

EXHIBIT 7

From: Andy Sere [REDACTED]@NRCC.org>
Sent: Wednesday, November 10, 2010 6:27 PM
To: dmckinley@[REDACTED]
Subject: one person's opinion

David:

For what it's worth, below are the thoughts of a GOP lawyer who used to work on the ethics committee, to whom I previously referred.

Andy

1. *"Consulting firms" fall under the prohibition against receiving compensation for fiduciary professions (p. 216 of the House Ethics Manual), however, it does not explicitly list engineering—lists legal, real estate, consulting and advising, insurance, medicine, architecture or financial. A conservative reading of this rule would be that engineering consulting counts, and thus he can't continue receiving income from the firm while in the House.*
2. *As I mentioned on the phone, Mr. McKinley, if he doesn't want to worry about changing the name of his firm, should probably think about who he plans to divest his interest to. If it happens to be a familial relative with the same name, he would most likely not have to change the name of the whole firm. If it is to a different individual, it likely would not be able to stay with his name on it.*

Andy Seré
Regional Press Secretary
National Republican Congressional Committee
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[REDACTED]@nrcc.org

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EXHIBIT 8

RECEIVED

2013 MAY -6 AM 10:32
COMMITTEE ON ETHICS

400 West Market Street
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(502) 587-
(502) 587-8391 Fax
www.stites.com

May 1, 2013

Christopher Tate
U.S. House of Representatives
1015 Longworth House Office Building
Washington, D.C. 20515-6328

George B. Sanders, Jr.
(502) 681-
(502) 779-8299 FAX
@stites.com

RE: McKinley & Associates, Inc.

Dear Mr. Tate:

I represent McKinley & Associates, Inc. Pursuant to our previous correspondence regarding the Committee on Ethics' letter of March 18, 2013 addressed to Timothy E. Mizer of McKinley & Associates, Inc., I am forwarding to your attention the documents and other information requested in the Committee's letter.

In identifying and producing the information responsive to the Committee's letter, the Company has made a search of the correspondence and email files of the Company's management, the global daily correspondence file maintained by the Company for the period from November 1, 2010 through the present, and any project files relevant to the matters raised in the letter. Documents and material resulting from the Company's search that fall within the Committee's request have been scanned onto the enclosed compact disc labeled "McKinley & Associates, Inc. Response to U. S. House of Representatives Committee on Ethics Letter of March 18, 2013" and numbered MCK 000001 through MCK 000117.

Documents MCK 000001 through MCK 000079 are in response to the numbered paragraph #1 of the Committee's letter of March 18, 2013. The Firm (as defined in the Committee's letter) has used its corporate name "McKinley & Associates, Inc." since its inception in 1989, and has used that name consistently, without change, from 1989 to the present. That name usage has not been the subject of conversations or communications with Representative David B. McKinley. Rather, conversations or communications between the Firm and Representative McKinley regarding the name of the Firm have been limited to the status of discussions between the Committee and Representative McKinley as to the extent to which the Committee would require him, as majority owner of the Firm, to cause the Firm to change its corporate name. Document MCK000079 is an email from Ernest Dellatorre to the undersigned in which he describes, at my request and specifically for transmittal to the Committee, any unwritten communications with Representative McKinley regarding the matters described in paragraph #1 of the Committee's letter. As such, it is not to be construed as a waiver of any attorney client privilege of the Firm regarding its communications with the undersigned as its attorney.

MC212.000MC:927649.1.LOUISVILLE



Christopher Tate
May 1, 2013
Page 2

Documents MCK000084, MCK000085, and MCK000088 through MCK 000117 are in response to paragraph #2 of the Committee's letter of March 18, 2013. I believe that the history of Johnson B. McKinley's business as a professional engineer and predecessor to McKinley & Associates is described in previous correspondence to the Committee from my predecessor, Charles Kaiser. The Firm is not in possession or control of the records of Johnson B. McKinley. The present McKinley & Associates is the natural continuation in the corporate form (and with expanded personnel) of the engineering business started by Johnson B. McKinley in 1954.

With respect to paragraph #3 of the Committee's letter, the Firm maintains a contract with United States Postal Service, a relationship that began more than 20 years ago, which is the only contract the Firm has with an agency of the federal government. Document MCK000080 lists the projects in which the Firm has recently been engaged by USPS between 2009 and the present, and shows a decline in that business over that period.

With respect to paragraph #4 of the Committee's letter, document MCK000081 contains a list of projects in which the Firm has been engaged since Representative McKinley's election to Congress in 2010. The Firm has engaged in each of these projects under its historic corporate name of McKinley & Associates without any change as a result of Representative McKinley's election in 2010. Document MCK000080 displays the revenues enjoyed by the Firm for a period that bridges Representative McKinley's election to Congress, which revenues have declined in each of the years following his election. Document # also contains information relevant to the importance of the Firm's historic corporate name and good will to the Firm's future and the future of its employee owners.

Beginning in 2008, the McKinley & Associates, Inc. Employee Stock Ownership Plan and Trust (the "ESOP") purchased 30% of the outstanding capital stock of the Firm, beginning a process that was intended to eventually result in the employees of the Firm owning 100% of the Firm. In December of 2011, acting on behalf of the ESOP, the corporation redeemed the balance of the capital stock owned by Representative McKinley and sold the shares to ESOP. As a consequence, the ESOP is now the 100% owner of the Company.

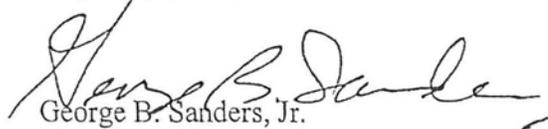
The Company is anxious to cooperate with the Committee in every way possible in providing any and all information required by the Committee. Please let me know at your convenience if you need additional information. The material submitted in response to the Committee's request contains confidential and proprietary information regarding the Company, its business, clients, customers, contracts and other confidential business information. The Company requests that to the maximum extent permissible, this information not be disclosed to the public or to competitors of the Company and be maintained by the Committee as confidential.

STITES & HARBISON^{PLLC}
ATTORNEYS

Christopher Tate
May 1, 2013
Page 3

Thank you very much for your attention to this matter, and I look forward to hearing from you if you need additional information.

Very truly yours,


George B. Sanders, Jr.

GBS:mem
Enclosure

EXHIBIT 9

From: Kaiser, Charles J. [REDACTED]@pgka.com>
Sent: Wednesday, November 24, 2010 5:04 PM
To: David B McKinley
Subject: RE: Company name change...

David: I will be out of town on Friday, but I think that it might be a good idea to pick a time early next week to talk about the options. There are no prohibitions in West Virginia to continuing to use the name McKinley & Associates even though you are not an owner or an officer or director. You will have to notify both the Board of Architecture and the PE Board who the "Supervising Architect" and the "Supervising Professional Engineer" is with respect to the company once that is decided. You will not be able to stay on the Board or be an officer, but you can be paid the value of the stock if it is sold to the ESOP (i.e. you can be paid for your capital interest) or for income that you are entitled to receive as a result of completed work. Caution will be required with respect to how this is calculated. 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 being formulated. In addition, it is important for you to understand that this is not simply a House Rule, but a federal statute. Let me know the best time to talk Monday (or Sunday if that works better). Have a Happy Thansgiving. CJK

From: David B McKinley [mailto:[REDACTED]@mckinleyassoc.com]
Sent: Tuesday, November 23, 2010 3:50 PM
To: Kaiser, Charles J.
Subject: FW: Company name change...

More thoughts.

From: Andy Sere [mailto:[REDACTED]@NRCC.org]
Sent: Tuesday, November 09, 2010 5:53 PM
To: dmckinley@[REDACTED]
Subject: RE: Company name change...

David:

Just a quick update.

Rep. Vern Buchanan's (R-Fla.) 2006 campaign manager gave me the contact info for John Tosch, Buchanan's corporate attorney who handled all Vern's transition stuff. Will be interesting to see what he has to say when he gets back to me, since they obviously found some way around this (Buchanan's car dealerships are still called "Buchanan Automotive").

Also talked to Todd Ungerecht, who used to work for the Ethics Committee and now works for Rep. Doc Hastings (R-Wash.) on the Natural Resources Committee. He told me that there may be ways around this (one question he had was, to whom do you plan to divest the business - is



David H involved?), and he's going to take a look at the situation and provide some thoughts soon.

At the end of the day this will obviously be handled by attorneys, but until they get involved I'll keep trying to find out more background and will keep you posted.

Andy

Andy Seré
Regional Press Secretary
National Republican Congressional Committee
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asere@nrcc.org

-----Original Message-----
From: Andy Sere
Sent: Tuesday, November 09, 2010 10:28 AM
To: 'dmckinley@████████████████████'
Subject: Company name change...

David:

Tim mentioned to me this issue you're having with a lawyer's opinion on your company's name in light of your election to Congress.

Have there been any further developments on this?

I am going to make a few calls this afternoon to see what I can find out about how this issue has been handled in the past with other members in similar situations. Will let you know if I learn anything.

Andy

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EXHIBIT 10

From: Kaiser, Charles J. <[REDACTED]@pgka.com>
Sent: Monday, November 29, 2010 10:46 AM
To: asere@[REDACTED]
Cc: David B McKinley
Subject: McKinley & Associates

Andy: It was nice to talk to you on the phone. As I explained we should get an understanding of how David wants to proceed with respect to McKinley & Associates, Inc. under West Virginia state law and the House Ethics Rules and then move to solve the Pennsylvania issues. There are no prohibitions under West Virginia law to continuing to use the name McKinley & Associates, Inc., even though David is no longer a stockholder or director or officer. David would have to notify both the WV Board of Architecture and the WV PE Board the names of the new "Supervising Architect" and "Supervising Professional Engineer" with respect to the company. David cannot remain a board member or officer of the company under the House Ethics Rules, but if he terminates his capital interest in the company, he can be paid the value of his stock if it is sold to the ESOP or the value based upon work completed in the past. The question regarding the change of name under the House Ethics Rules 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 it could be argued that DBMcK is not an architect so it does not apply to him even though McKinley & Associates provides both architectural and engineering services. 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 name; or (2) completely divest DBMcK's interest in the company (this appears to include David's wife as well). Because of the professional nature of the firm, it is treated differently than other companies like auto dealerships. Moreover, there is a federal statute as well as the House Ethics Rules to contend with. Let me know how you would like to proceed.

