



May 25, 2010

To: Senator Shan Tsutsui
President, Hawaii State Senate
– hand delivered –

Fm: Larry Geller / Disappeared News
larry@disappearednews.com (no incoming fax)

Subj: Rule 72 complaint, falsification of documents

Investigative reporter and blogger Ian Lind posted the results of his review of financial disclosures filed in recent years by Senator Clayton Hee. In part, he wrote:

In 2010 and 2008, Hee listed a mortgage and two jointly owned properties, one on Molokai and one in Kaimuki, but indicated “none” in all other categories. The senator even failed to list his own legislative salary.

The reports in 2009 and 2011 are short form reports which only indicate changes, if any. Hee indicated that there were no changes in any of the information. The report for 2011 should have included all required information through the date the report was filed, boldly written by Hee as May 12, 2012, with the year presumably in error.

However, earlier this year, Hee’s wife, Lynne Waters, was appointed Associate Vice President for External Affairs and University Relations for the University of Hawaii system. Her initial financial disclosure includes a considerable amount of information that has not been disclosed by Hee.

Waters reports income from her previous business, Lynne Waters Communications, between \$50,000 and \$100,000. She also discloses that Senator Hee is double-dipping by receiving retirement pay from the state Employees Retirement System of \$10,000 to \$25,000, in addition to his legislative salary. Hee served in the House and Senate before being reelected to the Senate, and also served as an elected trustee of the Office of Hawaiian Affairs.

Waters also reports the couple earned rental income from their jointly held properties of \$25,000 to \$50,000 in the past year.

Waters then reports being a member of the Judicial Conduct Commission and a board member of the the Honolulu Police Community Foundation.

All of the items disclosed by Waters should have also been disclosed by Hee. Most of them appear to have continued throughout the 2008-2011 period, meaning that Hee failed at each point to make full disclosure as required by law. The omissions were apparently not flagged by the Ethics Commission.

For each period, Senator Hee certified that his financial disclosure statement was complete and true.

I hereby certify that the above is a true, correct, and complete statement to the best of my knowledge and belief. If I have a spouse and/or dependent children, I also hereby certify that I have included their interests in this form to the best of my knowledge and belief. I understand that it is a violation of State law, Chapter 84 HRS, if information is not disclosed as required by Chapter 84, HRS.”

Hee signed and dated the certification on each of the reports.

The annual financial disclosure is one of the ethics provisions required by Article XIV of the Hawaii State Constitution.

Lind comments that the Constitution does not provide meaningful penalties for false reports whether intentional or by negligence.

As a concerned citizen, I do not believe that the Senate should condone this conduct, and it appears that action can be taken under Senate rules, but that a complaint is required. The rule does not restrict who may make a complaint. Rule 72 provides for the following procedure in the event of a complaint:

Rule 72 Misconduct; Procedure; Peer Review. No member of the Senate shall be subject to a charge for misconduct, disorderly behavior, or neglect of duty unless the person making the charge shall have first given notice of the charge to the President and to the member being charged.

Upon receipt of the charge, the President shall attempt to resolve the matter in an administrative proceeding. If the matter cannot be resolved administratively, the President may appoint a Special Committee to be chaired by the Vice-President or such other member as the President may designate to investigate, hear and report upon the conduct of the member charged for misconduct, disorderly behavior or neglect of duty. Any member so charged shall be informed in writing of the specific charge or charges made against the member and have opportunity to present evidence and be heard in the member's own defense before the Special Committee. Following its investigation and hearing, the Special Committee shall file its report with the President setting forth its findings and recommendations.

If the committee recommends dismissal of the charge or charges, the President may dismiss the charges without further hearing, or the President may present the report of the committee to the Senate for its consideration.

The Senate, by a majority vote, may dismiss the charge or charges against the member without a hearing.

If there is no dismissal of the charge or charges, or if the committee recommends censure, suspension or expulsion, the President shall present the report of the

committee to the Senate for its consideration and decision. The member who is charged, shall be informed in writing of the presentation of the charge or charges of the committee report to the Senate and be given an opportunity to be heard in the member's own defense. The Senate, by a majority vote, may dismiss the charge or charges without a hearing, or with notice and an opportunity to be heard in the member's own defense, censure a member or, upon a two-thirds vote of all the members of the Senate, suspend or expel a member.

At any stage of the charge against a member, the member shall have a right to be represented by a person or persons of the member's own choosing.

The disclosure form itself, immediately above the signature block, states "I further understand that there are statutory penalties for noncompliance." The sentence cannot be missed. So it is appropriate that action be taken that could lead to the imposition of those penalties.

It appears that a complaint is necessary in order to start this process. Please consider this communication to be that complaint.

I understand that the Ethics Commission has posted a replacement disclosure statement on their website, faxed to them and dated May 23, 2011, that is, two days after the article posted on Ian Lind's blog. Because the form does not provide for an indication that it is an amended filing, it appears to be an original. It is not the original filing, and should not be accepted in place of the original for the purposes of this complaint. The statutory and constitutional requirement to file "true, correct, and complete" disclosure is not erased by the subsequent filing of a new form only after the false disclosure has been uncovered. If I'm caught jaywalking I get a ticket, I cannot just go back to the curb and try crossing the street again.

This complaint extends to and includes any disclosures filed prior to 2011 found to be in error or false as well. In particular, should those filings indicate a pattern and practice, that finding should be taken into consideration.

Attached documents are believed to be close to the original submitted, but should not be relied upon.

Sincerely,
Larry Geller

Attach:

Sen. Hee 2011 disclosure dated 5/17/12
Lynne Waters 2011 disclosure dated 4-5-11
Sen. Hee 2010 disclosure dated 5/24/10
Sen. Hee 2009 disclosure dated 6/1/09
Sen. Hee 2008 disclosure dated 5/21/08