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Master

STATE OF HAWAII
FILED

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D. SAKIMOTO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

In the Matter of the Estate	)	EQUITY NO. 2048
)	
of	)	MASTER'S REPORT ON THE PETITION
	)	FOR THE ESTABLISHMENT OF A
BERNICE P. BISHOP,	)	PROCEDURE FOR SELECTION OF
	)	TRUSTEES, FILED AUGUST 5, 1999;
Deceased.	)	AFFIDAVIT OF MASTER BENJAMIN M.
	)	MATSUBARA; EXHIBITS "A" - "E"
	)	AND CERTIFICATE OF SERVICE
)	
	)	<u>HEARING</u>
	)	DATE: December 17, 1999
	)	TIME: 10:00 a.m.
	)	JUDGE: Presiding Judge
)	

MASTER'S REPORT ON THE
PETITION FOR THE ESTABLISHMENT OF A PROCEDURE
FOR SELECTION OF TRUSTEES, FILED AUGUST 5, 1999

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)	5, 1999
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MASTER'S REPORT ON THE
PETITION FOR THE ESTABLISHMENT OF A PROCEDURE
FOR SELECTION OF TRUSTEES, FILED AUGUST 5, 1999

The Petition For The Establishment Of A Procedure For Selection Of Trustees, filed August 5, 1999 (the "Petition"), was filed by Petitioners Robert Kalani Uichi Kihune, David Paul Coon, Francis Ahloy Keala, Constance Hee Lau and Ronald Dale Libkuman, the duly appointed, qualified and acting Interim Trustees (collectively the "Interim Trustees") under the Will and of the Estate of Bernice Pauahi Bishop, Deceased (the "Trust Estate"). The Interim Trustees have petitioned this Court to establish a procedure for the selection of persons to serve as future trustees of the Trust Estate.

Benjamin M. Matsubara was duly appointed as the Master pursuant to that Order Of Reference To Master, filed on August 9, 1999, to review and report to the Court concerning the matter

raised in the Petition.

I. INTRODUCTION.

Under the Will of Bernice Pauahi Bishop ("Pauahi"), the Justices of the Supreme Court of Hawaii are delegated the power to appoint the trustees of the Trust Estate by majority choice. On December 20, 1997, four of the five incumbent Justices declared that they would no longer exercise the power of appointment.¹ As a consequence, Pauahi's intended mechanism for trustee selection is rendered inoperable as the Trust Estate faces extraordinary and unprecedented circumstances affecting the governance and leadership of the Trust Estate. These circumstances, involving Trustees Marion Mae Lokelani Lindsey ("Lindsey"), Richard Sung Hong Wong ("Wong"), Henry Haalilio Peters ("Peters"), Gerard Aulama Jervis ("Jervis"), and Oswald Kofoad Stender ("Stender") (collectively the "Former Trustees"), include:

1. The permanent removal of Trustee Lindsey pursuant to the petition for removal filed by Trustees Stender and Jervis;²

¹ On December 20, 1997, Chief Justice Ronald T. Moon, Justices Steven H. Levinson, Paula A. Nakayama, and Mario R. Ramil (collectively the "Four Justices"), gave notice that they would not exercise the power granted to them under the Will to appoint trustees on the Board of Trustees. Only Justice Robert G. Klein ("Justice Klein") remained willing to exercise this power.

² See Order Granting Petition For Removal Of Trustee Marion Mae Lokelani Lindsey Filed December 29, 1997, filed May 6, 1999; and Findings Of Fact And Conclusions Of Law; Order Reaffirming May 6, 1999 Order Granting Petition For Removal Of Trustee Marion Mae Lokelani Lindsey Filed On December 29, 1997, filed June 10, 1999. Trustee Lindsey has appealed her removal.

2. The removal of Trustees Wong, Peters, and Lindsey, and the voluntary recusal of Trustees Stender and Jervis;³
3. The resignations of Trustees Stender and Jervis;⁴
4. Criminal proceedings have been filed against Trustees Richard Wong and Henry Peters;⁵

³ The Court prohibited the Former Trustees from exercising any trust power in connection with the Internal Revenue Service ("IRS") Audit and the IRS Form 5701, and appointed the Interim Trustees as Special Purpose Trustees to exercise the trust power and to address the issues raised in the IRS Audit and by the IRS Form 5701. See Order Granting Trustees Stender and Jervis' Petition For Approval Of Voluntary Recusal With Respect To Pending Tax Audit And For Appointment Of A Panel Of Special Administrators With Respect To Pending Tax Audit Filed January 21, 1999, filed February 26, 1999. The Court subsequently accepted Trustee Stender's resignation on an interim basis and removed Trustees Peters, Wong, Lindsey and Jervis. See Order Regarding Order To Show Cause Regarding Special Purpose Trustees' Report And Order To Show Cause Regarding New CEO Based Management System, filed May 7, 1999 ("Order Re: New CEO Management System"), at 11-12. The Court appointed the Special Purpose Trustees as the Interim Trustees of the Trust Estate. Id. at 13.

⁴ Trustee Stender submitted his interim resignation to the Court on May 7, 1999 and his permanent resignation to the Interim Board of Trustees on September 28, 1999. By letter dated August 19, 1999, Trustee Jervis tendered his resignation to Robert K.U. Kihune, Chairman of the Board of Interim Trustees. The Petition For Acceptance Of The Resignation Of Trustee Gerard Aulama Jervis As A Trustee Of The Estate Of Bernice Pauahi Bishop, Deceased, was filed on August 24, 1999.

⁵ The criminal actions brought by the Attorney General against Trustees Peters and Wong were dismissed on or about June 24, 1999. See Order Granting Defendant Richard Sung Hong Wong's Motion To Dismiss Indictment For Lack Of Probable Cause and Prosecutorial Misconduct, filed June 24, 1999, in CR. No. 99-0678; and Order Granting Defendant Henry Haalilio Peters' Motion To Dismiss Indictment Filed June 17, 1999, filed July 19, 1999, in CR. No. 98-2467. The Attorney General's Notice of Appeal from Trustee Wong's Order was filed on August 23, 1999. The Attorney General also reinstated criminal proceedings against Trustee Peters pursuant to an Indictment, filed August 4, 1999, in CR. No. 99-1502.