Charles J. Kaiser, Jr., Esq.
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EXHIBIT 11

From: Kaiser, Charles J. <[REDACTED]@pgka.com>
Sent: Tuesday, December 07, 2010 10:25 AM
To: David B McKinley
Cc: Andy Sere; [REDACTED]@mckinleyassoc.com
Subject: House Standards Response

Greetings: I heard back from Kelle Strickland last night regarding the "professions that provide services involving a fiduciary relationship" issue. Kelle is legal counsel to Rep. Jo Bonner, the Ranking Member of the House Ethics panel, and she consulted with Carol Dixon, who is Staff Director to the current Chair Rep. Zoe Lofgren. They 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. Because the Committee will have a number of similar written advice requests from new Members, it may well take some time to work through all of the opinions and the name can remain the same until the opinion is rendered. 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, Inc. 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. In addition, because McKinley & Associates has current contracts with the federal government, the House Ethics Manual requires a newly elected Member to consult with the contracting agency (see p. 202 of the House Ethics Manual). It appears that so long as the Member is the owner of stock in a corporation that is less than "substantially owned or controlled" that the corporation can continue to contract with the government agency. Here again, however, I would advise that decisions be made concerning the ownership issue so that we can advise the contracting agency specifically as to the ownership interests of Member McKinley. I am available to discuss this all day today, but I will not be available Wednesday or Thursday and only to a limited extent on Friday. Please let me know when you would like to discuss further. CJK



EXHIBIT 12

From: Lynn Adams <[REDACTED]@mckinleyassoc.com>
Sent: Monday, November 29, 2010 6:13 PM
To: David B. McKinley
Cc: Tim Mizer
Subject: Management Meeting Agenda Items

Tim and I put together this partial list for management meeting:

1. Energy Bill potential tax deductions for school projects
2. ESOP buyout
3. Need to settle with Jezerinac and Stafford on \$38K and \$21K, respectively
4. Certificate of Authority in WV in DBM name for consulting engineer
5. QA – Charlie’s future role
6. Patriot Services scope
7. Explanation of contract-review with Owners; all instructions to contractors must go through us; contractor claims for time delays
8. Wage adjustments

Lynn E. Adams
Office Manager
McKinley & Associates, Inc.
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Fax 304-233-4613

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EXHIBIT 13

From: Kaiser, Charles J. <[REDACTED]@pgka.com>
Sent: Wednesday, January 26, 2011 10:05 AM
To: David B McKinley
Cc: Lynn Adams
Subject: House Committee on Standards

David: I received a call from Mr. Simpson who is a staff member of the House Committee on Standards late yesterday afternoon. He advised me that the staff agreed with our assertion that McKinley & Associates does not provide professional services involving a fiduciary relationship. As you will recall this is the critical element that created the difficulties under the House Ethics Manual. 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 a blind trust to hold your stock in McKinley & Associates. There continues to be a strict prohibition on the part of Congressman McKinley using his elected office to solicit or to direct business to McKinley & Associates. Thus, for example, you could not specify earmarks or other federal funding for projects where McKinley & Associates is the project engineer and you could not contact any federal agencies on behalf of McKinley & Associates. However, you could be compensated by McKinley & Associates up to the earned income limits (\$25,000 +/-) for employment with McKinley & Associates. And there are no limits in your receipt of unearned income (i.e. dividends) from your stock ownership of McKinley & Associates. Because of the conflict of interest rules (i.e. using a congressional office to solicit personal business), Mr. Simpson and I believe that it would still be advantageous for you to avoid service as an officer or director of McKinley & Associates and to create a simple voting trust for your stock. In other words, the stock would still be in your name but someone else will vote the stock. Because we do not have to follow the Blind Trust Rules, the trustee of the voting trust can be family members or a combination of related parties (i.e. the trustees could be the officers of McKinley & Associates and David H.). Give me a call when you can talk further about this so that I can get back to Mr. Simpson and eliminate the Blind Trust. Best Regards.

Charles J. Kaiser, Jr., Esq.
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[REDACTED]@pgka.com

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EXHIBIT 14

From: David B McKinley <[REDACTED]@mckinleyassoc.com>
Sent: Saturday, April 02, 2011 3:15 PM
To: 'Kaiser, Charles J.'
Cc: 'WV01McKinleyDavid@[REDACTED]'
Subject: RE: House Committee on Standards

Lynn 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 he was not particularly pleased that another decision may be forthcoming and one that reversing an earlier and more encouraging solution. Please remember that McKinley and Associates is in many respects the successor company to Johnson B. McKinley. We have all of his drawings, files, correspondence and furniture.

From: Kaiser, Charles J. [mailto:[REDACTED]@pgka.com]
Sent: Wednesday, January 26, 2011 10:05 AM
To: David B McKinley
Cc: Lynn Adams
Subject: House Committee on Standards

David: I received a call from Mr. Simpson who is a staff member of the House Committee on Standards late yesterday afternoon. He advised me that the staff agreed with our assertion that McKinley & Associates does not provide professional services involving a fiduciary relationship. As you will recall this is the critical element that created the difficulties under the House Ethics Manual. 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 a blind trust to hold your stock in McKinley & Associates. There continues to be a strict prohibition on the part of Congressman McKinley using his elected office to solicit or to direct business to McKinley & Associates. Thus, for example, you could not specify earmarks or other federal funding for projects where McKinley & Associates is the project engineer and you could not contact any federal agencies on behalf of McKinley & Associates. However, you could be compensated by McKinley & Associates up to the earned income limits (\$25,000 +/-) for employment with McKinley & Associates. And there are no limits in your receipt of unearned income (i.e. dividends) from your stock ownership of McKinley & Associates. Because of the conflict of interest rules (i.e. using a congressional office to solicit personal business), Mr. Simpson and I believe that it would still be advantageous for you to avoid service as an officer or director of McKinley & Associates and to create a simple voting trust for your stock. In other words, the stock would still be in your name but someone else will vote the stock. Because we do not have to follow the Blind Trust Rules, the trustee of the voting trust can be family members or a combination of related parties (i.e. the trustees could be the officers of McKinley & Associates and David H.). Give me a call when you can talk further about this so that I can get back to Mr. Simpson and eliminate the Blind Trust. Best Regards.

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EXHIBIT 15



MEMORANDUM OF UNDERSTANDING

To: David McKinley
From: Ernest Dellatorre, ESOP Trustee
Subject: ESOP Purchase of Remaining McKinley & Associates Shares
Date: April 11, 2011

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.

By signing below, both parties agree to the above terms.


David B. McKinley, PE
4-11-11
Date


Ernest Dellatorre, ESOP Trustee
4-11-11
Date

EXHIBIT 16

From: Kaiser, Charles J. <[REDACTED]@pgka.com>
Sent: Thursday, April 14, 2011 4:51 PM
To: WV01McKinleyDavid@[REDACTED]
Cc: David B McKinley; Lynn Adams
Subject: Response to Ms. Heather Jones
Attachments: McKinley House Ethics Jones Copy (P0083245).PDF

David: Attached is a copy of my letter setting forth the rationale of why McKinley & Associates should not be treated like a law firm. I also added the paragraph at the end reiterating the relationship between the Johnson McKinley engineering practice and the present-day McKinley & Associates. I hope this will satisfy them. Regards.

Charles J. Kaiser, Jr., Esq.
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April 14, 2011

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Heather Jones, Esq., Counsel
Committee on Ethics
U.S. HOUSE OF REPRESENTATIVES
1015 Longworth House Office Bldg.
Washington, DC 20515
Via E-Mail

RE: McKINLEY & ASSOCIATES, INC.

Greetings:

Thank you for your e-mail of April 13, 2011. I have delayed in responding to check the facts cited in this letter. As you are aware 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.

Article 13 of Chapter 30 of the West Virginia Code sets forth the requirements for engineers to be licensed in the state. West Virginia Code §30-13-3 defines a number of terms that apply to the entire Article. Among those definitions are: Engineer, Professional Engineer, Consulting Engineer, and Practice of Engineering. However, only the definition of a "Consulting Engineer" carries with it the responsibilities of a fiduciary. The definition of a "Consulting Engineer" under the Code is:

(b) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of engineering; whose livelihood is obtained by offering engineering services to the public; who serves clients as an independent fiduciary; who is devoid of public, commercial, and product affiliation that might tend to infer a conflict of interest; and who is cognizant of their public and legal responsibilities and is capable of discharging them. (emphasis added).

Under the same code section a "Professional Engineer" is defined as:

(f) "Professional engineer" means a person who has been duly registered or licensed as a professional engineer by the board. The board may designate a professional engineer, on the basis of education, experience and examination, as

being licensed in a specific discipline or branch of engineering signifying the area in which the engineer has demonstrated competence.

Throughout his career Congressman David B. McKinley, P.E. has held himself out and been licensed in the State of West Virginia as a professional engineer, not a consulting engineer.

The West Virginia Code of State Regulations leaves no doubt as to where the primary responsibilities of a licensed professional engineer lies. WV 7CSR1 §12.3 sets forth the Registrant's Obligation to Society and states in subparagraph (a): "Registrants, in the performance of their services for clients, employers, and customers, shall be cognizant that their first and foremost responsibility is to the public welfare." (emphasis added). Thus unlike a lawyer whose primary responsibility is to her client, a registered professional engineer's primary responsibility is to the public welfare.

The provisions of the West Virginia Code that apply to architects do state that all architects must meet the definition of "good moral character" in order to be licensed. The definition of "good moral character" under West Virginia Code §30-12-2(4) states:

(4) "Good moral character" means such character as will enable a person to discharge the fiduciary duties of an architect to his client and to the public for the protection of health, safety and welfare. Evidence of inability to discharge such duties include the commission of an offense justifying discipline under section eight of this article.

Thus, even though the definition does state that an architect owes fiduciary duties to his client, an architect also owes equal fiduciary duties to the public for the protection of health, safety and welfare. The Rules of Professional Conduct for Architects set forth in the West Virginia Code of State Regulations (WV 2CSR1 §9.3.3) also provides clarity that the public interest is paramount by providing:

9.3.3. If in the course of his or her work on a project, a registered architect becomes aware of a decision made by his or her employer or client, against his or her advice, which violates applicable state or municipal building laws and rules or ordinances which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the registered architect shall:

9.3.3.a. Report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and rules or ordinances.

9.3.3.b. Refuse to consent to the decision; and

9.3.3.c. In circumstances where the registered architect reasonably believes that other similar decisions will be made notwithstanding his or her objections, terminate his or her services with respect to the project. If the registered architect terminates his or her services he or she has no liability to his or her client or employer on account of the termination.

(emphasis added). Failure to follow the Rules of Professional Conduct can be grounds for the loss of the license to practice architecture in the State of West Virginia. WV Code §30-12-8. Congressman McKinley is not a licensed architect; rather McKinley & Associates, Inc. has on its staff licensed architects that must comply with these rules.

West Virginia law requires that business firms that practice professional engineering and architecture designate a licensed professional in each field whose responsibility it is to supervise the professionals employed by the firm to assure that they are following the requirements of West Virginia law and regulations in the performance of their duties. McKinley & Associates, Inc. has designated senior professionals in each area to perform that function. Neither of those supervising professionals is Congressman McKinley. In fact, for the past several years Congressman McKinley's role with the company has not been in the practice of professional engineering but in the management of the approximately 40 employees (licensed and unlicensed) that are employed by the firm.

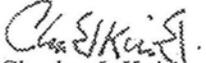
In conclusion, West Virginia imposes fiduciary responsibilities only upon consulting engineers, not professional engineers. Moreover, the House Rules were intended to apply to areas where a professional had fiduciary responsibilities to his or her client which could necessarily conflict with the responsibilities 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.

