed these concerns about the Committee's handling of this matter to affect his responsiveness to the Committee and, if he did, he regrets having done so; he believes he should have responded in a more formal manner to the Committee's letter dated June 24, 2011.

Documents indicate that, in late August 2011, Rep. McKinley had preliminary discussions with attorney Stefan Passantino in connection with this matter. Rep. McKinley did not sign an engagement letter with Mr. Passantino, but the Congressman considers these discussions to be covered by attorney-client



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privilege. Documents related to these discussions have been entered on the privilege log accompanying these responses at Exhibit A.

On October 11, 2011, Congressman and Mrs. McKinley had dinner with former Congressman Tom Reynolds and his associate Sally. It appears that "ethics matters" were discussed at the dinner, including discussion relating to what the Congressman, in an email to Mr. Reynolds the next day, refers to as his "'fifth' child," i.e., McKinley & Associates. (Bates Number DMB00000252.) On October 13, 2011, Mr. Reynolds responded by email to Rep. McKinley, saying that he had spoken with an attorney and asking the Congressman to call him. Mr. Reynolds followed up with Rep. McKinley again by email on November 4, 2011, on their "previous discussion about your business ownership and the house ethics committee"; in this same email Mr. Reynolds forward the contact information for attorney Rob Kelner. (Bates Number DMB00000257.) It appears that Rep. McKinley did not follow up on this recommendation.

Sometime in the late fall of 2011, Rep. McKinley, perhaps because of discussions with Ernie Dellatorre or others at McKinley & Associates, turned his attention to consummating the sale of his remaining shares in McKinley & Associates to the ESOP, as contemplated by the MOU he signed and entered into on April 11, 2011. There are a substantial number of documents related to this transaction, included with these responses at Bates Numbers DMB00000260-458. Rep. McKinley also had a number of discussions with individuals, including attorneys Ben Sanders and Charles Kaiser, persons at McKinley & Associates, and possibly others, about this transaction. An email from Mr. Sanders, distributed on December 31, 2011, to Ernie Dellatorre, Gregg Dorfner, and Tim Mizer at McKinley & Associates, discussed the transaction, its timing, and its effect. (Bates Number DMB00000369-70.) In this email, also sent to Rep. McKinley, Mr. Sanders explained that, "[b]ecause of the press of other business, particularly David's duties as a newly elected member of the House of Representatives, a closing of that sale [committed to through the MOU] has not occurred." Mr. Sanders noted that, "although the [MOU] in [Rep. McKinley's] mind means for all intents and purposes he no longer has an ownership interest in the Company, the [MOU] is apparently insufficient evidence of that fact from the point of view of House ethics rules." Mr. Sanders further noted that, as of that date – i.e., December 31, 2011 – "requirements imposed on the ESOP by ERISA" made it impossible to finalize the transaction with the ESOP by the end of 2011. Therefore, because Rep. McKinley



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wanted "to start 2012 without an ownership interest in the company," as of December 31, 2011, the corporation McKinley & Associates redeemed all of Rep. McKinley's remaining shares in the company "on the condition that the Company [would] assume [Rep. McKinley's obligation under the [MOU] to sell the shares to the ESOP as soon in 2012 as time [would] permit." So, as of December 31, 2011, the transfer of all of Rep. McKinley's remaining shares in McKinley & Associates, committed to in good faith in the April 2011 MOU, was finalized, albeit temporarily to the company rather than the ESOP. The company's sale of the shares to the ESOP was completed on April 22, 2012.

Because he reasonably believed that none were necessary, Rep. McKinley took no further steps in connection with this matter until he received the Committee's letter to him of August 24, 2012. In connection with that letter, Rep. McKinley had some preliminary contacts with Mr. Kaiser, but shortly after receiving the letter Rep. McKinley retained undersigned counsel. As previously noted, Rep. McKinley's communication with undersigned counsel in connection with that letter and with the Committee's letter of March 18, 2013, are covered by attorney-client privilege and are not separately noted or entered on the privilege log. Further, any communications by Rep. McKinley with others and any communication by others in connection with compliance with the Committee's request for documents and information as set forth in its March 18, 2013, letter are covered by attorney-client privilege and/or work product protection and are also not separately noted or entered on the privilege log.

#### Response to Committee Request 2

Committee Request 2 requests information and documents concerning the association of Johnson B. McKinley, Rep. McKinley's father, with McKinley & Associates.

Rep. McKinley believes that, to the extent that his father was paid by his firm, it was as a consultant. Johnson B. McKinley was not a paid employee, officer, director, owner, or contractor in connection with McKinley & Associates. With respect to Johnson B. McKinley's role as consultant to McKinley & Associates, or its predecessor firm McKinley Engineering Company,<sup>3</sup> Rep. McKinley provides

<sup>3</sup> As discussed above, although in its June 11, 2011, letter to Rep. McKinley the Committee required a change of the name of the company McKinley & Associates "to the name of your father's



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two documents from September 1981 responsive to the Committee's request. The first is a September 1981 report on "Structural Steel Evaluation" undertaken by McKinley Engineering Company for Koppers Company, Inc. in Follansbee, West Virginia. (Bates Numbers DMB00000539-53.) As clearly stated at the beginning of the document, the report sets forth the results of the work of "J.B. McKinley, Engineer, Wheeling, West Virginia, at the request of Thurman Wilson, Koppers Co." "J.B. McKinley, Engineer" was Rep. McKinley's father. Similarly, a September 15, 1981, letter (Bates Number DMB00000554) from McKinley Engineering Company to the Mayor of Martins Ferry, Ohio, states: "A site inspection . . . was made by J.B. McKinley, Engineer, to determine the stability of an alley, sewer repairs, and construction methods."