5. The petition for the permanent removal of Trustees Lindsey, Peters and Wong.⁶

Based upon the unconditional resignations of Trustees Stender and Jervis, there are two certain and immediate vacancies on the Trust Estate's Board of Trustees. Additionally, the Circuit Court has permanently removed Trustee Lindsey. However, in the absence of less than a majority of the Justices willing to exercise the power of appointment, these vacancies cannot be filled as intended by Pauahi.

II. SCOPE OF REVIEW.

In assisting the Probate Court in establishing a procedure for trustee selection, this Master's review has been guided by the following:

A. The Will of Bernice Pauahi Bishop.

The Will clearly and unambiguously provides that the trustees of the Trust Estate shall be appointed as follows:

" . . . I further direct that the number of my said trustees shall be kept at five; and that vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court, the selection to be made from persons of the Protestant religion."

See Article Fourteenth of the Will (emphasis added). A copy of Pauahi's Will and Codicils (collectively the "Will") are attached hereto as Exhibit "A". In construing this provision of the will, the Hawaii Supreme Court has held that the power of appointment is vested in the Justices, as individuals, and not as a court. See Estate of Bishop, 23 Haw. 575, 581-582 (1917), aff'd, 250 F. 145,

⁶ See Petition For Removal Of Trustees Marion Mae Lokelani Lindsey, Henry Haalilio Peters And Richard Sung Hong Wong And For Evidentiary Hearing, filed August 24, 1999.

149-50 (9th Cir. 1918). The Court explained that the language used in the Will is merely descriptive of the persons whom Pauahi intended should exercise the power of appointment. Id.

Comments: The power of appointment is granted to the Justices in their individual capacities. Therefore, there is no basis in law or equity to compel the Four Justices to exercise that power. Moreover, the Will does not provide for nor suggests an alternative mechanism for selecting future trustees.

B. PLEADINGS.

This Master has reviewed the following pleadings filed with the Probate Court regarding the subject of the Petition:

1. Position Statement Of The Justices' Working Group Re: Selection of Trustees, filed August 3, 1999 ("Statement of Justices' Working Group");⁷
2. Petition For The Establishment Of A Procedure For Selection of Future Trustees, filed August 6, 1999 ("Petition");
3. Supplement To Petition For The Establishment Of A Procedure For Selection of Future Trustees, filed August 10, 1999 ("Statement of

⁷ The Justices' Working Group is composed of sixteen (16) organizations: (i) Royal Order of Kamehameha I; (ii) Ahahui Ka'ahumanu; (iii) Hale O Na Ali'i; (iv) Mamakakaua, Daughters and Sons of Hawaiian Warriors; (v) Daughters of Hawai'i; (vi) Hui Kalai'aina; (vii) Association of Hawaiian Civic Clubs; (viii) Kamehameha Schools' Alumni Association, O'ahu Region; (ix) Association of Hawaiian Civic Clubs, O'ahu Council; (x) Council of Hawaiian Organizations; (xi) Native Hawaiian Chamber of Commerce; (xii) State Council of Hawaiian Homesteaders Associations; (xiii) Native Hawaiian Bar Association; (xiv) Kipu'upu'u; (xv) Na Pua A Ke Ali'i Pauahi, Inc.; (xvi) Kamehameha Schools' Alumni Association, Board of Presidents. In filing the Statement of the Justices' Working Group, all but Kamehameha Schools' Alumni Association, O'ahu Region, Na Pua A Ke Ali'i Pauahi, Inc., and the Kamehameha Schools' Alumni Association, Board of Presidents remain part of the Justices' Working Group. See Statement of Justices' Working Group, p. 4, fn. 2.

the Direct Beneficiaries Group");⁸

4. Attorney General's Response To Position Statement Of The Justices' Working Group Re: Selection of Trustees, filed August 17, 1999 ("AG's Response I");
5. Trustee Henry Haalilio Peters' Response To Petition For The Establishment Of A Procedure For Selection Of Future Trustees, Filed August 6, 1999, filed September 9, 1999 ("Peter's Response");⁹
6. Trustee Richard S.H. Wong's Objections To Petition For The Establishment Of A Procedure For Selection Of Future Trustees, filed September 10, 1999 ("Wong's Response"); and
7. Attorney General's Response To Petition For The Establishment Of A Procedure For Selection Of Future Trustees, filed September 13, 1999 ("AG's Response II");

Comments: This Master has reviewed the Petition and the responsive pleadings thereto filed by the Justices' Working Group, the Direct Beneficiaries Group, the Attorney General, Trustee Peters, and Trustee Wong.

The Attorney General challenged the participation of the Justice's Working Group in this matter. See AG Response I. However, this Master gave due consideration to the proposal submitted by the Justices' Working Group since it mirrored in principle part the procedures proffered by the Interim Trustees and

⁸ The four (4) groups identifying themselves as the "Direct Beneficiaries" are: (i) the Kamehameha Schools Alumni Association; (ii) Na Pua a Ke Ali'i Pauahi, Inc.; (iii) Na Kumu O Kamehameha; and (iv) the "Broken Trust" authors (Gladys Brandt, Walter Heen, Samuel King and Randall Roth).

⁹ On September 16, 1999, Trustee Lindsey filed Trustee Marion Mae Lokelani Lindsey's Joinder To Trustee Henry Haalilio Peters' Response To Petition For The Establishment Of A Procedure For Selection Of Future Trustees, Filed August 6, 1999.

the Direct Beneficiaries Group, respectively. Furthermore, the Justice's Working Group could have submitted their proposal as a public comment in response to this Master's Public Notice published subsequently.

C. COURT ORDERS AND STIPULATIONS.

A number of Orders and Stipulations have been issued relating to events affecting the Trust Estate and its leadership. See Section I., above. Under the "law of the case" doctrine, the relevant Orders and Stipulations filed herein are binding upon this Master in his review and recommendation of the trustee selection procedure described herein below. The "law of the case" doctrine is defined as follows:

The phrase "law of the case" has . . . been used in discussing, *inter alia*, the question whether a trial court judge is bound to follow a prior interlocutory decision of fact or law made in the same case by another judge of the same court. [5 Am.Jur.2d *Appeal and Error* § 744 (1962)]. This is a rule of practice based on consideration of efficiency, courtesy, and comity. Wong v. City and County of Honolulu, 66 Haw. 389, 665 P.2d 157 (1983); Gallas v. Sanchez, 48 Haw. 370, 405 P.2d 772 (1965); Annot., 132 A.L.R. 14-89 (1941).