Before closing, I wanted to reiterate the history of the professional engineering firm within the McKinley family. McKinley & Associates, Inc. is the successor business to the independent practice of professional engineering by Johnson B. McKinley, Congressman David B. McKinley's father, who first opened his office in Wheeling in 1954. Father and son worked together for two years; Congressman McKinley purchased his father's office furniture, acquired his drawings and files, and assumed his clients when his father retired as a professional engineer. Thus it is hard for me to understand the distinction that you are apparently making between an unincorporated family business to practice professional engineering and an incorporated family business using the same family name. Though the present McKinley & Associates, Inc. business is much larger than the single-engineer office that was started in 1954, McKinley & Associates, Inc. is the natural and direct successor and should be recognized as such. The change to corporate form is no different than if a business changes from a partnership to a corporation to a limited liability company; the business is the same, only the legal form has changed.

Heather Jones, Esq., Counsel
April 14, 2011
Page 4

In the event you would like copies of any of the code sections or state regulations cited above, I will be happy to send them to you. If you would like to discuss these matters further, please do not hesitate to contact me. Thank you for your cooperation.

Very truly yours,


Charles J. Kaiser, Jr.

CJK/sls

cc: Congressman David B. McKinley

EXHIBIT 17

Kaiser, Charles J.

From: Kaiser, Charles J.
Date: Thursday, April 14, 2011 3:04 PM
To: 'Jones, Heather'
Subject: RE: Rep. McKinley
Attachments: McKinley House Ethics Jones (P0083243).PDF

Greetings: The "brief" is in the form of a letter to you. If you would like me to change the format or provide you with copies of the code and state regulations cited in the letter, please let me know. If you would like to discuss this further, please do not hesitate to contact me.

From: Jones, Heather [<mailto:Heather.Jones@mail.house.gov>]
Sent: Wednesday, April 13, 2011 2:16 PM
To: Kaiser, Charles J.
Subject: Rep. McKinley

Mr. Kaiser-

I wanted to remind you that the Committee on Ethics is waiting on your brief regarding whether architects and engineers are fiduciaries under West Virginia law. You may send it to me by email at this address.

Regards,
Heather Jones

Heather Jones
Counsel
Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, DC 20515
(202) 225-7103



COPY

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April 14, 2011

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Heather Jones, Esq., Counsel
Committee on Ethics
U.S. HOUSE OF REPRESENTATIVES
1015 Longworth House Office Bldg.
Washington, DC 20515
Via E-Mail

RE: McKINLEY & ASSOCIATES, INC.

Greetings:

Thank you for your e-mail of April 13, 2011. I have delayed in responding to check the facts cited in this letter. As you are aware 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.

Article 13 of Chapter 30 of the West Virginia Code sets forth the requirements for engineers to be licensed in the state. West Virginia Code §30-13-3 defines a number of terms that apply to the entire Article. Among those definitions are: Engineer, Professional Engineer, Consulting Engineer, and Practice of Engineering. However, only the definition of a "Consulting Engineer" carries with it the responsibilities of a fiduciary. The definition of a "Consulting Engineer" under the Code is:

(b) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of engineering; whose livelihood is obtained by offering engineering services to the public; who serves clients as an independent fiduciary; who is devoid of public, commercial, and product affiliation that might tend to infer a conflict of interest; and who is cognizant of their public and legal responsibilities and is capable of discharging them. (emphasis added).

Under the same code section a "Professional Engineer" is defined as:

(f) "Professional engineer" means a person who has been duly registered or licensed as a professional engineer by the board. The board may designate a professional engineer, on the basis of education, experience and examination, as

being licensed in a specific discipline or branch of engineering signifying the area in which the engineer has demonstrated competence.

Throughout his career Congressman David B. McKinley, P.E. has held himself out and been licensed in the State of West Virginia as a professional engineer, not a consulting engineer.

The West Virginia Code of State Regulations leaves no doubt as to where the primary responsibilities of a licensed professional engineer lies. WV 7CSR1 §12.3 sets forth the Registrant's Obligation to Society and states in subparagraph (a): "Registrants, in the performance of their services for clients, employers, and customers, shall be cognizant that their first and foremost responsibility is to the public welfare." (emphasis added). Thus unlike a lawyer whose primary responsibility is to her client, a registered professional engineer's primary responsibility is to the public welfare.

The provisions of the West Virginia Code that apply to architects do state that all architects must meet the definition of "good moral character" in order to be licensed. The definition of "good moral character" under West Virginia Code §30-12-2(4) states:

(4) "Good moral character" means such character as will enable a person to discharge the fiduciary duties of an architect to his client and to the public for the protection of health, safety and welfare. Evidence of inability to discharge such duties include the commission of an offense justifying discipline under section eight of this article.

Thus, even though the definition does state that an architect owes fiduciary duties to his client, an architect also owes equal fiduciary duties to the public for the protection of health, safety and welfare. The Rules of Professional Conduct for Architects set forth in the West Virginia Code of State Regulations (WV 2CSR1 §9.3.3) also provides clarity that the public interest is paramount by providing:

9.3.3. If in the course of his or her work on a project, a registered architect becomes aware of a decision made by his or her employer or client, against his or her advice, which violates applicable state or municipal building laws and rules or ordinances which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the registered architect shall:

9.3.3.a. Report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and rules or ordinances.

9.3.3.b. Refuse to consent to the decision; and

9.3.3.c. In circumstances where the registered architect reasonably believes that other similar decisions will be made notwithstanding his or her objections, terminate his or her services with respect to the project. If the registered architect terminates his or her services he or she has no liability to his or her client or employer on account of the termination.

(emphasis added). Failure to follow the Rules of Professional Conduct can be grounds for the loss of the license to practice architecture in the State of West Virginia. WV Code §30-12-8. Congressman McKinley is not a licensed architect; rather McKinley & Associates, Inc. has on its staff licensed architects that must comply with these rules.

West Virginia law requires that business firms that practice professional engineering and architecture designate a licensed professional in each field whose responsibility it is to supervise the professionals employed by the firm to assure that they are following the requirements of West Virginia law and regulations in the performance of their duties. McKinley & Associates, Inc. has designated senior professionals in each area to perform that function. Neither of those supervising professionals is Congressman McKinley. In fact, for the past several years Congressman McKinley's role with the company has not been in the practice of professional engineering but in the management of the approximately 40 employees (licensed and unlicensed) that are employed by the firm.

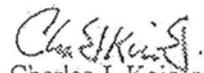
In conclusion, West Virginia imposes fiduciary responsibilities only upon consulting engineers, not professional engineers. Moreover, the House Rules were intended to apply to areas where a professional had fiduciary responsibilities to his or her client which could necessarily conflict with the responsibilities 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.

Before closing, I wanted to reiterate the history of the professional engineering firm within the McKinley family. McKinley & Associates, Inc. is the successor business to the independent practice of professional engineering by Johnson B. McKinley, Congressman David B. McKinley's father, who first opened his office in Wheeling in 1954. Father and son worked together for two years; Congressman McKinley purchased his father's office furniture, acquired his drawings and files, and assumed his clients when his father retired as a professional engineer. Thus it is hard for me to understand the distinction that you are apparently making between an unincorporated family business to practice professional engineering and an incorporated family business using the same family name. Though the present McKinley & Associates, Inc. business is much larger than the single-engineer office that was started in 1954, McKinley & Associates, Inc. is the natural and direct successor and should be recognized as such. The change to corporate form is no different than if a business changes from a partnership to a corporation to a limited liability company; the business is the same, only the legal form has changed.

Heather Jones, Esq., Counsel
April 14, 2011
Page 4

In the event you would like copies of any of the code sections or state regulations cited above, I will be happy to send them to you. If you would like to discuss these matters further, please do not hesitate to contact me. Thank you for your cooperation.

Very truly yours,


Charles J. Kaiser, Jr.

CJK/sls

cc: Congressman David B. McKinley

EXHIBIT 18

From: David B McKinley <[REDACTED]@mckinleyassoc.com>
Sent: Monday, June 27, 2011 6:26 PM
To: 'Kaiser, Charles J.'
Subject: FW: Ethics advisory opinion
Attachments: ethicscommittee@mail.house.gov_20110627_142125.pdf

This makes no sense. think 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.

-----Original Message-----

From: Strickland, Kelle [<mailto:Kelle.Strickland@mail.house.gov>]
Sent: Monday, June 27, 2011 5:55 PM
To: [REDACTED]@mckinleyassoc.com
Subject: Ethics advisory opinion

Congressman,

Please see the attached letter, per your conversation with Mr. Bonner.

Also, if you or your counsel have questions regarding the attached, Mr. Bonner advised that our Staff Director and Chief Counsel would be happy to speak with you regarding the details of the letter. Dan Schwager may be reached at 202-225-7103.

Thank you.

Kelle Strickland
Counsel to the Chairman
Committee on Ethics



EXHIBIT 19



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September 14, 2012

Jan Witold Baran
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[REDACTED]@wileyrein.com

The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
Committee on Ethics
United States House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Re: Response of Rep. David B. McKinley to August 24, 2012 Committee Letter

Dear Chairman Bonner and Ranking Member Sanchez:

By letter of August 24, 2012, you requested an explanation from the Honorable David B. McKinley regarding the status of efforts to rename the West Virginia engineering, architecture, and interior design firm of McKinley & Associates, Inc., in light of the Committee's concerns that continued operation of the firm under that name could violate provisions of the Ethics in Government Act that "prohibit a firm that provides fiduciary services from using the name of a Member, even if the Member is not compensated." We were recently engaged by Rep. McKinley to represent him in connection with his response to the Committee's August 24th request.¹

It is important to note at the outset that Rep. McKinley and his wife no longer own any stock in McKinley & Associates. The Employee Stock Option Plan ("ESOP") – in which neither Rep. McKinley nor his wife participate – now owns *all* of the shares in McKinley & Associates previously owned by Rep. McKinley. The ESOP now owns 100% of the shares of McKinley & Associates. Further, Rep. McKinley has no other affiliation with McKinley & Associates as an owner, board member, executive, employee, or consultant. Therefore, as described in more detail below, Rep. McKinley has no association or affiliation with McKinley & Associates which could raise concerns – either for him or for McKinley & Associates -- pursuant to

¹ Your August 24th letter requested a response from Rep. McKinley by September 7, 2012. In a September 4, 2012, telephone call with Committee Staff Director and Chief Counsel Daniel A. Schwager we asked on behalf of Rep. McKinley for an additional week to respond. Mr. Schwager informed us by email on September 5, 2012, that you had approved a one week extension for Rep. McKinley's response, to September 14, 2012.





The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 2

the "fiduciary" restrictions set forth in the Ethics in Government Act and by House Rule XXV.²

As explained further below, 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, architectural, 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. Rep. McKinley therefore requests that you approve the company's continued use of the name "McKinley & Associates" for all business purposes.

² As disclosed in his annual financial disclosure form covering calendar year 2011, Rep. McKinley holds the notes receivable with respect to loan agreements entered into by the ESOP to purchase Rep. McKinley's ownership interest in McKinley & Associates. Rep. McKinley owns the building which houses McKinley & Associates; he leases space in this building from McKinley & Associates for use as an office (not for official purposes) and he pays the firm for use of their telephone and internet/email services. Rep. McKinley's wife, Mary, serves as Secretary of the Board of Directors and as a Vice President of McKinley & Associates; if required to do so by the Committee, Mary McKinley would relinquish these positions at the company. Rep. McKinley's daughter-in-law, Katy McKinley, is an employee of the company and an owner of the company by virtue of her participation in the Employee Stock Ownership Plan. Rep. McKinley's oldest son also is the financial advisor to the ESOP participants and the company's secondary retirement fund.



