

APPENDIX A

Charles W. Dent, Pennsylvania
Chairman
Linda T. Sánchez, California
Ranking Member

Patrick Meehan, Pennsylvania
Trey Gowdy, South Carolina
Susan W. Brooks, Indiana
Kenny Marchant, Texas

Michael E. Capuano, Massachusetts
Yvette D. Clarke, New York
Ted Deutch, Florida
John B. Larson, Connecticut



ONE HUNDRED FOURTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

Thomas A. Rust
Staff Director and Chief Counsel

Joanne White
Administrative Staff Director

Clifford C. Stoddard, Jr.
Counsel to the Chairman

Daniel J. Taylor
Counsel to the Ranking Member

1015 Longworth House Office Building
Washington, D.C. 20515-6328
Telephone: (202) 225-7103
Facsimile: (202) 225-7392

September 28, 2016

MEMBER'S PERSONAL ATTENTION

The Honorable David McKinley
U.S. House of Representatives
412 Cannon House Office Building
Washington, DC 20515

Dear Representative McKinley:

On September 27, 2016, the Committee on Ethics (Committee) voted to issue you this letter of reproof in response to your knowing disregard of the Committee's advice regarding the name of your former engineering and architecture firm, McKinley & Associates (the Firm), in a fashion that resulted in a violation of House Rules and the Ethics in Government Act (EIGA), 5 U.S.C. app. § 502(a). The Committee has also voted to adopt and publish the attached Report to the House of Representatives.

The conduct for which you are being reproofed includes your choice to ignore advice provided by this Committee, given from at least November 2010 until June 2011, both informally and in a formal advisory opinion letter dated June 24, 2011, in which the Committee counseled that the Firm should change its name, given its fiduciary responsibilities and the consequences that such responsibilities triggered under House Rules and EIGA. Instead of complying with the advice of the Committee, which has the sole authority under EIGA to administer these restrictions for Members of the House, you chose not to change the name of the Firm, and instead sold your interest in the Firm, with the name intact. Further, you did not inform the Committee of this action until after you had taken it.

With respect to this conduct, you violated 5 U.S.C. app. § 502, which provides that a Member shall not "permit [his] name to be used by" firms providing professional services involving a fiduciary relationship. Such behavior is also prohibited by House Rule XXV, clause 2. In failing to comport with this standard, you also violated House Rule XXIII, clauses 1 and 2, which state that "[a] Member . . . shall behave at all times in a manner that shall reflect creditably on the House," and "shall adhere to the spirit and the letter of the Rules of the House."

The Committee found that prior to your election to the House, you worked as a licensed professional engineer at the Firm, which you established and at which you were also an officer and director. The Firm used the name "McKinley & Associates" since 1989; prior to that, you operated a sole practitioner's office in West Virginia, focused solely on engineering services, known as "McKinley Engineering," which you folded into the Firm once it began offering

architectural services. Under West Virginia law, architecture is a profession that involves fiduciary duties. While your father was also a licensed professional engineer, and while you and your father had informal professional relationships throughout your career until his retirement, your father did not establish or co-found the Firm, was never on the payroll of the Firm, and maintained his own separate business when you started the Firm.

After you were elected to the House in 2010, you sought the advice of Committee staff regarding the Firm. Staff's original advice was that the Firm would need to change its name. You disagreed with that advice, and responded to it in two independent ways. First, you continued to dispute, through counsel, the Committee's advice, in an attempt to change the Committee's position. The Committee considered your arguments, but you and your counsel were repeatedly advised that the Committee would likely require you to change the name of the Firm.¹ On June 24, 2011, the Committee issued a formal advisory opinion to you, informing you that House Rules and federal law required the Firm to change its name.² Second, based on your own counsel's legal advice, you began the process of selling your interest in the Firm to the Firm's Employee Stock Option Plan (ESOP), without changing the name. While you and the Firm had contemplated the sale prior to your election to the House, the process of selling the Firm took some time, culminating in a formal agreement of sale on December 31, 2011 (six months after the Committee's advisory opinion), and a closing date of April 30, 2012. Despite the Committee's advice, at no point in the process of selling the Firm did you require that the Firm change its name, based on the contrary advice of your own lawyer, which misconstrued the rules and relevant federal law. The Firm still uses the name McKinley & Associates today.

With respect to EIGA Section 502 and House Rule XXV, the Firm used and continues to use your name while providing fiduciary services. Specifically, architecture is a service defined as one involving fiduciary responsibilities – both as a matter of West Virginia law and within the legislative history of EIGA itself. The statute and House Rule were designed to prevent conflicts of interest between a Member's duty to the public and his fiduciary duties to his client. As a practical matter, when Members are elected to the House and have associations with these sorts of businesses, the Committee consistently advises them that the appropriate course of action is to

¹ You have contended that at some point in early 2011, in one telephone conference with one Committee staffer, that staffer informed you that you would not need to change the Firm's name. As more fully discussed in the accompanying Report, the evidence of precisely what transpired during that informal conference is unclear, and in any event, cannot override the consistent and contrary opinion of the Committee and its staff throughout the advisory process, much less the formal advisory opinion issued later that year. On March 31, 2011, your attorney was informed by Committee counsel that the staff would recommend that the Committee issue a formal advisory opinion concluding that you must change the Firm's name. You signed a Memorandum of Understanding, in which you agreed to sell the Firm without changing its name, 11 days later.

² The Committee's letter advised you that it would be permissible to change the name of the Firm to "McKinley Engineering," on the basis that your father had operated a business using that name. As discussed more fully in the accompanying Report, this was a factual error that appears to be based largely on vague and confusing syntax in a submission by your own lawyer. That factual error notwithstanding, you did not choose to rename the Firm "McKinley Engineering," and you did not request that the Committee revise its opinion to accord with accurate facts, despite notice and opportunity to do so.

cease receipt of any compensation and to remove their name from the business and its materials.³ Having disregarded this advice, you acted in a manner contrary to House rules and federal law.

Your disregard for the Committee's advice and processes not only led to a substantive violation of these principles, it impaired the Committee's function in enforcing the standards set by your peers. Thus, your actions failed to comply with the spirit and letter of House Rules, and did not reflect creditably on the House.

Accordingly, based on your conduct in this matter, the Committee has determined that you should be publicly reprimanded. Now that this letter has issued and the Committee has publicly noted its reprimand of your conduct, the Committee has determined that this matter is closed.

Sincerely,



Charles W. Dent
Chairman



Linda T. Sánchez
Ranking Member

³ The Committee is aware of your position, taken repeatedly throughout this process, that the Firm's name refers not only to you, but to your father. Accordingly, you wish to rely on an exception to EIGA and House Rule XXV permitting an entity that provides fiduciary services to continue using the name of a Member where that name is associated with a family business. The accompanying report provides a fulsome view of the Committee's analysis of the family name exception, but in short, it does not apply here. Your father's reputation in the West Virginia engineering community notwithstanding, the facts of this case demonstrate that the Firm is not named for your father. It is named for you. EIGA prohibits the use of your name now that you are a Member of Congress.