State v. Goodwin, 7 Haw.App. 261, 263 n. 2, 752 P.2d 598, 600 n. 2 (1988). This Master submits that the following issues relevant to establishing a trustee selection procedure have been addressed by governing Orders or Stipulations. In light of the controlling law, these issues are discussed separately below:

1. Definition Of "Beneficiaries" Of The Trust Estate And Their Participation In The Trustee Selection Process.

Certain proposals for a trustee selection procedure include the participation of beneficiaries of the Trust Estate in

the selection process. The question of who or what constitutes the beneficiaries of the Trust Estate was addressed by Circuit Court Judge B. Eden Weil in Trustee Lindsey's removal action. Judge Weil concluded as a matter of law as follows:

The Court concludes that the Kamehameha Schools as an institution and all current and future students thereof are beneficiaries of the Will and KSBE.

See Conclusion of Law No. 35, Findings of Facts and Conclusions of Law, and Order Reaffirming May 6, 1999 Order Granting Petition for Removal of Trustee Marion Mae Lokelani Lindsey Filed on December 29, 1997, filed June 10, 1999, at 186; but cf. Petition at 2-3, ¶ A.6.

Comments: Given Judge Weil's ruling and the charitable nature of the Trust Estate, this Master concurs that as *parens patriae* of charitable trusts, the Attorney General is the proper representative of the beneficiaries of the Trust Estate. See AG's Response I at 3; AG's Response II at 13. Consequently, the interests of the Trust Estate's beneficiaries, including those of various Hawaiian organizations, may be properly represented by the Attorney General.

2. Effect Re: CEO Management System And Governance Policy.

Pursuant to Stipulation No. 14 of the Stipulations Concerning Master's Recommendations (109th, 110th, and 111th Annual Accounts), filed October 2, 1998 ("1998 Stipulations"), the Former Trustees agreed to cease use of the "lead trustee" system of management in administering the Trust Estate. Id. at 13-14. In its place, the Former Trustees agreed to adopt and implement a

Chief Executive Officer ("CEO") based system of management¹⁰ which incorporates a formal governance policy to more clearly define the roles of the Board of Trustees and that of the CEO.¹¹

Having failed to timely fulfill this requirement of the 1998 Stipulations, the Court temporarily removed the Former Trustees and replaced them with the Interim Trustees.¹² The Interim Trustees subsequently entered into a stipulation regarding the CEO based management system and governance policy which are described in the Kamehameha Schools Bernice Pauahi Bishop Estate Governance Policy, dated August 18, 1999 (the "Governance Policy").¹³ See Exhibit "C" attached hereto and incorporated herein by reference.

The Governance Policy assigns objective standards to the trustees' duties and responsibilities which are generally described in the Will.¹⁴ In summary, the Governance Policy describes the

¹⁰ The Court notes that Trustees Stender and Jervis were in favor of a CEO based management system. See Order Re: New CEO Management System at 10.

¹¹ The Court notes that the Former Trustees acknowledge that they agreed to adopt and implement the CEO based management system and that this matter was not judicially imposed upon them except upon their stipulation. Id.

¹² Id. at 10-14.

¹³ See Stipulation Approving A CEO Based Management System And Governance Policy For The Kamehameha Schools Bernice Pauahi Bishop Estate, filed August 27, 1999.

¹⁴ Article Thirteenth and Codicil No. 1, ¶ 17th of the Will describes the trustees' duties and responsibilities to the Trust Estate as follows:

Duties Regarding The Schools:

- adoption of rules and regulations for the government of

respective roles of the trustees and CEO as follows:

Policy Title:

The Trustees' Role

The Trustees' role is to create, sustain, and fulfill a vision whose primary focus is on furtherance of education, while leaving the development and execution of the plan to fulfill the vision to the Chief Executive Officer (CEO). The Board sets policy, management implements policy; the Board is responsible for oversight of the Estate while the day-to-day management of the operations of the Estate is the responsibility of the CEO.

Id. at 1 (emphasis in original). The specific duties and responsibilities of the trustees are further described in the Governance Policy as follows:

the Schools;

- regulating the admission of pupils; and
- to expend such amounts as they may deem best, not to exceed however one-half of the fund which may come into their hands, in the purchase of suitable premises, the erection of school buildings, and in furnishing the same with the necessary and appropriate fixtures furniture and apparatus.

Duties Regarding The Finances Of The Trust Estate:

- to invest the remainder of [Pauahi's] estate in such manner as they may think best, and to expend the annual income in the maintenance of said schools;
- full power to lease or sell any portion of [Pauahi's] real estate;
- to reinvest the proceeds and the balance of [Pauahi's] estate in real estate;
- to sell and dispose of any lands or other portion of [Pauahi's] estate;
- to exchange lands and otherwise dispose of any lands or other portions of [Pauahi's] estate;
- to purchase land, and to take leases of land whenever they think it expedient; and
- to make such investments as [the Trustees] consider best.

Policy Title:
Board of Trustees' Duties

In accordance with standards of trust law applicable to the trustees of perpetual charitable trusts, and the Will, the Trustees collectively shall perform and fulfill the following acts and duties in view of the manner in which persons of ordinary prudence diligence, discretion, and judgment would act in the management of their own affairs The Trustees shall:

A. Establish the policies, goals, and objectives of KSBE consistent with the mission. The policies shall be established to ensure that the Trustees' fiduciary obligations are met Board established policies shall include, but not be limited to, the following:

- strategic plan policy that addresses KSBE's primary
- internal audit policy

B. Oversee the implementation of KSBE's policies and procedures and take all steps necessary to ensure that KSBE is being managed in a manner consistent with its mission, and that its assets are being managed prudently and only for KSBE's exclusively charitable purposes. All functions and decisions shall be measured against the mission.

C. Make substantive strategic policies affecting the administration of KSBE such as its educational and financial objectives and other major plans and actions.

D. Oversee the management of KSBE's finances, including reviewing and approving annual budgets, periodically reviewing financial projections, and establishing and implementing fiscal controls sufficient to assure that KSBE's resources are expended only for KSBE's purposes. The Board collectively and each Trustee individually is accountable for the financial well-being of KSBE.

* * *

Id. at 3.

Comment: The Governance Policy is clearly the most significant document shaping this Master's recommendations for a trustee selection process. The duties and responsibilities described therein provide objective standards by which applicants' skills, experience, and other qualifications will be assessed.

The public's perceptions of the Judiciary's role in trustee selection can be enhanced by the application of a procedure based upon objective standards and clear measures of accountability.