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 3

Background

The McKinley family name; the "McKinley & Associates" brand name

Nine generations of McKinleys are associated with the Wheeling area. The McKinley name in West Virginia dates back to the Revolutionary War Era, when Captain John McKinley is known to have been an early Wheeling landowner in what was then Virginia. Several generations later, Johnson Camden McKinley, Rep. McKinley's grandfather, further established the McKinley name in the state through his pioneering activity as an organizer and developer – a "baron" -- of the northern coal fields in West Virginia; he was recognized as such by induction into the Coal Hall of Fame. He operated the McKinley Coal Company and was honored when the community of McKinleyville in a neighboring county was named after him. The Johnson Camden McKinley House – or "Willow Glen" – in Wheeling, is one of the best-known historic houses in the state and endures as a monument to the significant role Johnson C. McKinley played in the industrial history of West Virginia.

Johnson B. McKinley, Rep. McKinley's father, established the McKinley family name in engineering and construction in the Wheeling area. Johnson B. McKinley served as the City Engineer for Bethlehem, West Virginia, for many years; among many other prominent projects, he was the engineer for a civic center and for a sewage treatment plant. Over his many years of practice, Johnson B. McKinley appears to have operated under a number of business names, including "Johnson B. McKinley Engineering" and, primarily, "Johnson B. McKinley, Consulting Engineer." Although he was not an architect, and therefore did not refer to architectural services in his business name, Johnson B. McKinley designed primarily in the area of municipal sewer and water projects and built many projects under the name "Penn Construction." It is unclear whether Johnson B. McKinley ever incorporated his business operations.

From 1971 to 1973, Rep. McKinley worked with his father in his father's engineering and construction businesses and, together, they continued to develop the reach and reputation of the McKinley name for these skills and services in the tri-state and Wheeling regional area. Rep. McKinley left his father's business after about two years. He founded his own firm, McKinley Engineering Company, in 1981. In 1989, after the firm began to offer architectural services, the company name changed to McKinley & Associates, Inc. Despite any gap in time or



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 4

variations in the company name, however, it is important to appreciate the continuity of core professional services and reputation centered on the McKinley name. It is equally important to appreciate the continuity of the public professional collaboration between Johnson B. McKinley and David B. McKinley.

From the time David B. McKinley began his own firm in 1981 – and continuing for some years beyond the renaming of this firm as McKinley & Associates in 1989 -- Johnson B. McKinley played an instrumental and very public role in solidifying and expanding the reputation of that firm, and of the McKinley family name as used by that firm, in engineering and architectural services in West Virginia and beyond. Particularly during those periods when David McKinley was required to be absent from the firm to attend the state legislature, Johnson B. McKinley served as the eyes and ears for the firm that became McKinley & Associates on numerous project sites, and in so doing became a public face of the firm. Although he also maintained his own business, Johnson B. McKinley attended many meetings with clients as the representative of McKinley & Associates; he walked many project sites with owners as the representative of McKinley & Associates.

The continuity and close connection between Johnson B. McKinley and McKinley & Associates continued even after Johnson B. McKinley's death in 1996 at age 76. McKinley & Associates completed all of Johnson B. McKinley's unfinished work. McKinley & Associates acquired all of Johnson B. McKinley's business assets. McKinley & Associates hired a site design specialist to continue providing services that Johnson B. McKinley's expertise had allowed the company to offer and that clients of McKinley & Associates had come to expect.

Based on Johnson B. McKinley's long association with and substantial work for the firm, "McKinley & Associates" was and is inarguably a family name, independent of Rep. McKinley's service as a Member of Congress. Moreover, the established brand name of "McKinley & Associates" – its recognized reputation for professional excellence in engineering and architecture – further eliminates any concern that the firm could be seen as trading on a Member's "prestige." With three offices in West Virginia and Pennsylvania, McKinley & Associates has completed major projects, not just in every county in West Virginia, but across the country in North Carolina, South Carolina, Ohio, Pennsylvania, New York, Kentucky, Minnesota, Illinois, and Utah. These projects include hospitals, secondary schools and colleges, federal and state government buildings, office and commercial projects, historic preservation sites, and others. The reputation of



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 5

McKinley & Associates has been earned – and continues to be confirmed – by the work of its over 40 architects and mechanical, electrical, structural, and civil engineers.³ The work of these professionals has garnered McKinley & Associates wide recognition and numerous awards, including, naming only a few, the prestigious West Virginia AIA (American Institute of Architects) Honor Award and Merit Award and the Governor's Award for Historic Preservation. Building from the solid foundation of the McKinley family name in engineering, design, and construction, it is on the work and reputation of these professionals – on the McKinley & Associates brand name that they maintained and extended -- that the future success, and the future business, of McKinley & Associates rests.

Sale of Rep. McKinley's interest in McKinley & Associates

Five years ago and prior to any consideration of public service David B. McKinley, PE began the first of two steps in transferring ownership of the company to his employees by initiating an Employee Stock Ownership Plan (ESOP) and selling it 30% of McKinley & Associates. Besides holding the stock of a company, an ESOP is generally considered a form of retirement benefit for employees.

In April of 2011, Rep. McKinley then signed a Memorandum of Understanding with the company ESOP to sell the balance of McKinley & Associates to them. Rep. McKinley understood, in good faith, that the sale of his entire ownership interest in McKinley & Associates would resolve, and was an appropriate response to, any concerns expressed by the Committee as to the company's continued use of the name "McKinley & Associates."

As disclosed on his annual financial disclosure form for calendar year 2011, on December 31, 2011, Rep. McKinley entered into a formal agreement to sell his entire remaining ownership interest in McKinley & Associates – comprising 70% of the company's shares – to the ESOP. This sale was contingent on an independent valuation of the firm. Because of the time needed to complete this valuation, and because of ERISA requirement, the actual sale was not completed until April 30, 2012. On that date McKinley & Associates became 100% ESOP owned. Rep.

³ Of course, the professional work of David B. McKinley as an engineer has contributed significantly to the "brand name" and reputation of McKinley & Associates. But, as the Committee has been informed previously, for the past several years before entering Congress Rep. McKinley's role with the company has not been in the practice of professional engineering but in the management of the firm's more than 40 professionals and support employees.



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 6

McKinley holds the note receivable with respect to the loan undertaken by the ESOP to finance its purchase of his 70% interest in McKinley & Associates (as he also holds the note receivable for the loan undertaken by the ESOP to finance its earlier purchase of its initial 30% share of the company's stock). According to the sale documents, Rep. McKinley does not retain any authority to direct or require the ESOP to change the name of the company.

Restriction on permitting one's name to be used by an entity that provides covered services

The Ethics in Government Act of 1989, at Title 5 U.S.C. app. 4 § 502(a)(2), provides that a Member or covered employee shall not "permit [his or her] name to be used by any . . . firm, partnership, association, corporation, or other entity" which, by reference to § 502(a)(1) of the statute, "provides professional services involving a fiduciary relationship." House Rule XXV, paragraph 2, §§ (a) and (b), which reflect the same restrictions on fiduciary professions and uses of a Member's or covered employee's name as are set forth in the Ethics in Government Act, limit the scope of § 502(a)(1) of the Act to cover any entity that "provides professional services involving a fiduciary relationship *except for the practice of medicine.*" (Emphasis added.)

Recognizing that neither Committee action, nor even a House Rule, can trump the statutory requirements of the Ethics in Government Act, the Committee on Ethics has stated: "Notwithstanding the existing statutory prohibition, the Standards Committee has authorized Member-physicians to practice medicine for a limited amount of compensation." (*House Ethics Manual*, page 218.) Indeed, the Committee has permitted member physicians to practice medicine for at least a limited amount of compensation ever since the passage of the Ethics in Government Act, and notwithstanding the fact that the legislative history of the act makes clear that "medicine" – like "architecture"⁴ – is one of the "professional activities involv[ing] a 'fiduciary' relationship" the practice of which for compensation was specifically intended to be covered by the Act.⁵

⁴ Unlike architecture, the Committee does not appear to have concluded that engineering is a covered "fiduciary" profession.

⁵ House Bipartisan Task Force on Ethics, *Report of the Bipartisan Task Force on Ethics on H.R. 3660*, 101st Cong., 1st Sess. 13-14 (Comm. Print. Comm. on Rules 1939), page 16: "The task force



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 7

The same legislative history makes clear that "consulting and advising," without apparent limitation, are intended to be included as "fiduciary" professions covered by the Act and, thus, by the House Rule. Yet -- although neither the language of the Act, the legislative history of the Act, nor the language of the House Rule on fiduciary restrictions appear to contemplate such an exception -- the Committee on Ethics advises that a senior staffer, who is otherwise covered by the restrictions, "is not prohibited from accepting compensation for political consulting services that he or she provides to either a candidate (including one's employing Member), a political party, or a Member's leadership PAC." (*House Ethics Manual*, at page 218.)

Our purpose in citing these expansive interpretations and applications by the Committee of the language of House Rule XXV, of the Ethics in Government Act, and of the legislative history of the Act (as contained in the *Report of the Bipartisan Task Force on Ethics*) is not to criticize the Committee's past approach to interpreting and applying the fiduciary restrictions. To the contrary, the purpose in citing these well-known past instances is to demonstrate clear Committee precedent -- in fact, a Committee tradition -- for reading the language of the fiduciary restrictions, and of the related legislative history, flexibly and pragmatically when there is a reasonable basis for doing so.

Approval of the continued use of the name "McKinley & Associates" by Rep. McKinley's former firm would not require you to reach outside of the language and four corners of the Rule, the statute, or the legislative history, as was arguably done by the Committee in the instances of interpretation and application cited above. Your approval of the continued use of the name "McKinley & Associates" would simply require you to approach the "fiduciary" restrictions -- and, in particular, the related legislative history -- as written in light of what they may be viewed reasonably and soundly to permit (not in light of what they may be argued to prohibit).

(Continued . . .)

intends the ban to reach, for example, services such as legal, real estate, consulting and advising, insurance, medicine, architecture or financial."



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 8

Continued use of the name "McKinley & Associates" is consistent with the restrictions on "fiduciary services"

In its section by section report on the Ethics in Government Act of 1989, and as repeatedly referred to above, the House Bipartisan Task Force on Ethics specifically discussed a "family name" exception to the prohibition on the use of a Member's name by an entity that provides "fiduciary services":

[T]he task force understands that a law firm, real estate agency, or other firm that bears a "family" name, as opposed to the name of the individual Member, officer, or employee, would not have to change its name. Thus, the fact that a Member, officer or employee is presently associated with a law firm founded by, and still bearing the name of his father would not require the firm to drop the "family" name.⁶

In its June 24, 2011, letter to Rep. McKinley the Committee appears to read this last quoted sentence from the *Bipartisan Task Force Report* as describing and defining the only circumstance under which a firm name will be considered a "family name."⁷ Admittedly, this also appears to be the overly narrow reading of "family name" taken by the Committee in its *Manual*.⁷ But these circumstances -- that is, where the firm in question is legally and factually the same entity as founded by, and still bearing the specific name of, the father or other relative of the Member -- can and should be viewed as *only one example* of the kind of family participation in, and association with an entity, that supports a determination that the entity bears a "family name."