At Bates Number DMB00000521, the Committee will find a narrative drafted by Rep. McKinley relating to his father and his professional association with his father. Rep. McKinley drafted this narrative after receiving the Committee's letter of August 24, 2012. Mary McKinley's comments on this draft narrative may be seen in an email from her to Rep. McKinley at Bates Numbers DMB00000460-61.

Apart from the information described above or provided in Rep. McKinley's September 14, 2012, letter to the Committee, Rep. McKinley does not have any other information or documents responsive to Committee Request 2. McKinley & Associates may have additional information or documents responsive to this request, but Rep. McKinley does not know if they do or, if so, what information or documents they may have.

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original business, McKinley Engineering," to the best of his knowledge his father never used or operated under the name McKinley Engineering and he does not know where the Committee got this information or why it came to this conclusion. Research done by McKinley & Associates employee David Carenbauer in connection with the Committee's August 24, 2012, letter to Rep. McKinley listed a number of names used by Johnson B. McKinley between 1954 and 1992 for his business, but McKinley Engineering is not one of these names. (Bates Number DMB00000524.) A piece of letterhead from Johnson B. McKinley from 1985 shows his use of the business name "Johnson B. McKinley, Consulting Engineer." (Bates Number DMB00000526.) Minutes of the regular meeting of the Council of Beech Bottom, West Virginia, for November 4, 1986 – available online in PDF form at <http://beechbottomwv.org/pdfs/1986.pdf>, at page 257 – refer to a "Johnson B. McKinley Engineering."



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Rep. McKinley believes that, with respect to understanding and appreciating his father's connection with McKinley Engineering and McKinley & Associates, it is important for the Committee to focus on more than just pay records, financial transactions, or contracts alone. First, if some of the records sought by the Committee existed at one time, these records may have been created as much as 30 years ago, or more; for the Committee to base any determination on the absence of such records under these circumstances would be unsound. Second, Johnson B. McKinley's interest and activities in assisting his son's business did not depend on compensation, so to focus exclusively on records of financial compensation in this context is to focus too narrowly. Johnson B. McKinley was Rep. McKinley's father. There were family ties at work. Therefore, it is important for the Committee in this regard to review carefully the information on Johnson B. McKinley and his association with Rep. McKinley's business that is set out at pages 3 and 4 of Rep. McKinley's September 14, 2012, letter. (Bates Numbers DMB00000527-38.)

### Response to Committee Request 3

Committee Request 3 asks for information and documents in connection with McKinley & Associates' contracts with or practices before the federal government.

As to any such current contracts, to Rep. McKinley's understanding the company still has an "open-ended" contract with the U.S. Postal Service, under which the company may do work upon request. Rep. McKinley does not know specifics as to the current status of this contract or as to the work, if any, currently being done by McKinley & Associates in connection with the contract. With respect to such specifics as the Committee is requesting in Request 3 on any current or previous contracts with the federal government, Rep. McKinley believes that such information is within the custody and control of McKinley & Associates; therefore, Rep. McKinley respectfully advises that the company would be the source of such information for the Committee.

Although not strictly responsive to this request, an additional point should be made here with respect to use of the name "McKinley & Associates" by Rep. McKinley's former firm. Under relevant procurement codes and regulations, and under other standards applicable to architects and engineers, no matter what name the Committee may determine that McKinley & Associates should operate under,



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when the company bids for work with a government client that government client will necessarily see abundant documentation (relating to past projects by and qualifications of the firm) that the firm is the former "McKinley & Associates." In this way, short of closing down the company there appears to be no way to keep use of the "McKinley & Associates" name out of the government contracting process.

#### Responses to Committee Requests 5, 6, 7, and 8

Through the discussion and responses in this letter, and through the documents accompanying this letter, Rep. McKinley has attempted to comply with Committee Request 5 and 6 with respect to providing documents and, as solicited by the Committee in Request 8, has provided other information and documents that he hopes will assist the Committee.

With respect to Committee Request 7, regarding efforts taken to identify documents responsive to the Committee's request, reasonable and appropriate steps were taken identify such documents, including:

- Identifying and collecting hard copy documents in Rep. McKinley's possession.
- Distributing a document preservation and identification notice to official and campaign staff and collecting identified materials.
- Copying and searching Rep. McKinley's House email account. (Rep. McKinley understands, however, that the House has a 14 day retention policy for email.)
- Imaging and searching the hard drives of Rep. McKinley House desktop and laptop computers. (It appears that Rep. McKinley saved items locally and did not save items to the House network.)
- Imaging and searching text messages from Rep. McKinley's iPhone.
- Imaging and searching Mary McKinley's AOL email account.



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- Imaging and searching the computer used by Rep. McKinley in his non-official office at the Maxwell Center in Wheeling, West Virginia.

Although he is not able to identify specific items, Rep. McKinley believes there are likely to be documents responsive to the Committee's requests in the possession, custody, and control of McKinley & Associates and/or individual personnel at the company.

If the Committee has any questions about the responses or documents provided with this letter by Rep. McKinley, or wishes to discuss any aspect of this matter, please do not hesitate to contact Jan Witold Baran, at 202.719. [REDACTED] or Robert L. Walker, at 202.719. [REDACTED].

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Baran".

Jan Witold Baran  
Counsel for Rep. David B. McKinley

A handwritten signature in cursive script, appearing to read "Robert L. Walker".

Robert L. Walker  
Counsel for Rep. David B. McKinley

Attachments

cc: The Honorable David B. McKinley