3. Trustee Compensation Committee.

Pursuant to Stipulation No. 15 of the 1998 Stipulations, the Former Trustees agreed to submit "to this Court for its review and approval a plan for determining trustee compensation that is in compliance with and satisfies applicable requirements of state and federal law, including without exception, federal Intermediate Sanctions legislation and Treasury regulations incident thereto, and H.R.S. Section 607-20, as amended by Act 310 of the 1998 Hawaii State Legislature." Id. at 14-15. In accordance with Stipulation No. 15, the Former Trustees' filed their Petition For Approval Of A Plan For Determining Trustee Compensation Pursuant To Stipulation No. 15 And For Creation Of A Compensation Committee In Accordance With The Plan, on March 29, 1999.¹⁵ The Court subsequently entered its Order Granting Petition

¹⁵ The Court also considered the Objections Of Attorney General To Petition For Approval Of A Plan For Determining Trustee Compensation Pursuant To Stipulation No. 15, filed April 27, 1999, and the Master's Report Regarding Trustees' Petition For Approval

For Approval Of A Plan For Determining Trustee Compensation Pursuant To Stipulation No. 15 And For Creation Of A Compensation Committee In Accordance With The Plan, filed May 10, 1999, which adopts a plan proposed by the Former Trustees calling for the creation of an independent committee charged with the task of determining the sole issue of: *"What is a reasonable amount of compensation to be paid to each of the trustees of the Kamehameha Schools Bernice Pauahi Bishop Estate?"*¹⁶

The Trustee Compensation Committee reached a determination of reasonable compensation which is reported in the Report Of The Trustee Compensation Committee Regarding Its Determination Of A Reasonable Annual Amount Of Compensation To Be Paid To Each Of The Trustees Of Kamehameha Schools Bernice Pauahi Bishop Estate, filed October 1, 1999. The Trustee Compensation Committee determined that the reasonable annual compensation for each trustee of the Trust Estate should be as follows:

- A. For a single Trustee who is designated as the Chairperson of the Board of Trustees:
1. Annual retainer of \$30,000, payable in twelve equal monthly installments; and
 2. A Meeting Fee of \$2,000 per meeting, payable for each duly noticed and recorded meeting of the Board of Trustees or any committee thereof provided for under the Governance Policy. The Meeting Fee shall be payable for up to a

Of A Plan For Determining Trustee Compensation Pursuant To Stipulation No. 15 And For Creation Of A Compensation Committee In Accordance With The Plan Filed On March 29, 1999, filed April 27, 1999.

¹⁶ The Court appointed Allen K. Hoe, Michael E. Rawlins, and Colbert M. Matsumoto to serve as the initial members of the Trustee Compensation Committee.

maximum of 45 meetings during a 12-month period.

- B. For each Trustee who is not the Chairperson of the Board of Trustees:
1. Annual compensation of \$30,000, payable in twelve equal monthly installments; and
 2. A Meeting Fee of \$1,500 per meeting, payable for each duly noticed and recorded meeting of the Board of Trustees or any committee therefore provided under the Governance Policy. The Meeting Fee shall be payable for up to a maximum of 45 meetings during a 12-month period.

Id. at 7-8.

Comments: The hearing on the Trustee Compensation Committee's report is currently scheduled for January 14, 2000.

D. PARTICIPATION BY JUSTICES.

The Justices, by virtue of the power of appointment granted to them under the Will, conceivably remain "interested persons" as contemplated in the Uniform Probate Code,¹⁷ notwithstanding their withdrawal from the trustee selection process.¹⁸ Consequently, the Justices have been served with copies of the pleadings filed regarding the subject of the Petition. See Exhibit "E" attached hereto and incorporated herein by reference. Consequently, the Justices may submit their individual responses to this report if they choose to do so.

¹⁷ See generally Haw. Rev. Stat. § 560:1-201(24)

¹⁸ The Four Justices filed notice to the Administrative and Probate Judges of the Circuit Court informing them that they would not exercise the power to appoint trustees to the Board of Trustees of the Trust Estate. See Exhibit "A" to the Petition. Earlier, on December 20, 1997, the Justices issued a press release which states the respective positions of the Four Justices and Justice Klein (the "Justices' Statement"). See Exhibit 1 to AG's Response II.

Comments: As the only Justice willing to exercise the power of appointment, this Master met with Justice Klein on September 23, 1999, who concurred with this Master that a literal reading of Pauahi's Will requires action by a "majority" of the sitting Justices of the Supreme Court. Contrary to various unverified reports, this Master has determined that it was never Justice Klein's position that as a result of the withdrawal by the other Four Justices from the selection process, that he alone would constitute a "majority" in selecting future trustees.

E. PUBLIC COMMENT.

The Interim Trustees requested that in considering the Petition, a mechanism would be included to allow the public to submit comments on the subject of trustee selection. Id. at 6, ¶ 13. Consequently, on October 3, 6 and 8, 1999, this Master published Public Notice in various newspapers wherein he requested written comments from the community at large regarding the establishment of a selection process for future trustees of the Trust Estate. The Public Notice was published in the following newspapers:

- The Honolulu Advertiser
- The Honolulu Star-Bulletin
- The Garden Island
- Maui News
- West Hawaii Today
- Hawaii Tribune-Herald

A copy of the published notice is attached hereto as Exhibit "B" and incorporated herein by reference.

As of the October 15, 1999 deadline set forth in the Public Notice, this Master received thirty-five (35) written comments and five (5) telephone messages. An additional eleven (11) written comments were received during the week after the deadline. Id. Copies of the written submissions by mail and facsimile, including the description of the telephone messages, are attached collectively hereto as Exhibit "D" and incorporated herein by reference.

Comments: This Master considered all of the written comments and telephone messages submitted in response to the Public Notice. This Master appreciates the time and effort taken by individuals who submitted substantive comments on the issues of concern in this proceeding.

III. DISCUSSION.

A. THE AUTHORITY AND ROLE OF THE PROBATE COURT.

The Probate Court is required to construe a will or trust so as to implement the intent of the settlor. Id. at 401, 652 at 1142; Bishop v. Kemp, 35 Haw. 1 (1939); Campbell v. Kawananao, 34 Haw. 333, 342 (1937); In re Campbell, 33 Haw. 799 (1936); Hapai v. Brown, 21 Haw. 499, 505 (1913); Haw. Rev. Stat. § 560:2-603. The settlor's intent is to be ascertained, if at all possible, from the four corners of the document. In re Lopez, 64 Haw. 44, 49, 636 P.2d 731 (1981); In re Dowsett, 38 Haw. 407 (1949); Fitchie v. Brown, 18 Haw. 52, 70-71 (1906); Haw. Rev. Stat. § 560:2-603. Furthermore, construction of a will or trust entails the same principles as construction of a contract. In re Lopez, supra, 64 Haw. at 58, n. 13.