That the specific circumstances described in the *Bipartisan Task Force Report* were intended as only one example of when the facts will support the finding of a "family name" is evident from the fact that the key sentence (quoted above) begins with the word "thus," a common meaning of which is "as an example" or "for example."

There may be a number of factual scenarios, therefore, under which the Committee could, and should, determine that an entity bears a "family name." Rather than

⁶ *Id.*

⁷ *House Ethics Manual*, at page 221 and page 222, Example 32.



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 9

being applied rigidly only where a present firm is legally and factually the identical firm founded by a Member's "father" (the *Bipartisan Task Force Report* does not, after all, identify any other permissible family relationship), interpretation and application of the "family name" exception should serve the actual, underlying purpose of the restrictions on use of a Member's name by a "fiduciary services" firm. As the *Bipartisan Task Force Report* makes clear, this underlying purpose is to address the "potential for abuse . . . in cases where outside interests attempt to trade on the prestige of Members of Congress . . ."⁸ Where there is a reasonable basis for the Committee to determine that use in a firm's name of the surname (or "family name") of a Member reflects historical factors or reflects some demonstrable family association with the firm the Committee should determine that the firm name qualifies as a "family name."

As detailed in this letter, there are ample grounds for the Committee to determine that "McKinley & Associates" qualifies as a "family name." Independent of Rep. McKinley – and dating back to his grandfather Johnson Camden McKinley and, before him, to the Revolutionary War – "McKinley" is a recognized and prominent family name in West Virginia history and business. Initially in agriculture and then in the coal fields of West Virginia, the name of McKinley has been associated with business. In the fields of engineering, construction, and design, Rep. McKinley's father, Johnson B. McKinley, first established and, for many years, grew the reputation of the "McKinley" name in and around the Wheeling regional area. Johnson B. McKinley founded the "McKinley" professional family name. Johnson B. McKinley imparted his professional bona fides, and the professional reputation he first founded, to his association with "McKinley Engineering Company" and to "McKinley & Associates" through his important and frequent work over many years as the public eyes, ears, and representative of the firm (under both firm names).

Just as the Committee should not unduly and rigidly limit application of the "family name" exception to the single set of circumstances cited as one example in the *Bipartisan Task Force Report*, the Committee should recognize that – even apart from a firm name being a "family name" – there are other reasonable bases to determine that a firm name is not an "attempt to trade on the prestige" of a Member of Congress and is, therefore, permissible under both statute and House Rule. One such basis should be found where a firm name that includes a Member's surname is

⁸ *Bipartisan Task Force Report* at page 14



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 10

an established brand name in its professional field. As discussed above, "McKinley & Associates" is an established brand name and industry leader – in Wheeling, in West Virginia, in the tri-state area, and beyond – in engineering, architecture, and interior design. As "McKinley & Associates" has successfully completed numerous high-profile projects under its current name for over 20 years, and as the reputation and brand of the firm under this name has grown, the professional excellence of the "McKinley & Associates" firm has been repeatedly recognized and awarded by peer groups, professional associations and others. "McKinley & Associates" does not trade on the "prestige" of Rep. McKinley as a Member of Congress. Frankly, that kind of "prestige" would be worthless to the firm in the technical, results-oriented industries in which it operates. "McKinley & Associates" trades on its recognized and established name and reputation for technical excellence and practical success.

A final, related point should be noted about the scope of the "potential for abuse" that the drafters of the Ethics in Government Act intended to address in imposing restrictions on the use of a Member's name by a "fiduciary" services firm. Throughout the discussion in the *Bipartisan Task Force Report* on the restrictions on the practice of "fiduciary" professions and the delivery of "fiduciary" services, the emphasis is on the potential for conflict between a Member's official, representative duty to the public in general and the personal, private duty that may be owed by a Member/professional to an individual client. The following passage from the *Report* makes this focus clear:

When certain private positions and employment create for the Member or public official a fiduciary or a representational responsibility to a private client or a limited number of private parties, then such outside activities create the potential for a serious conflict of interest. The conflict occurs in the clash of those responsibilities and the divergence of public and private interests on a particular governmental matter or in general government policy.⁹

This central passage leads directly into the discussion in the *Report* about "the potential for abuse of *this type of income* in cases where outside interests attempt to trade on the prestige of Members of Congress . . ." (Emphasis added.) Thus, it appears that the concern of the drafters of the Ethics in Government Act about outside entities "trading" on the "prestige of Members" was intended primarily to

⁹ *Id.*



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 11

address circumstance where such an entity would profit improperly by implying that private clients would have, and would benefit from, an actual fiduciary or representational relationship with a Member of Congress. As a general matter – and absent other factors supporting use of a Member's surname in a firm name – the potential for such abuse may well exist in a law firm or in a consulting or advising firm, particularly in a small firm or practice. But the potential for this kind of abuse by a firm providing architectural services (among other services) would appear to be minimal. In the case of a large, established, industry-leading architectural firm like McKinley & Associates, the potential for such abuse – for “trading” on Rep. McKinley’s status as a Member in this misleading way -- is nonexistent.

Conclusion

As the Committee has been informed in previous submissions on behalf of Rep. McKinley, a prohibition on McKinley & Associates use of its existing name would create severe financial hardship for all of the current employee/owners of the firm. For their compensation and for their retirement savings, these employee/owners are dependent on the continued success of McKinley & Associates in a difficult economy. The goodwill and positive professional reputation that the firm has engendered over the years attaches to the brand name McKinley & Associates and would be lost if a name change were required.

But no such name change is required. Based on the information, and for the reasons, set forth above, the name “McKinley & Associates,” as used by Rep. David B. McKinley’s former firm, is a “family name,” an established brand name, and is otherwise consistent with the intent and purpose of the restrictions imposed by statute and House Rule on the provision of professional services involving a fiduciary relationship. On behalf of Rep. McKinley, therefore, we respectfully urge you to approve the firm’s continued use of the name “McKinley & Associates.”



The Honorable Jo Bonner, Chairman
The Honorable Linda T. Sanchez, Ranking Member
September 14, 2012
Page 12

If you have any questions or wish to discuss this matter, please do not hesitate to contact me, at 202-719-██████, or my colleague Robert L. Walker, at 202-719-██████.

Sincerely,

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

Jan Witold Baran
Robert L. Walker
Counsel for Rep. David B. McKinley

EXHIBIT 20

Call w/ Steve P - David McKinley's Counsel
8/12/11 - He called to inform me the Committee
made a factual mistake regarding the name of
the father's business. The business name was
J.B. McKinley Engineering. He asked if that
fact might change the Committee's decision to
change the firm's name. It told him it
was not something I could do & that he
should have the Member send a letter to the
Committee. I indicated that it was
unlikely they would change the opinion
absent a significant change in facts.

EXHIBIT 21

JO BONNER, ALABAMA
CHAIRMAN

MICHAEL T. McCAUL, TEXAS
K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI

KELLE A. STRICKLAND,
COUNSEL TO THE CHAIRMAN

LINDA T. SÁNCHEZ, CALIFORNIA
RANKING MEMBER

MAZIE K. HIRONO, HAWAII
JOHN A. YARMUTH, KENTUCKY
DONNA F. EDWARDS, MARYLAND
PEDRO R. PIERLUISI, PUERTO RICO

DANIEL J. TAYLOR,
COUNSEL TO THE RANKING MEMBER

1015 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-7103

ONE HUNDRED TWELFTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515-6328

June 24, 2011

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

Dear Colleague:

This responds to the letters dated January 3, 2011, and April 14, 2011, which were submitted on your behalf by your counsel, Charles J. Kaiser, Jr., concerning your outside business interests.

FACTUAL BACKGROUND

According to the information provided in Mr. Kaiser's letters, additional information provided to Committee counsel by you and Mr. Kaiser, and publicly-available information, the background on this matter is as follows.

Prior to your election to the House, you worked as a licensed professional engineer at McKinley & Associates, Inc. (the Firm), of which you were also an officer and director. According to its Web site, the Firm opened its doors in 1981 as "a full-service architectural and engineering firm." Your counsel has represented that the Firm "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." Your letters concede that West Virginia law deems architecture to be a profession that involves fiduciary duties.

The Firm has three offices, located in Wheeling, West Virginia; Charleston, West Virginia; and Washington, Pennsylvania, and employs more than 40 individuals. The Firm provides services in the Tri-state region and other mid-Atlantic states. Its Web site indicates that past clients have included many state- and local-level government entities, as well as federal entities such as the U.S. Postal Service, Department of Defense, NASA, and the Federal Aviation Administration.

In January 2007, the Firm established a partial Employee Stock Ownership Plan (ESOP). You own approximately 70% of the Firm's common stock, with the remaining 30% owned by the Firm's employees under the ESOP.

Your father, Johnson B. McKinley, was also a licensed professional engineer. 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. You worked with your father at McKinley Engineering for approximately two years, prior to establishing the Firm in 1981, which became “custodian of all of the drawings, files, and other assets accumulated” by your father during his career as an engineer, and also serves many of the same clients. Your letters stress that the name “McKinley” has been associated with engineering services in the Wheeling area since 1954.

Finally, we understand that you wish to avoid changing the name of the Firm if at all possible within the Rules.

LEGAL AUTHORITY AND ANALYSIS

Federal law and House rules restrict the outside earnings of Members and senior staff of the House of Representatives. These individuals may not receive more than 15 percent of the Executive Level II (House Member) salary in outside earned income in a calendar year.¹ For 2011, this limit is \$26,955. Regardless of whether this income level is reached however, certain types of earnings are absolutely prohibited.

Section 502 of the Ethics in Government Act (5 U.S.C. app. 4 § 502(a)) provides that Members and senior staff shall not —

- (1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;
- (2) permit that Member’s, officer’s, or employee’s name to be used by any such firm, partnership, association, corporation, or other entity;
- (3) receive compensation for practicing a profession which involves a fiduciary relationship; or
- (4) serve for compensation as an officer or member of the board of an association, corporation, or other entity.

See also House Rule 25, cl. 2. The Act gives this Committee responsibility for interpreting these provisions for the House.

The statute does not define “fiduciary,” a term generally denoting an obligation to act in another person’s best interests or for that person’s benefit, or a relationship of trust in which one relies on the integrity, fidelity, and judgment of another.² However, in creating the exception,

¹ 5 U.S.C. app. 4 § 501(a)(1); House Rule 25, cl. 1(a)(1).

