INFORMAL ADVISORY OPINION NO. 2004-1

The Hawaii State Ethics Commission ("Commission") issued a charge against a state employee for failure to file a disclosure of financial interests ("financial disclosure" or "disclosure"). The Commission also assessed a monetary penalty against the employee for her failure to file a disclosure. The Commission was prompted to take this action against the employee because her financial disclosure had become seriously delinquent and she had been unresponsive to repeated reminders from the Commission to file her disclosure.

After the charge was issued and the monetary penalty was assessed against the employee, the employee submitted to the Commission a financial disclosure statement and a payment of the fine. In light of this, the Commission did not believe that further charge proceedings were warranted. The Commission instead decided to issue the employee an Informal Advisory Opinion, to emphasize the requirements of the financial disclosure law and to ensure the employee's future timely compliance.

The State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS"), requires certain state officials and employees to file a disclosure of financial interests with the Commission each year. Due to the particular position the employee held in state government, she was required to file a financial disclosure. The employee had been filing a financial disclosure with the Commission, on an annual basis, for well over ten years.

The Commission's records indicated that prior to the deadline for filing the financial disclosure, the Commission's staff had provided the employee with a financial disclosure form, and informed her of the due date. The Commission's records further indicated that prior to the filing deadline, the Commission's staff attempted to remind the employee about filing her disclosure, in writing and by telephone. The employee, however, did not file her financial disclosure by the due date.

After the employee's financial disclosure had become delinquent, the Commission's staff made numerous attempts to have the employee file her disclosure. These efforts involved speaking to the employee by telephone, leaving her telephone messages, and writing to her, over an extended period of time. The employee was afforded every opportunity to file her disclosure, to avoid the matter having to be presented to the Commission for formal action. Twice, the employee gave assurances that she would be filing her disclosure by a certain date, but failed to do so. The employee was informed that the Commission understood that there were in certain instances legitimate reasons for not filing a financial disclosure, and the employee was asked to contact the Commission if that were the case. In addition, the employee was informed that the Commission had the authority to issue a charge and assess a monetary penalty against her for her failure to file a financial disclosure. Throughout the period of time leading up to the charge and the assessment of the fine, the Commission did not hear from the employee as to any problems she might have had in filing her disclosure.

The Commission issued a charge against the employee pursuant to HRS section 84-31. Pursuant to HRS section 84-31(b), the Commission has the authority to initiate, receive, and consider charges concerning alleged violations of the State Ethics Code. This section also authorizes the Commission to investigate and hold hearings. The employee was given an opportunity to respond to the charge by a certain date.

The Commission also assessed a fine against the employee in the amount of $50 for her failure to file a financial disclosure. Pursuant to HRS section 84-17(i), the Commission has the authority to assess fines against individuals for failure to file financial disclosures. The employee was asked to submit a payment of the fine to the Commission by a certain date. The employee was further informed that if she failed to file her financial disclosure by that date, an additional penalty of $10 for each day it remained unfiled would be assessed against her.

After having been issued the charge and assessed the fine, the employee submitted to the Commission a financial disclosure statement, together with a payment of $50. Shortly thereafter, the employee submitted a written response to the charge.

In her response to the charge, the employee asked that the charge against her be dismissed. The employee attempted to explain why her financial disclosure had been delinquent. She indicated that she had attended to work-related matters before attending to her financial disclosure. She added that she may have been distracted by illness in her family. The employee said she appreciated that she had been given every opportunity to file her disclosure, and expressed embarrassment that she did not complete the filing without the imposition of a charge and a fine against her. The employee apologized to the Commission and its staff, and appeared to recognize that the timely filing of a financial disclosure was a responsibility associated with her position.

The Commission expended a considerable amount of time and effort to have the employee file her financial disclosure. The employee eventually filed her disclosure, but not until after it had become seriously delinquent and she had been issued a charge and assessed a fine. Until that time, the employee had not responded to repeated reminders from the Commission's office, or had given assurances, which she did not act upon, that she would be filing her disclosure. Moreover, throughout the period of time leading up to the charge and the fine, the Commission did not hear from the employee as to any problems she might have had in filing her disclosure. The Commission found the employee's conduct to be unacceptable.

However, in light of the fact that the employee finally filed her disclosure and paid the fine, the Commission did not believe that further charge proceedings against the employee were warranted. In lieu of pursuing the charge, the Commission believed it was appropriate to issue her an Informal Advisory Opinion, to emphasize the requirements of the financial disclosure law and to ensure her future timely compliance.

The Commission regards the financial disclosure law as one of the keystones of the State Ethics Code. The requirement of disclosure of financial interests is rooted in the Hawaii State Constitution. Article XIV of the Constitution mandates the establishment of a state ethics code, and requires that the ethics code include provisions on financial disclosure. Article XIV states, in relevant part, as follows:

> The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

The financial disclosure law allows the public the opportunity to evaluate matters that might bring about conflicts of interests between public employment and private financial interests. In the interests of privacy, certain non-elected officials and employees file confidential financial disclosure statements that are seen only by the Commission. A review of these statements allows the Commission to take action on possible conflicts of interests before problems arise. The financial disclosure statement of the employee in this case was considered a confidential disclosure.

Some state officials and employees might view the financial disclosure requirement as an unwelcome chore. Individuals in government service, however, must accept the legal responsibilities that accompany government service. Those responsibilities include complying with the State Ethics Code.

In this case, the employee had been unresponsive to the Commission's repeated efforts to have her fulfill her legal obligation to file a financial disclosure. The Commission noted that the employee had been filing financial disclosures with Commission for well over ten years, and thus should have been familiar with the filing requirements. It appeared that the employee did not take seriously the requirements of financial disclosure. The Commission could not condone the employee's conduct in this case.

The Commission informed the employee that although it would not be taking further action with respect to the charge against the employee, the Commission in the future would consider more serious proceedings against the employee under HRS Chapter 84, should she fail to file a required financial disclosure in a timely manner.

Dated: Honolulu, Hawaii, January 22, 2004.

STATE ETHICS COMMISSION
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