The Probate Court's role in the exercise of its authority is to give effect to Pauahi's instructions as set forth in her Will. Except under the most extreme circumstances, the Probate Court is not permitted to depart from or alter the terms of the Will. In this case, based upon the declaration of the Four Justices, Pauahi's instructions regarding trustee selection is now inoperable. In the absence of an alternative means for fulfilling this function, the legal authority for appointing (and removing) the trustees of the Trust Estate is now vested in the Probate Court.¹⁹

¹⁹ The applicable provisions of the Hawaii Revised Statutes governing the Probate Court's jurisdiction provide as follows:

1. **§ 603-21.6. Probate.**

The several circuit courts shall have the power to grant probate of wills, to appoint personal representatives, . . . to remove any personal representative or any such guardian and to do all other things as provided in chapter 560.

2. **§ 603-21.7. Nonjury cases.**

The several circuit courts shall have jurisdiction without the intervention of a jury except as provided by statute, as follows:

(a) Of actions or proceedings:

* * *

(3) For enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate, . . . and except when a different provision is made they shall have original and exclusive jurisdiction of all other cases in the nature of suits in equity, according to the usages and principles of courts of equity;

* * *

(Emphasis added).

3. **§ 560:1-302. Subject matter jurisdiction.**

(a) To the full extent permitted by the constitution and except as otherwise provided by law, the court has

The Probate Court also possesses the authority to fashion a procedure that will best maintain and further Pauahi's intent. In fashioning such a procedure, the Probate Court, may consider Pauahi's legacy as embodied in the Kamehameha Schools and the children educated there, including the size, status and historical role of the Trust Estate here in Hawai'i.²⁰ The Probate Court may also consider the unprecedented circumstances currently facing the Trust Estate, including the demands by the Hawaiian community to participate in the selection process, the public's desire for an impartial and non-politicized selection process, and the Justices's desire to preserve the integrity of the Judiciary. See generally Justices' Statement.

jurisdiction over all subject matter relating to:

(1) Estates of decedents, including construction of wills . . . ;

* * *

(3) Trusts.

4. § 560:7-201. Court; jurisdiction of trusts.

(a) The court has jurisdiction of proceedings initiated by trustees and interested persons concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) Appoint or remove a trustee; . . .

(Emphasis added).

²⁰ See Haw. Rev. Stat. § 560:1-302(b) which provides:

The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Comments: None of the pleadings or comments received by this Master dispute the Probate Court's jurisdiction over the Trust Estate or its authority to adopt a procedure for trustee selection to fill the vacancies on the Board of Trustees.

The establishment of a trustee selection process is especially crucial at this juncture with the unconditional resignation of two (2) trustees, the permanent removal of a third, and the current legal proceedings initiated to remove the remaining two trustees. See Section I., above. Therefore, it is critical that a procedure is established immediately so that the business at hand -- the education of children of Hawaiian ancestry -- can move forward secure in its leadership and ever respectful of Pauahi's legacy.

The procedure selected must, at a minimum, address the following guidelines:

1. be consistent with Pauahi's intent and wishes;
2. be a process which encompasses the confidence of the Hawaiian community and the community at large; and
3. be devoid of elements and features that would invite legal challenges that could result in changes to Pauahi's vision and legacy.

Recommending that the Probate Court act as the selecting authority is not based upon a quality or character judgment over the other appointing authorities which have been proposed. Rather, this recommendation is based upon the statutory authority and jurisdiction of the Probate Court to appoint trustees of any trust when the mechanism for appointment set forth in the respective

trust instruments becomes inoperable. Since the mechanism established in the Will has been rendered inoperable, the normal and customary statutory procedure should apply. Any other conclusion would result in an unnecessary rewriting of the Will.

Furthermore, it is noted that the mechanism proposed by this Master was already in place when the Will was submitted to Probate in 1884.²¹ Consequently, had the Justices of the Supreme Court declined to exercise the power of appointment at that time, it would have been the Chief Justice exercising probate jurisdiction as the chancellor who would make the selection.²²

²¹ The Will was executed in 1883, the year before Pauahi's death, and admitted to Probate on December 2, 1884. See Kekoa at 577.

²² At the time the Will was submitted to Probate, the Supreme Court and the Circuit Courts shared original jurisdiction in equity pursuant to constitutional and statutory provisions then in effect. See Act 1878, Chapter XV of The Compiled Laws of the Hawaiian Kingdom, 1884, at 389. However, jurisdiction in probate matters was exercised solely by the individual members of the Supreme Court pursuant to Section 851 of the Civil Code, which provided:

The several Justices of the Supreme Court shall have the powers at chambers, to grant probate of wills, to appoint guardians, and administrators, and again to compel all guardians, administrators, and executors, to perform their respective trusts, and to account in all respect for the discharge of their official duties. They may in case of moral unfitness, or other good and sufficient cause, remove any administrator, guardian, or executors, appointed by will or otherwise.

See also Estate of Gill, 2 Haw. 699 (1863) (commenting that the powers in probate conferred by Section 851 upon the Justices of the Supreme Court are broader than the general powers possessed by a court of equity).

B. Pauahi's Legacy Would Best Be Served By The Probate Court Exercising The Power Of Appointment.

The pleadings and public comments received have offered a number of alternatives for the selection of trustees. In reviewing the submitted proposals, this Master considered the effect of each proposal on the express terms of the Will. Based upon this review, this Master's concludes that the terms of the Will would be preserved by having the Probate Court appoint the trustees of the Trust Estate. This Master's position regarding the various proposals are discussed below.

1. This Master is not persuaded by arguments that the Justices of the Supreme Court may be substituted by the Judges of the Intermediate Court of Appeals ("ICA Judges") or retired Justices of the Supreme Court ("Retired Justices") (hereinafter generally referred to as the "Substitution Proposal"). See AG's Response II at 2, Statement of Justices' Working Group at 20-21, respectively. Proponents of the Substitution Proposals argue that substitution creates an alternative mechanism for trustee selection that would most closely fulfill the terms of the Will. This Master concludes that the Substitution Proposal requires the Probate Court to needlessly engage in rewriting the Will by unnecessarily expanding the class of individuals having the power of appointment to include the ICA Judges²³ or the Retired Justices.²⁴ Any

²³ The ICA was not established until approximately 1980 as reflected by its first reported decision in State v. Valentine, 1 Haw.App. 1, 612 P.2d 117 (1980). Consequently, Pauahi could have never have considered the ICA Judges as potential members of the class of individual who could exercise the power of appointment at the time she drafted her Will.

substitution of the Justices is contrary to the express language of the Will.