² *See Black’s Law Dictionary* 658, 1315 (8th ed. 2004); *Bipartisan Task Force Report, Report on H.R. 3660*, 101st Cong., 1st Sess. (Comm. Print, Comm. on Rules 1989), *reprinted in* 135 Cong. Rec. H9253 (daily ed. Nov. 21, 1989) at 16.

the Bipartisan Task Force stated that in order for the underlying purposes to be achieved, “the term fiduciary [should] not be applied in a narrow, technical sense.”³ This report further states:

The task force intends the ban to reach, for example, services such as legal, real estate, consulting and advising, insurance, medicine, architecture, or financial.⁴

The legislative history of the statute clearly denotes architecture as a field involving a fiduciary relationship. This determination is supported by West Virginia law,⁵ and your letters indicate you concur with this assessment.⁶ Thus, the Firm is a business that provides fiduciary services, and therefore is subject to the limitations stated in the statute and rule cited above.

These provisions prohibit a firm that provides fiduciary services from using the name of a Member, even if the Member is not compensated. The ban extends, for example, to use of the name of the Member on the letterhead, advertising, or signage of any covered organization. Under this provision, when the name of an incoming Member is used in the name of a law firm, real estate agency, or other organization that provides fiduciary services, the name of that organization must be changed to eliminate the name of the Member. However, the requirement does not apply when the organization’s name in fact reflects a “family” name, as opposed to that of the individual Member or staff person. On this point, the Bipartisan Task Force Report states, “the fact that a Member, officer, or employee is presently associated with a law firm founded by, and still bearing the name of, his father would not require the firm to drop the ‘family’ name.”⁷

In the case of the Firm, the Committee accepts your representation that the current Firm can reasonably be seen as a practical continuation of McKinley Engineering, the business originally established in 1954 by your father, Johnson McKinley, for whom it was named. However they are legally and factually distinct entities. **Accordingly, the Committee finds that, while a name change is required under current rules, guidelines and policies, a change of the Firm name to the name of your father’s original business, McKinley Engineering, along with a clear association with your father, such as adding to the letterhead the phrase “Part of a Family Tradition since 1954”⁸ if appropriate and consistent with relevant state**

³ *Bipartisan Task Force Report* at 16, 135 Cong. Rec. at H9257.

⁴ *Id.*

⁵ West Virginia statute requires architects to practice “good moral character,” which means “character as will enable a person to discharge the fiduciary duties of an architect to his client and to the public.” *See* W.V. Code § 30-12-2(4); W.V. Code § 30-12-4.

⁶ Because both you and the Committee are in agreement on this point, we do not address whether the provision of engineering services also involves fiduciary duties. This is because the rule addresses any of the firm’s services, not the Member’s actual prior services.

⁷ *See 2008 House Ethics Manual* at 221; *Bipartisan Task Force Report* at 16, 135 Cong. Rec. at H9257.

⁸ We note that any reference to Association with your father should not misrepresent the company’s actual corporate history or status. However, should some other language be more appropriate or preferred, you should consult with the Committee to determine if the alternate language or proposal would satisfy the need to change the name and satisfy the family name exception.

laws, would be consistent with the family name exception to the Rules and would be permissible for the purposes of House Rules.

Regarding the limitation on outside earnings, these limitations apply only to “income,” that is, compensation for services (or “earned income”), and not to money received from ownership or investment of equity income (“unearned income”).⁹ Because these provisions and House Rules concern the receipt of compensation for services they do not generally restrict the ability of a Member to have an ownership interest in a business or to receive dividends or other income that results from their ownership interest. However, the Committee has taken the position that when a Member has an ownership interest in a “personal service” business – that is, a business in which capital is not a material income-producing factor – the Member’s share of the profits from the business will be deemed to be outside *earned* income, unless it can be demonstrated that the income was in fact a return on investment. Even when the Member performs no personal services, absent a strong showing to the contrary, it is presumed that the Member’s share of profits from a service business is for attracting or retaining clients and thus constitutes *earned* income.¹⁰

Your attorney has indicated that you resigned as an officer and director of the Firm prior to taking the oath of office. However, for the sake of completeness, we address the rules related to board service. The ban on paid board service arises from the same set of concerns as the fiduciary relationship prohibitions. The ban on accepting compensation for serving as an officer or board member applies to all entities, including nonprofit and campaign organizations, and governmental entities. As a general matter, Members may serve in such capacities, but they may not be paid any directors’ fees or other compensation for that service. Members may accept reimbursements for travel and other expenses in carrying out the duties of a board member and may be covered by an insurance policy as a member of a board, provided that acceptance is permissible under the applicable provision of the gift rule (House Rule 25, cl. 5(a)(3)(G)(i)).¹¹

Finally, we note for your information an additional federal statute, 5 U.S.C. § 501, which provides:

An individual, firm, or corporation practicing before an agency of the United States may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the business.

This statute is enforced by the U.S. Department of Justice, and, thus, the Committee cannot give definitive guidance on its scope or offer you any exception from its requirements. To be clear, this statute may prohibit the Firm, even with a revised name such as the one discussed in this letter, from completing or accepting work from the U.S. government or federal entities or agencies. You should seek guidance from the Department of Justice or private counsel on that issue.

⁹ See House Rule 25, cl. 4(d)(1); *2008 House Ethics Manual* at 228.

¹⁰ See *2008 House Ethics Manual* at 231.

¹¹ See *id.* at 222.

LIMITATIONS

The response above constitutes an advisory opinion concerning the application of 5 U.S.C. app. 4 §§ 501 *et seq.* and House Rule 25, clause 1. The following limitations apply to this opinion:

- This advisory opinion is issued only to Representative David B. McKinley, the requestor of this opinion. This advisory opinion cannot be relied upon by any other individual or entity.
- This advisory opinion is limited to the provisions of House rule and federal statute specifically noted above. No opinion is expressed or implied herein regarding the application of any other federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the proposed conduct described in this letter, including, without limitation, 5 U.S.C. § 501.
- This advisory opinion will not bind or obligate any entity other than the Committee on Ethics of the United States House of Representatives.
- This advisory opinion is limited in scope to the specific proposed conduct described in this letter, the specific facts represented to the Committee, and the understanding of those facts to the extent indicated in this letter, and does not apply to any other conduct or facts, including those which appear similar in nature or scope to that described in this letter. Should this letter misstate any facts in this matter, the opinion and advice may no longer apply and you should inform the Committee as soon as possible to determine if the advice and opinion in this letter applies to the accurate factual basis.

The Committee will take no adverse action against you in regard to any conduct that you undertake, or have undertaken, in good faith reliance upon this advisory opinion, so long as you have presented a complete and accurate statement of all material facts relied upon herein, and the proposed conduct in practice conforms with the information you provided, as addressed in this opinion.

Changes or other developments in the law (including, but not limited to, the Code of Official Conduct, House rules, Committee guidance, advisory opinions, statutes, regulations, or case law) may affect the analysis or conclusions drawn in this advisory opinion. The Committee reserves the right to reconsider the questions and issues raised in this advisory opinion and to rescind, modify, or terminate this opinion if required by the interests of the House. However, the Committee will rescind an advisory opinion only if relevant and material facts were not completely and accurately disclosed to the Committee at the time the opinion was issued. In the event that this advisory opinion is modified or terminated, the Committee will not take any adverse action against you with respect to any action taken in good faith reliance upon this advisory opinion so long as such conduct or such action was promptly discontinued upon notification of the modification or termination of this advisory opinion.

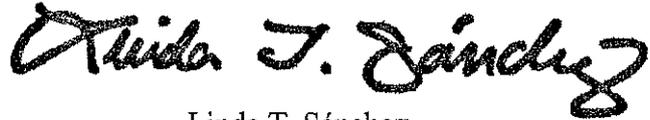
The Honorable David B. McKinley
Page 6

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.



Jo Bonner
Chairman

Sincerely,



Linda T. Sánchez
Ranking Member

JB/LTS:ced

EXHIBIT 22

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COMMITTEE ON
ENERGY AND COMMERCE

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Congress of the United States House of Representatives

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CO-CHAIR,
CONGRESSIONAL YOUTH CHALLENGE CAUCUS
CO-CHAIR,
HIGH PERFORMANCE BUILDINGS CAUCUS
CO-CHAIR
CONGRESSIONAL HEARING HEALTH CAUCUS

August 22, 2016

The Honorable Charles W. Dent, Chairman
The Honorable Loretta T. Sánchez, Ranking Member
Members of the Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Re: Response of Representative David B. McKinley to the Committee's proposed report and letter

Dear Members of the Committee on Ethics:

Thank you for this opportunity to respond to the draft report and draft letter of reproof provided to me by the staff of the Committee on Ethics.

Following the clear and repeated advice of my attorney at that time, after I was elected and sworn into my first term in Congress I sold my remaining interest in the McKinley & Associates architecture and engineering firm to that firm's Employee Stock Option Plan to comply with my obligations under House ethics requirements, specifically with the so-called "fiduciary restrictions." I have since come to understand that the advice of my then attorney in explaining and interpreting to me House Committee on Ethics requirements and guidance, and my reliance on that advice, were mistaken. I regret relying on that advice.

I appreciate that, after a long review, the Committee on Ethics in its proposed report has not found that I acted in bad faith in relying on my then attorney's legal advice; that there is no finding by the Committee of any knowing or willful violation by me; and that, in fact, the Committee's own proposed findings indicate that my actions were, at worst, negligent. And yet, based on these findings, the Committee proposes the disproportionate response of issuing a letter of reproof to me.

Even recognizing that a Committee on Ethics reproof is not considered a sanction under the Committee's own procedural rules, I take the strongest exception to this disproportionate and unjustified proposed response. I urge the Committee to handle this matter as an advisory matter, without issuing any public report. But, even if you decide that my good faith reliance on the advice of counsel merits a public report to keep others in the House community from making a



similar mistake, I respectfully ask you to agree that this important educational end can be fully achieved without reproving me through that report and without a finding that my actions reflected on the House. The issuance of a separate letter of reproof in this matter, where any violations by me were unintentional, is clearly not merited and would be contrary to the most recent Committee precedent.

As noted, this matter concerns my compliance with restrictions on affiliating with or receiving compensation from a firm that provides professional services involving a fiduciary relationship. That is, this matter concerns the House “fiduciary restrictions.” In its inquiry, the Committee has focused on the continued use of the name McKinley & Associates by the West Virginia architecture and engineering firm I founded in 1981. Prior to entering Congress in 2011, I was a principal, officer, and director of McKinley & Associates, but my wife Mary McKinley and I no longer own any stock in McKinley & Associates; I have no other affiliation with the firm either as an owner, board member, executive, employee, or consultant. Through letters submitted on my behalf by my current counsel, Jan Witold Baran and Robert L. Walker, to the Committee on September 24, 2012 and May 1, 2013, and through a substantial volume of accompanying documents, I have described and discussed at length my efforts to understand and to comply with these “fiduciary restrictions.”¹ The two earlier letters are included as Exhibits 1 and 2 to this letter and, although they are lengthy, I urge you to read through them carefully. I believe strongly that your review will convince you that, based on the advice of my attorney at that time, I acted in good faith to comply with the “fiduciary restrictions” and did not intentionally violate those restrictions.

