



LAW OFFICE OF DAVID F. SIMONS

**PERSONAL & CONFIDENTIAL  
FOR ADDRESSEE ONLY**

July 16, 2012

**Via Email Only**

President M.R.C. Greenwood  
University of Hawaii  
[mrcgreenwood@hawaii.edu](mailto:mrcgreenwood@hawaii.edu)

Tom Apple, Chancellor  
University of Hawaii Manoa Campus  
[tapple@hawaii.edu](mailto:tapple@hawaii.edu)

Re: Jim Donovan

Dear President Greenwood and Chancellor Apple:

I, on behalf of my client Jim Donovan, request that by Thursday noon, July 19, 2012, you publicly reinstate Mr. Donovan to his position as athletic director at the University of Hawaii at Manoa.

Your public suspension of Mr. Donovan defamed him and ruined his reputation. The suspension was unnecessary. There were no facts to support it. The suspension was in breach of Mr. Donovan's contract, his constitutional rights to due process prior to his liberty and property interests being taken, and was contrary to clear, consistent, express University of Hawaii policy, which prohibits disclosure to the public that a University of Hawaii at Manoa employee had been placed on leave. By having a news conference, and publicly suspending Mr. Donovan, you deliberately made Mr. Donovan a scapegoat for what was a systematic problem at the University of Hawaii, not at the athletic department. The truth is, as you know, Mr. Donovan had little to do with the possible loss to the University of \$200,000.00. Because this matter was embarrassing to both of you; you panicked and acted peremptorily to suspend Jim in order to deflect criticism from yourselves, and people who reported to you. By suspending Jim, you falsely made it appear that it was all his fault. Legally we call that putting someone in a "false light" which is tortious conduct, for which Mr. Donovan can seek compensatory and punitive damages from each of you.

You suspended Mr. Donovan even though the facts that were known to you at the time of the suspension made it clear he was not responsible for the possible \$200,000 loss and had engaged in no personal misconduct. Worse, you not only suspended him, but you also ordered him to stay silent so he could not let people know the truth, while you held a press conference at which you defamed and humiliated him. At the time you did that, you knew the following facts:

1. Mr. Donovan was not even in the State when the contract was signed;
2. Mr. Donovan was not in the State when the money was sent;
3. Mr. Donovan had no direct involvement in the crucial decision-making mistakes that resulted in the possible \$200,000 loss;
4. These crucial decision-making mistakes were made by your general counsel's office and your fiscal office.
5. The money was sent to Florida without Mr. Donovan's knowledge, or consent, much less his authorization. It was sent to an entity with which UH had no past dealings; nor did UH have any contractual relationship with Epic. To the contrary, UH's Office of General Counsel decided not to enter into a contract with Epic. How and why both your legal and fiscal office – which are autonomous and do not report to Mr. Donovan, nor are they controlled by the Athletic Department - decided and did send \$200,000 of UH funds to an Epic bank account in Florida, should be the focus of your inquiry. This happened while Mr. Donovan was out of town and at a National Meeting of Athletic Directors in Dallas, Texas. It happened, as you know, without Mr. Donovan's knowledge, consent or authorization. How, why, and who approved sending the money is the question that needs to be investigated – an action in which Mr. Donovan had no involvement.

There was no operational reason, need or justification to publicly suspend Mr. Donovan. The obvious and only reason you publicly suspended him was to deflect criticism toward him and away from both of you, and from the people who caused this problem, who are people who report to you, not to Mr. Donovan, including **your** general counsel's office and **your** fiscal office.

You chose to scapegoat Mr. Donovan rather than appropriately investigating first. You breached UH policy. By not investigating first and instead publicly labeling Mr. Donovan as the culprit, you have denied him his constitutional right to due process, and breached clear and established UH policy.

In addition to reinstating Mr. Donovan we ask you to be honest and confirm to the press the following facts, and also make it clear that these facts were known to you at the time you publicly labeled Mr. Donovan as a "disciplinary problem" (a statement that was completely false even based upon your own letter to him which stated his leave was "not



a disciplinary action"). We ask you to confirm to the press that in your letter putting Mr. Donovan on leave with full pay, you wrote, "This is not disciplinary action". Despite your own words in your letter to Mr. Donovan in breach of Mr. Donovan's contract, constitutional rights and UH policy after delivering that letter, you both held an unprecedented news conference at which you, in breach of policy, not only disclosed Mr. Donovan was on leave, you also made him the scapegoat for the scandal. It was reported that Mr. Apple said no "other disciplinary action" would be taken against people other than Mr. Donovan and Mr. Sheriff until after the investigation was finished. By saying that, Mr. Apple clearly and falsely implied that the action taken against Mr. Donovan was a "disciplinary" action. It was not a disciplinary action, nor was it based on any facts showing wrongdoing by Mr. Donovan.

The suspension made it appear that Mr. Donovan was involved in the decision to send the money to Florida, a decision he did not even know about. It was that decision, to send the money that caused the problem. Had the money not been sent to an unknown account and disappeared, there would have been no problem cancelling the concert. Concerts often get canceled. There would have been no public outcry. 95% of the tickets were refunded within hours of the cancellation. Publicity for the concert had just begun. What caused the embarrassment for you and UH was that UH had sent \$200,000 to an unknown bank account in Florida. Mr. Donovan had nothing to do with the decision, and your suspension of him, clearly implied he had.