2. In further support of the Substitution Proposal, the Attorney General argues that both the Supreme Court and the ICA share concurrent jurisdiction. See AG's Response II at 5-7. As noted above, only membership in the class of individuals who are appointed to the Supreme Court is relevant in determining who can exercise the power of appointment. Consequently, the concurrent jurisdiction shared by the Supreme Court and ICA is irrelevant as a basis to justify substitution.

3. The Attorney General also argues in support of the Substitution Proposal that the ICA Judges, in their individual capacities, are willing to exercise the power of appointment granted by Pauahi to the Justices. See AG's Response II at 11. However, should the ICA Judges decline to exercise this power, appointments to fill the vacancies created by the resignations of Trustees Stender and Jarvis would be further delayed to the detriment and prejudice of the Trust Estate and its beneficiaries.

4. The Attorney General's arguments that the ICA may never be faced with an appeal involving the Trust Estate or be prevented from carrying out its judicial duties is equally unpersuasive. These factors do nothing to dispel concerns over the public's perception of the Judiciary in the selection process expressed in the respective statements of the Four Justices and

²⁴ Pauahi granted the power of appointment to the Justices as that class of individuals who holds the highest judicial office in the Hawaiian Islands.

Justice Klein. See generally Justices' Statement. The public perceives the Judiciary as the embodiment of fairness, justice and predictability. However, this perception is met with "distrust and cynicism" when the Justices, the highest judicial officers of the State of Hawai'i, act as individuals in the trustee selection process. Id. at 1. In their individual capacities, the Justices are not bound by any cognizable standard, thereby often leaving the public at a loss to comprehend their selections. Substituting the Justices with the ICA Judges will not remove the public's "adverse" perception of the Judiciary. Id. at 6. The ICA Judges would, like the Justices have for nearly 115 years, exercise this "naked appointment power" in their individual capacities and therefore be held unaccountable to anyone. Id. at 4; see also Kekoa v. Supreme Court of Hawaii, 55 Haw. 104, 118, 516 P.2d 1239, 1248-1249, cert. denied 417 U.S. 930 (1973) (Lanham, Cir. J., concurring) (noting that "portions of the decisions in Estate v. Bishop, supra, and King v. Smith, supra, . . . seem to say that the supreme court justices' appointment, even though made as individuals, may not be subjected to review by the circuit court judge in probate.").

5. The Justices' Working Group suggest that since there were only three (3) Justices when Pauahi executed her Will, under the rule of intention and/or doctrine of *cy pres*, a single justice could make the selection. See Statement of Justices' Working Group at 15-16. Based on the foregoing, the Justices' Working Group submits that Justice Klein alone could exercise the power of appointment. In considering these arguments, this Master has met with Justice Klein who has confirmed his position that a single

Justice does not constitute a majority for purposes of trustee selection.

6. Alternatively, the Justices' Working Group proposes to ask the Four Justices to assign their proxies to the Justice(s) willing to exercise the power of appointment. Id. at 20.²⁵ In contrast, Pauahi's Will demands that trustee selection shall be based on a majority of the Justices, exercising their vote in their individual capacities. See generally Kekoa at 109, 516 P.2d at 1243-1244 ("When the settlor designates a method for filling vacancies in the office of trustee, the method designated is the only method to be utilized."). The Will clearly expresses Pauahi intent to have the trustees selected based upon the collective wisdom of the Justices by majority choice. Consequently, the vote held by the individual Justices are not assignable.

7. The Justices' Working Group assumes that the Hawaiian community will not be allowed by the Probate Court to participate in the selection process based upon the method used by the Probate Court in appointing the Interim Trustees. See Statement of Justices' Working Group at 19. This assumption overlooks the fact that there was an ongoing IRS investigation of the Trust Estate pending at that time. Upon inquiry by Colbert M. Matsumoto, the Master as to the 109th, 110th, and 111th Annual Accounts, it was disclosed that the Trust Estate's tax exempt status was at risk of being revoked by the IRS based upon the

²⁵ The Justices' Working Group failed to cite any legal authority in support of its proposal or references to the Will suggesting that any mechanism other than a majority of the Justices can exercise the power of appointment.

conduct of the Former Trustees. Given the urgency of the circumstances and the magnitude of the risk confronting the Trust Estate, the Probate Court accepted the interim resignation of Trustee Stender and removed the remaining Former Trustees. In their place, the Probate Court immediately appointed the Interim Trustees nominated by Master Colbert M. Matsumoto. Consequently, there was no opportunity or procedure in place to allow the Probate Court to consider input from the Hawaiian community at that time.

8. Trustees Peters and Wong argue against any deviation from the terms of the Will regarding the power of appointment granted to the Justices. See Peters' Response and Wong's Response. However, with the withdrawal of the Four Justices, the method for selecting trustees is rendered inoperable. Because the power of appointment is held by the Justices in their individual capacities, the Probate Court is without authority to compel the Four Justices to resume their responsibility under the Will in selecting trustees. Neither Trustee Peters nor Trustee Wong offer any suggestion to cure this situation. Consequently, in the absence of an alternative method for trustee selection, the law empowers the Probate Court to exercise that power of appointment.

9. In light of the Probate Court's statutory authority and jurisdiction in place since the Will was submitted to Probate this Master is unpersuaded by any of the other proposals for trustee selection not specifically addressed above.

Comments: The Probate Court is vested with the authority and jurisdiction to exercise the power of appointment and to adopt a selection procedure. The Probate Court already considers the

annual accounts of the trustees for approval through the review and examination of its court-appointed masters. Furthermore, the Probate Court has presided over all the material proceedings affecting the trustees' compliance with the prior Orders and Stipulations relating to the governance and leadership of the Trust Estate. Therefore, being best advised of the premises herein and in the interest of judicial economy, the Probate Court can and should exercise its statutory authority to establish a selection procedure and appoint trustees to the current vacancies on the Board of Trustees.