Although I urge my colleagues on the Committee to carefully review all the arguments and information in my earlier letters, I want to emphasize in this letter the following points:

- **Relying on the advice and guidance of my former attorney, after entering Congress I sold my ownership interest in McKinley & Associates with the understanding that this sale would satisfactorily address and eliminate the need for that firm to remove “McKinley” from its name. My good faith reliance on this legal advice and guidance occurred in the context of receiving what I reasonably perceived as self-contradictory and confusing guidance from the then Committee staff. The Committee’s proposed report in this matter, and the proposal to issue a reproof based on the findings in that report, unrealistically and unfairly minimizes that context of confusion.**
- **The Committee’s proposed report appears to suggest, incorrectly, that I did not notify the Committee of the sale of my interest in McKinley & Associates until sometime after August 24, 2012. In fact, as clearly described in my May 1, 2013 submission to the Committee on Ethics, in June 2011 I told the then Chairman of the Committee that I had sold my interest in the firm. I do not know why the Committee’s proposed report ignores this fact, especially when the report cites other parts of this same exchange with the then Chairman as apparent fact. I do know that a determination by the Committee to issue a report or reproof based, even in**

¹I have also argued – and I maintain – that the facts in this case do not make out a violation because the name “McKinley & Associates” should be found to fall within the “family name” exception to the “fiduciary restrictions.”

part, on an erroneous and incomplete understanding of when I informed the Committee of this sale would be unfair.

- I have cooperated fully with the inquiry the Committee began in this matter in August 2012. I have provided exhaustively detailed factual information and over 550 pages of documents in response to the Committee's requests for information and documents. In doing so, I also continued to advance what I still regard as a reasonable position in this matter: the Committee should determine that McKinley & Associates falls within the "family name" exception to the fiduciary restrictions.

In the remainder of this letter I address at greater length each of the three points outlined above.²

- Relying on the advice and guidance of my former attorney, after entering Congress I sold my ownership interest in McKinley & Associates with the understanding that this sale would satisfactorily address and eliminate the need for that firm to remove "McKinley" from its name. My good faith reliance on this legal advice and guidance occurred in the context of receiving what I perceived as self-contradictory and confusing guidance from the then Committee staff. The Committee's proposed report in this matter, and the proposal to issue a reproof based on the findings in that report, unrealistically and unfairly minimizes that context of confusion.

To a non-lawyer layperson like me – and, I imagine, even to some of you on the Committee – the requirements, the "do's and don'ts," of the "fiduciary restrictions" under the Ethics in Government Act and House rules do not seem to be based on common sense and require clear and consistent exposition to understand. As I think the record and documents I provided to the Committee show, in 2010 and 2011 Committee on Ethics staff did not provide consistent guidance on the "fiduciary restrictions" to me.

Yes, as my May 1, 2013 letter to the Committee fully describes and acknowledges, soon after my election to Congress in November 2010 there were members of the Committee staff who were providing the "informal opinion" that the "fiduciary restrictions" would necessitate changing the name of McKinley & Associates (by removing my surname "McKinley") because, as a provider of architectural services, it is apparently considered to be a provider of professional services imposing fiduciary obligations. However, *in clear contrast to and in complete contradiction of this staff advice*, on January 25, 2011 another counsel to the Committee – in fact the Director of

² Apart from the specific points covered in this letter, there numerous other statements and conclusions in the Committee's proposed report and proposed letter with which I disagree, including, but not limited to, the following.

On page 10, the Committee's proposed report states: "Nevertheless, it must be noted that, at that time, both Representative McKinley and his counsel and Committee staff knew that the only procedural solution to the matter was a *formal opinion from the Committee*, not informal advice from its staff." I am not sure what "procedural solution" is intended to mean here, but if this statement is intended to mean that in 2011 I knew that the only solution of the issues arising under the "fiduciary restrictions" was a formal opinion letter from the Committee, this statement is wrong. As I have emphasized throughout this letter and in my other responses to the Committee, at that time I believed – based on my then attorney's firm advice – that, if issues existed under the "fiduciary restrictions," these issues could be resolved by the sale of my interest in McKinley & Associates.

Financial Disclosure at that time – called my attorney at that time, Charles J. Kaiser, to tell him (as Mr. Kaiser emailed to me the following day):

[The Committee] staff agreed with our assertion that McKinley & Associates does not provide professional services involving a fiduciary relationship. As you will recall, this is the critical element that created the difficulties under the House Ethics Manual. [He] also agreed that McKinley & Associates qualified as a “family business” and so the name would not need to be changed.

For two months, McKinley & Associates and I operated on the understanding – based on this analysis and opinion (albeit informal) by Committee counsel – that McKinley & Associates would not need to change its name. *Then*, yet again in clear contrast and complete contradiction – but this time of the guidance received on January 25 from the Director of Financial Disclosure – *yet another* Committee counsel contacted Mr. Kaiser to tell him the counsel he had spoken with on January 25 was no longer with the Committee and that this new counsel was going to recommend, in sum, that the Committee take the position that McKinley & Associates did provide services involving a fiduciary relationship and that the name “McKinley” would have to be removed from the firm name.

Throughout the process of receiving contradictory, and so to me, unclear guidance from Committee staff, my attorney Mr. Kaiser provided an essentially consistent and clear explanation of the requirements imposed by the “fiduciary restrictions”: “If McKinley & Associates is considered to be a firm providing professional services involving a fiduciary relationship, then it appears you are left with two choices: (1) change the name, or (2) completely divest yourself of your interest in the company. . . .”³ This clearly stated analysis from Mr. Kaiser – either change the company name or divest myself of my interest in the company – established a firm frame of understanding for me through which I viewed my obligations under House Ethics standards with respect to McKinley & Associates. Even the Committee’s proposed report appears to take note of the consistency and persistency of Mr. Kaiser’s guidance: “[] Mr. Kaiser’s internal discussions with Representative McKinley and his team repeatedly referenced the sale [of my interest in McKinley & Associates] as a fully-fleshed alternative pathway to EIGA compliance.”⁴

³ See the November 24, 2010 email from Mr. Kaiser to me, included as Exhibit 3 to this letter. Please note that, if my discussion and documentation (in this and other responses by me to the Committee) of communications between me and attorney Charles J. Kaiser may be viewed as constituting a waiver by me of attorney-client privilege with respect to communications with Mr. Kaiser, no such waiver is intended to be implied, and none should be inferred, respecting any other communications between me and any other counsel.

⁴ See the Committee’s proposed report at page 9. As I have previously described to the Committee, and as the Committee discusses in its proposed report, a plan to have the McKinley & Associates ESOP purchase my interest over time was in the works before my election to Congress. But this does not at all contradict the fact that I also understood and believed, based on advice from Mr. Kaiser, that the sale of my interest was, in the Committee’s description, “a fully-fleshed alternative pathway to EIGA compliance.” At page 7 in its proposed report, the Committee states: “While it is true that Representative McKinley may have mistakenly viewed full divestment as a solution to the ethics issues the Firm presented for him, it is not the only reason for such a sale.” For the Committee’s purposes in concluding that any violation by me in this matter was unintentional, the only relevant part of this sentence should be the first part: It is true that I “mistakenly viewed full divestment as a solution to the ethics issues” in this matter.

It also appears that McKinley & Associates and its President, Ernie Dellatorre, also understood that sale of my ownership interest in the company would resolve any ethics issues and would permit the company to keep the name

The proposed Committee report unrealistically and unfairly minimizes the context of contradictory guidance on the “fiduciary restrictions” provided by Committee staff to me and my then counsel in 2010 and 2011.⁵ Please understand that I am not saying that the Committee’s inconsistent guidance caused me to rely on the consistent – but, as I now understand, mistaken – guidance of my attorney at that time. I am, however, asking you – as my colleagues who have come to the House from varied private businesses, occupations, and professions – to put yourselves in my shoes as a novice to the House and to the House ethics process in late 2010 and early 2011. I am asking you to understand from that perspective that it was an understandable – not an unreasonable – impulse to rely on the clear counsel of a trusted attorney to make sense of what I perceived to be self-contradictory guidance from the Committee on the arcane requirements of the “fiduciary restrictions.”

Again, I am not trying to say that the Committee or its staff is to blame for what occurred here. I am not saying that, viewed in hindsight, I should have relied on private counsel. But neither should I be “reproved” by the Committee for relying on my own attorney at that time to make sense for me – in a matter of great importance to me and the hardworking employee-owners of McKinley & Associates – of what I reasonably perceived as the confusing counsel being provided by the Committee. The proposed Committee report itself states: “The evidence suggests that Representative McKinley did indeed disclose all pertinent facts to Mr. Kaiser, and Representative McKinley appears to have actually relied on the advice Mr. Kaiser gave him.”⁶

“McKinley & Associates.” In an April 30, 2013 email to attorney George B. Sanders explaining the company’s understanding of the requirements imposed by the “fiduciary restrictions,” Mr. Dellatore wrote: “It was our understanding that a name change would be required if DBM [David B. McKinley] maintained any percentage ownership. . . .” This understanding – which appears to have been the same as my understanding of the relevant ethics requirements – was also based on guidance provided to the company by attorney Kaiser, who was advising the company through the process at that time. (This email is cited as document MCK000079 in Exhibit 8 to the Committee’s proposed report.)

⁵ For example, regarding the January 25, 2011 call from the Committee’s then Director of Financial Disclosure to Mr. Kaiser, the Committee’s proposed report says:

Neither the Director of Financial Disclosure nor the Committee has a similar record or recollection of such a conversation. The Committee does not know what Mr. Kaiser told the Director of Financial Disclosure regarding the facts of the matter on this call, who initiated the call and for what purpose. Without this information, it is difficult for the Committee to judge precisely why Mr. Kaiser recalls this single teleconference resulting in advice so vastly different than that provided by the Committee on a consistent basis throughout the remainder of this process.

The purely theoretical approach of this analysis ignores the often messy and inconvenient way in which events occur in the real world. Things happen. And this call from the Committee’s then Director of Financial Disclosure happened, even if what he said in the call did not fit in with what some others from the Committee staff had said or would say. Look carefully at the detail of Charles Kaiser’s email to me the day after this call occurred recounting with specificity the range of things discussed in the call. [See Exhibit 4 to this letter, previously provided to the Committee in the document production accompanying my letter of May 1, 2013; this email is Exhibit 13 to the Committee’s proposed report.] Isn’t plain to from your reading that Mr. Kaiser – the very day following his call with the Committee’s Director of Financial Disclosure – recalled this “vastly different” advice because Committee counsel actually provided this “vastly different” advice? Against this essentially contemporaneous evidence, the proposed report offers no actual evidence at all in contradiction in contradiction of Mr. Kaiser’s email narrative. Whatever the Committee determines to do in this matter, wouldn’t it better for the Committee to forthrightly accept and factor into its determination how its guidance and advisory function may have misfired here, so that there is less chance of a similar misfire affecting other Members in the future?

⁶ Committee proposed report at page 17.

As I stated at the outset of this letter, I urge the Committee to handle this matter as an advisory matter, without issuing any public report. If you decide, however, that my good faith reliance on the advice of counsel merits a public report to keep others in the House community from making a similar mistake, I ask you to agree that this important educational end can be achieved fully without reprimanding me and without finding that my actions reflected on the House.

The Committee's proposed report suggests, incorrectly, that I did not notify the Committee of the sale of my interest in McKinley & Associates until sometime after August 24, 2012. In fact, as clearly described in my May 1, 2013 submission to the Committee on Ethics, in June 2011 I told the then Chairman of the Committee that I had sold my interest in the firm. A determination by the Committee to issue a report or reprimand based, even in part, on an erroneous and incomplete understanding of when I informed the Committee of this sale would be unfair.