At the time you publicly humiliated Mr. Donovan there was a clear policy in place at the UH implemented by UH's HR and legal department which required that, when people were placed on leave pending investigation, that no information would be made public about the matter until an investigation had been completed. That policy expressly recognized that if the UH publicly disclosed that a person had been placed on leave pending investigation, that that information would be understood by the public as a clear indication that the person is guilty – why would they be placed on leave immediately, before an investigation, if the facts did not clearly show the person who was guilty? That is exactly what happened here. The press and public all immediately came to the conclusion that the decision to send \$200,000.00 to an unknown Florida bank account, was Mr. Donovan's fault, and he was responsible for it. They came to that conclusion because you placed him on leave and because you publicly announced it and because you implied that it was a disciplinary action. None of that was true. It was defamatory, it was false, it put him in a false light, and breached Mr. Donovan's contract, constitutional rights and clear UH policy. Also, it was completely unnecessary. There was no reason, need, or justification to immediately suspend him prior to investigation.

In addition to reinstating Mr. Donovan we ask that you publicly release the following information to the press:

1. Mr. Donovan did not sign the contract for the Stevie Wonder concert. He was out of State when it was signed. His instructions to the athletic department before he left was that the contract was not to be signed until it had been cleared and approved by UH's general counsel's office, which was



drafting and redrafting the contract, negotiating the specific provisions of it. It was the job of the University's lawyer to make sure the contract was drafted in such a way that protected UH from loss. Once the general counsel approved the contract, Mr. Donovan instructed the associate athletic director to review and sign the contract on his behalf if the associate athletic director was okay with the language. Epic was not a party to that contract.

2. Mr. Donovan was not in the State nor aware of the fact that the fiscal office had approved release of the money and sent it to an unknown Florida company, with which UH had no contractual relationship.
3. He was unaware any money was sent by UH, to anyone, much less that it was sent to Epic Productions.
4. The financial approval to send the money to Epic Productions was a decision made not by the athletic department, but rather by the UH fiscal office, which controls the funds.
5. From the evening of June 2<sup>nd</sup> to the evening of the 4<sup>th</sup>, Mr. Donovan was attending Mountain West meetings in San Diego with Ms. Greenwood. From June 7<sup>th</sup> to June 20<sup>th</sup> Mr. Donovan was out of State on a previously approved, planned vacation. He returned to Hawaii for a couple of days on June 21<sup>st</sup> and 22<sup>nd</sup>, during which nothing significant transpired in connection with the concert. He then left the State to attend a national athletic director's conference in Dallas and take some additional vacation in Los Angeles, and was there from June 24<sup>th</sup> to July 1<sup>st</sup>. He did not return to his office until July 2<sup>nd</sup>. It was during this time in late June that the money was sent to Florida without Mr. Donovan's knowledge, approval or consent.

Please reinstate Mr. Donovan. He did not deserve to be publically suspended, nor do the facts provide any basis for his suspension, much less the public disclosure of it. The false labeling of the suspension as a disciplinary action, was a conscious decision by you to imply to the public that Mr. Donovan was responsible for this fiasco, when you knew it was not his fault. Please also confirm not only that the facts stated above are accurate, and that those facts show that Mr. Donovan had no involvement in the transmission of the \$200,000.00, but that it was UH's legal office and fiscal office that were involved in drafting and approval of the contract and also transmission of the payment.

Warren Buffet said: "It takes 20 years to build a good reputation but only five minutes to destroy it." In five minutes you destroyed Mr. Donovan's reputation by breaching policy, making false assertions and not disclosing the relevant facts, which would have made it clear that the possible loss of the \$200,000.00 was not Mr. Donovan's fault. You now have until Thursday at noon to reinstate Mr. Donovan to his position, disclose the facts that were known which prove he was not at fault, and thereby, to the extent it is possible, restore his reputation.



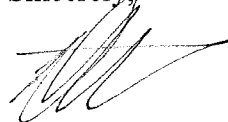
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If Mr. Donovan is not reinstated by Thursday at noon we reserve all our legal options. I will have no choice but to pursue Mr. Donovan's legal rights in court. It would be much better for UH, including its athletic department, if rather than the facts having to come out in a lawsuit showing that both of you acted prematurely and unfairly against Mr. Donovan, that, instead, quietly, Mr. Donovan is reinstated, the reasons for the reinstatement are made known, and Mr. Donovan and you work together to both resolve this affair, and also move forward with UH athletics. The football season approaches with Norm Chow at the helm; the basketball season approaches with Gib Arnold having a strong team ready to go, and UH has new valuable conference alliances. There are so many good things about UH athletics that should be the focus of the department and the public, rather than having the department and UH bogged down in a lawsuit. We hope you will make the right decision and reinstate Mr. Donovan.

All statements made in this letter are made for the purpose of resolving a legal dispute without litigation. Pursuant to HRE & FRE Rule 408 they are made without prejudice to any right my client may have or position he may take should litigation be necessary.

Sincerely,



David F. Simons

DFS:ceb