In exercising its authority in establishing a selection procedure, it is well within the discretion of the Probate Court to consider the various interests affecting the Trust Estate and to incorporate mechanisms to address them. Among the interests noted in the pleadings and comments received is the participation of the Hawaiian community in the selection process. The Justices have also stated this preference. See generally Justices' Statement. This Master believes it is well within the jurisdiction and discretion of the Probate Court to adopt a procedure that will officially allow the Hawaiian community to participate in the selection process. In contrast, the ICA Judges or Retired Justices, in their individual capacities, would not necessarily be bound by the Justices' preference for such participation by the Hawaiian community. Although arguing in support of substitution, the Attorney General favors "the highest degree of openness and public input in filling trustee vacancies." See AG's Response II at 12.

Finally, this Master believes that it is well within the Probate Court's authority to adopt within the selection process a specific statement of required trustee qualifications. These qualifications are at present unstated. This Master believes that an affirmative expression of objective qualifications in selecting trustees will positively serve Pauahi's intent, the beneficiaries of the Trust Estate, the image of the Judiciary, and the interests of the Hawaiian community and the community at large.

IV. PROPOSAL FOR A SELECTION PROCESS FOR FUTURE TRUSTEES.

A. APPOINTMENT OF THE COMMITTEE.

1. The Board of Trustees shall file a notice of anticipated vacancy with the Court within six (6) months prior to the effective date of any vacancies from among its members.

2. Upon such notice, the Court shall appoint a committee (the "Committee") whose purpose is to assist the Court in seeking a qualified individual to fill the vacant trustee position.

3. The Court shall constitute the Committee within ninety (90) days of the notice.

4. The Committee shall be comprised of a minimum of seven (7) persons as determined by the Court from time to time.

5. The Committee shall consist of knowledgeable and informed persons, each of whom the Court finds to possess the integrity, probity, competence and disinterested status necessary to be qualified and serve as an independent and unconflicted Committee member.

6. Each Committee member shall be familiar with and sensitive to (1) the history and role of the Trust Estate relative

to the Hawaiian community and the community at large, and (2) Pauahi's legacy and her vision for the future of Hawaiian children.

7. Each Committee member, relative to the purpose and intent of the Will, shall possess experience and insight into the operation and management of:

- a. a large private educational institution;
- b. large financial institutions; or
- c. large public charitable trusts or foundations.

8. The Court shall designate the Committee members of the Committee as officers of the Court akin to a court-appointed master²⁶ or a "kokua kanawai" in accordance with Rules 28 and 113 of the Hawai'i Probate Rules, respectively.

9. The Committee shall receive statements, testimony and information from witnesses with such assurances to them of confidentiality as the Committee reasonably deems appropriate.

10. No such confidence shall be broken by the Committee except with the express approval of the witness concerned or except as required by law.

11. The statements, testimony and information received or obtained by the Committee, except as shall have been filed with the Court by the Committee, shall remain under the seal of the Court, available for inspection only by the Court.

12. The Committee's deliberations shall not be public proceedings.

²⁶ See generally Estate of Lee Chuck, 33 Haw. 220 (1934) (the master becomes an agent of the court and aids and assists the court in clarifying the issues and making tentative findings).

13. The Committee shall not be compensated, except for reimbursement of its reasonable out of pocket expenses, until its decision has been filed or as otherwise ordered by the Court.

14. If a vacancy arises on the Committee, the Court, upon notice and consideration shall appoint a replacement Committee member.

15. If the Committee fails or is unable to render a timely decision, the Court shall constitute a new Committee.

16. The Committee may but shall not be required to file with the Court any other written evidence or submissions received, gathered or considered by it.

17. The Committee's determination shall be determined by a simple majority of the Committee. Dissenting Committee members shall be entitled to file with the Court a statement of their dissent and the reasons therefor.

18. The Committee's selection of finalists shall be entitled to a presumption of reasonableness.

19. The Court shall reject the Committee's selection of semi-finalists if its selection(s) was:

a. procured by corruption, fraud, or undue means;
or

b. based upon partiality or corruption in the Committee or any of its members; or

c. if any Committee members or any of them were guilty of misconduct, in refusing or neglecting to obtain information of a candidate, or in refusing to hear evidence pertinent and material to its consideration of the candidate, or of

any other misbehavior, by which the interests of the Trust Estate or its trustees have been prejudiced; or

d. where the Committee exceeded its powers or so imperfectly executed them that its consideration of candidates consistent with the selection criteria set forth herein was not made.

20. The foregoing shall not be deemed or construed to limit the Court's authority to modify or disapprove the Committee's selection of finalists for other cause.

Comment: Committee members shall be appointed to assist the Probate Court based upon their demonstrated character, integrity, and commitment to the purpose and intent of Pauahi's legacy, the Hawaiian community, and the community at large. Membership in one or more Hawaiian organization shall not exclude any person from being selected as a Committee members. However, such Committee members shall act as individuals and not as representatives of any Hawaiian organizations he or she might be a member of.

This Master believes that individual character traits and qualifications as opposed to group membership as a basis for appointment to the Committee is the more appropriate standard to utilize due to the eternal consensus of what comprises positive character traits. This Master believes it would be inappropriate to exclude qualified individuals because of their non-membership in a particular group. This procedure is meant to be inclusive rather than exclusive.

The Committee's ability to act independently is assured by having its members designated as officers of the Court. See generally Seibel v. Honolulu, 63 Haw. 516, 631 P.2d 173 (1981); Hulsman v. Hemmeter Development Corp., 65 Haw. 58, 647 P.2d 713 (1982).²⁷ The Committee's independence is further preserved by granting the Committee the authority to make assurances of confidentiality to witnesses and to have its deliberations kept private. This will allow for free and open discussions, while maintaining the privacy of individuals applying for the position of trustees.

B. AUTHORITY TO RETAIN CONSULTANT.

1. The Committee shall have the authority to retain a consultant knowledgeable and experienced in hiring of executive personnel. The consultant should:

a. assist the Committee in organizing, screening, and reviewing applications and nominations for the vacant trusteeship position;

b. verifying information provided by the applicant, including educational background, business background, honors and awards, community activities, and involvement in Hawaiian issues; and

c. providing the initial screening of applicants and report its findings to the Representatives.

²⁷ Both Seibel and Hulsman hold that an individual performing a "quasi-judicial function" or acting as an "arm of the court" is entitled to absolute immunity from lawsuits.

2. All costs and expenses incurred by the consultant in carrying out the directives of the Committee shall be borne by the Trust Estate.