The Committee's proposed report states, at page 12, that a telephone conversation between me and the Committee's Chief Counsel at that time "appears to be the first time in which Representative McKinley notified the Committee of his sale of his interest in" McKinley & Associates. This is contrary to the record before the Committee in this matter. Shortly after June 27, 2011 – within days of receiving the Committee's advisory letter dated June 24, 2011 – I told the then Committee Chairman that I had already sold McKinley & Associates.⁷ My May 1, 2013 letter to the Committee, submitted through counsel, describes the following exchange in June 2011 with the then Chairman of the Committee:

Rep. McKinley recalls that, within a day or two of receiving the Committee's [June 24, 2011] 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

⁷ As described in greater detail in my May 1, 2013 letter to the Committee, on April 11, 2011 I entered into a Memorandum of Understanding ("MOU") with the McKinley & Associates Employee Stock Ownership Plan ("ESOP"). Through this MOU, I 1) committed to the sale of all my remaining stock in the company to the ESOP and 2) agreed that I had "no further control over the ownership and operations of McKinley & Associates, Inc." As discussed above, previous to my entering into this MOU my then attorney Charles Kaiser had advised me 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 my interest in the company. By entering into the MOU with the McKinley & Associates ESOP on April 11, 2011, I believed that I had taken satisfactory good faith steps to effectuate this second compliance option as described by attorney Kaiser, that is, divestment of my interest in the company. On December 31, 2011, this MOU was followed up by a formal agreement regarding the sale of my ownership interest in McKinley & Associates to the ESOP. This sale was contingent on an independent valuation of the firm; because of the time needed to complete this valuation, and because of ERISA requirement, the actual sale was not completed until April 30, 2012.

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.⁸ Chairman Bonner said that he did not know this and that he had hoped it would not come to this.

Why doesn't the fact of my June 2011 exchange on the House floor with the then Chairman of the Committee on Ethics regarding the sale of my interest in McKinley & Associates appear in the Committee's proposed report? Referencing my May 1, 2013 letter to the Committee as the source, the Committee report does cite *other* portions of this *same* House floor exchange with the Committee's former Chairman as apparent fact.⁹

My June 2011 exchange with the then Chairman of the Committee regarding the sale of my interest in McKinley & Associates is another rough fact about the Committee's past process in this matter that should be fully acknowledged and considered by the Committee in this case, not ignored because it does not fit into a predetermined narrative and conclusion. Does this fact mean that I provided procedurally perfect notice to the Committee at that early stage about the sale of McKinley & Associates? No, not at all. As my May 1, 2013 letter to the Committee states with regard to this exchange with the former Committee Chairman, I regret not having responded more formally at the time – including by providing a more formal notification of the sale – to the Committee's June 24, 2011 letter regarding McKinley & Associates. But I did respond to and did inform the then Committee Chairman. To the extent that this fact is ignored, to the extent that the Committee's determination as to whether or not to issue a reproof to me would be based on the erroneous suggestion that I did not inform the Committee of the sale until essentially forced to do so in late August 2012, that determination would be unfair and wrong.

I have cooperated fully with the inquiry the Committee began in this matter in August 2012. I have provided exhaustively detailed factual information and over 550 pages of documents in response to the Committee's requests for information and documents. In doing so, I also continued to advance what I still regard as a reasonable position in this matter: the Committee should determine that McKinley & Associates falls within the "family name" exception to the fiduciary restrictions.

On August 24, 2012, the Committee sent me a letter requesting an explanation of the status of efforts to rename McKinley & Associates. On March 18, 2013, the Committee sent me a detailed written request for documents and explanatory information. Through letters submitted on my behalf by my current counsel, Mr. Baran and Mr. Walker, I responded to these requests at length and in specific detail, including with over 550 pages of responsive documents that accompanied my May 1, 2013 response to the Committee's March 18, 2013 letter. My responses also argued and supported my strong and continuing central view on this matter: the name "McKinley & Associates" for my former architecture and engineering firm is a "family name," therefore meeting an exception to the "fiduciary restrictions." The Committee's proposed report rejects this position, but I respectfully urge the full Committee to reconsider my position. I won't repeat in this letter all the facts and arguments that support finding that "McKinley &

⁸ See footnote 2.

⁹ See page 12 of the Committee's proposed report, regarding the Committee's error in assuming that McKinley Engineering was the name of my father's firm: "[Representative McKinley] apparently approached Representative Bonner on the floor of the House and stated, 'what the [heck] is this,' and explained the factual error."

Associates” is a family name. These facts and arguments are set out primarily in my September 14, 2012 letter to the Committee (Exhibit 1 to this letter), and I again ask the Members of the Committee to review that letter in full. The following paragraph from that September 14, 2011 letter, however, summarizes the substantial basis for determining that use of the McKinley & Associates name is not contrary to the restrictions relating to fiduciary professions:

[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.¹⁰

¹⁰ The discussion in the Committee’s proposed report regarding the business names used by my father is yet another point at which that report minimizes or ignores hard, contrary evidence. The report provides a list of some names used by my father professionally from about 1954 through 1992. This list was compiled through a review of still extant engineering drawings from my father’s records. This list includes such titles as “Engineers,” “Consulting Engineer,” “Eng’r,” and “P.E.”; none of the names on this list include the word “engineering.” The report, at page 5, concludes that “Johnson McKinley appears to have done business” under the names on this list. I provided this list to the Committee as a document accompanying my May 1, 2013 letter to the Committee.

In my May 1, 2013 letter to the Committee, I also provided the Committee with an online link to a PDF of the minutes of the regular meeting of the Council of Beech Bottom, West Virginia, for November 4, 1986 (<http://beechbottomwv.org/pdfs/1986.pdf>, at page 257) which publicly record and refer to my father’s business as “Johnson B. McKinley *Engineering*.” (Emphasis added; although I have previously provided the Committee with a link to these minutes, I include the relevant pages from those minutes with this letter as Exhibit 5.) And yet, in contrast to the Committee’s apparent willingness to accept as authoritative a list of names (provided by me) that does *not* include the word “engineering,” it seems to dismiss (and, frankly, seems to mischaracterize) the use of the name “Johnson B. McKinley Engineering” by an independent source. About the evidence supporting use of the name “Johnson B. McKinley Engineering,” the proposed report, at page 6, states, vaguely and dismissively: “Representative McKinley, through his counsel, has stated that the name ‘Johnson B. McKinley Engineering’ was also used at some point.” In its investigation, did the Committee not go to the link I provided to actually view the relevant document? As of August 19, 2016, the relevant minutes of the Beech Bottom Council were still there. My point here is not that this independent source showing the use of the name “Johnson B. McKinley Engineering” for my father’s practice is, by itself, determinative of the question of whether “McKinley & Associates” meets the “family

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Thank you again for the opportunity to respond directly to all of you on the Committee's draft proposed report and draft letter. As I have discussed above, the proposed response of a reproof – in whatever form issued by the Committee – is disproportionate and unjustified in this matter, in which I acted in good faith reliance on the advice of my counsel at the time that I was complying with House requirements. And, certainly, because any violation by me of House standards was unintentional, no separate letter of reproof is merited here.¹¹

Sincerely,



David B. McKinley
Member of Congress

name" exception. My point here is that this source seems to have been unfairly weighed and accounted for in the Committee's review and consideration of the evidence relevant to determination of the "family name" question.

¹¹ See, for example, the most recent public action taken by the Committee on July 14, 2016 in a matter in which the Committee determined that the Member's violations were not intentional.

EXHIBIT 23

Jo Bonner, Alabama
Chairman
Linda T. Sánchez, California
Ranking Member

Michael T. McCaul, Texas
K. Michael Conaway, Texas
Charles W. Dent, Pennsylvania
Gregg Harper, Mississippi

John A. Yarmuth, Kentucky
Donna F. Edwards, Maryland
Pedro R. Pierluisi, Puerto Rico
Joe Courtney, Connecticut



ONE HUNDRED TWELFTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

August 24, 2012

Daniel A. Schwager
Staff Director and Chief Counsel

Joanne White
Administrative Staff Director

Kelle A. Strickland
Counsel to the Chairman

Daniel J. Taylor
Counsel to the Ranking Member

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Facsimile: (202) 225-7392

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

Dear Representative McKinley:

On June 24, 2011, the Committee on Ethics (Committee) issued a letter to you in response to your letters dated January 3, 2011, and April 14, 2011, regarding your engineering firm. As the letter indicated, the Committee determined that pursuant to Section 502 of the Ethics in Government Act (5 U.S.C. app. 4 § 502(a)) and House Rule XXV, clause 2, your engineering firm, McKinley & Associates, Inc. (the Firm), provides fiduciary services. As such, your name could not be used as a part of the Firm's name. The Committee thus instructed you in its letter that a change of the Firm's name was required. The Committee noted that it accepted your indication that the current Firm could reasonably be seen as a practical continuation of a firm started by your father, Johnson McKinley, and found that changing the Firm's name to McKinley Engineering, the name of your father's former firm, along with a clear association to your father, would be permissible for the purposes of House Rules.

To date, it does not appear that you have changed the name of the Firm. Your 2011 Financial Disclosure Statement, that you filed on May 15, 2012, continues to list the Firm as McKinley and Associates. In addition, the Firm's Web site still lists McKinley and Associates as its name and there is no indication that the name of the Firm has or will be changed. Further, according to publicly available information, the Firm appears to still be registered with the West Virginia Secretary of State as McKinley and Associates.

The Committee expects you to change the name of the Firm, as directed. Failure to do so may be viewed as a knowing violation of the Ethics in Government Act and House Rule XXV, clause 2, and may result in further proceedings against you by the Committee. The Committee thus requests a detailed explanation of the status of your efforts to change the name of the Firm, and what that name will be. If the firm intends to use the name McKinley Engineering, please inform the Committee how the firm will indicate the clear association between the name and your father.

We request that you provide a response to this letter by September 7, 2012. To the extent that any part of your response is not a complete written response signed by you, we request that



The Honorable David B. McKinley

Page 2

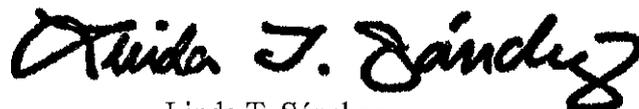
the response be provided under oath or affirmation. (We have enclosed a declaration for this purpose.)

If you have any further questions regarding this letter, please contact the Committee's Chief Counsel and Staff Director Dan Schwager, the Director of Investigations, Deborah Sue Mayer, or Committee counsel Patrick McMullen, at extension 5-7103.



Jo Bonner
Chairman

Sincerely,



Linda T. Sánchez
Ranking Member

Declaration

I, Representative David B. McKinley, declare (certify, verify, or state) under penalty of perjury that the response and factual assertions contained in the attached letter dated _____, 2012, relating to my response to the August 24, 2012, Committee on Ethics request for information, are true and correct.

Signature: _____

Name: Representative David B. McKinley

Date: _____, 2012