C. THE SELECTION PROCESS.

The Committee shall assist the Probate Court by the following:

1. Establish qualification requirements;
2. Consider a synopsis submitted by the trustees regarding the needs and goals of the Trust Estate;
3. Publish notice of vacancy and qualifications;
4. Screen and identify qualified applicants;
5. Solicit qualified individuals who may not have applied;
6. Applicants will be required to provide a statement regarding their perceived role of a trustee and their goals and objectives for the Trust Estate if appointed;
7. Review applicants to determine best qualified candidates;
8. In the event of a conflict of interest between a Committee member and a candidate who has met the minimum qualifications, the Committee member should declare that a conflict exists and fully describe the nature and extent of the conflict. The remaining Committee should determine whether that Committee member in question should withdraw from consideration of the candidate in question. For a Committee member to be considered not to have a conflict of interest, that Committee member must not:

- a. be related to (i.e., a member of the family of) any disqualified person whose compensation is being determined;
- b. be in an employment relationship subject to the direction or control of any applicant;
- c. be receiving compensation or other payments subject to the approval of such applicant;
- d. have any material financial interest that would be affected by the selection of such applicant as a trustee; and
- e. approve any arrangement with respect to an applicant who has approved or will approve a transaction providing economic benefits to the Committee member.

9. Based on information in the applications and gathered by the consultant, the number of applicants under consideration should be reduced to six (6) semi-finalists;

10. The Committee then should proceed with interviews of the six (6) semi-finalists to determine three (3) finalists;

11. Upon determination of the three (3) finalists, the Committee shall file their names in a writing filed with the Court as a public record, and shall also publish their names in a newspaper of statewide distribution;

12. The trustees of the Trust Estate and the Attorney General, as *parens patriae*, shall be entitled to submit such evidence and testimony for the Committee's review and consideration as may be pertinent and material to the Committee's further deliberation of the three (3) finalists;

13. In the event there is more than one (1) vacancy on the Board of Trustees, the name of an additional finalist shall be

submitted to the Court for each additional vacancy;

14. The Hawaiian community and general public shall also be entitled to submit comment and support of the candidates to the Committee within thirty (30) days from the initial date of publication of the names of the three (3) finalists;

15. The Committee shall file a final report, including any other written evidence or submissions received, gathered or considered by it regarding the qualifications of the three (3) finalists, and serve copies of such report to the Attorney General, as *parens patriae*, and the trustees of the Trust Estate;

16. The Court shall schedule a hearing at which the Attorney General, as *parens patriae*, and the trustees of the Trust Estate shall be afforded an opportunity to be heard.

17. The Court will select one of the finalists as trustee. If none of the finalists is selected, the Court will advise the Committee of its reasons and request additional names.

Comments: In selecting individuals who are willing to undertake this obligation and responsibility, this Master suggests that the description of the trustees' duties and responsibilities described in the Governance Policy should set forth the minimum standards for trustee qualification requirements.

D. CANDIDATES' PERSONAL TRAITS, QUALITIES AND CHARACTERISTICS.

The desirable qualities and characteristics of a trustee should include:

1. A recognized reputation of integrity and good character;

2. The capacity to fulfill the responsibilities of a fiduciary under trust law;

3. Respect from and for the community;

4. Consistent and active leadership in the community at large with specific emphasis on those issues that impact the well being of the Hawaii people;

5. The optimal candidate would have:

a. have a history of success in business, finance or related areas;

b. have received a formal education; and

c. possess outstanding personal traits including Hawaiian values such as *pono* (to be moral and proper), *'imi 'ike* (to seek knowledge), *laulima* (to work cooperatively), *loko maika'i* (to share), *na'au pono* (to possess a deep sense of justice), *malama* (to care for each other), and *ha'a ha'a* (to be humble).

6. The desirable qualities and characteristics of a trustee shall include a willingness and sincerity to uphold the purposes of the Kamehameha Schools Bishop Estate as stated in Pauahi's Will and Codicils.

Comments: The education of children of Hawaiian ancestry is a timeless and solemn covenant between Pauahi and the trustees of the Trust Estate. Therefore, the Committee must not merely rely on a list of qualities and characteristics in assessing a candidates. Instead, from that list, the Committee must discern whether that candidate possesses a deep sense of commitment and willingness to carry Pauahi's vision and legacy into the future.

E. CANDIDATES' EDUCATION AND EXPERIENCE.

The candidate must possess expertise in one or more of the following areas:

1. Business Administration: to include knowledge, skills and prior successful experience in managing a large corporation;

2. Finance and Investment: to include management of land and monetary assets of a multi-million dollar corporation;

3. Strategic Planning and Policy Setting: to include responsibility for administering the affairs and/or setting policies for the direction and management of a large corporation or educational institution;

4. General areas of interest, including education, law, finance or especially relevant background in governance.

Comments: This Master believes that the candidates' experience and education, as outlined above, are essential for them as trustees to fulfill their duties and responsibilities as set forth in the Governance Policy. These candidates, as trustees, must be able to properly assess the performance of the CEO in managing the Trust Estate.

F. TRUSTEE TERM LIMITS AND MANDATORY AGE LIMITS.

1. The trustees shall be appointed to a five-year term and shall be eligible to petition the Court for reappointment of one additional, consecutive five-year term.

2. Six (6) months prior to the expiration of a trustee's term, if eligible, that trustee may submit a petition to the Court for reappointment.

3. Upon receipt of the trustee's petition for reappointment, the Court shall schedule a hearing at which the Attorney General, as *parens patriae*, the incumbent trustees, and the court-appointed master responsible for reviewing the annual accounts shall be afforded an opportunity to be heard.

4. In the event the trustee is not reappointed by the Court, the Court shall constitute a Committee in accordance with the procedures set forth herein whose members shall proceed with the selection process and shall submit the names of three finalists to the Court.

5. There should be no mandatory retirement age nor any other arbitrary limit upon the terms of the trustees, except that where more than one trustee is selected at the same time, their respective terms should be staggered to ensure that no more than two trustees' terms expire within the same year.

Comments: This Master believes that the five (5) year term limits for trustees, subject to reappointment for an additional five (5) year term, is reasonable based upon the trustees' duties and responsibilities outlined in the Governance Policy.

Due to the current events facing the Trust Estate and its leadership, the Court will be required to fill a number of vacancies on the Board of Trustees. This Master recommends that the new trustees should be appointed to staggered terms so as to minimize the disruption to the ongoing activities of the Trust Estate. Assuming the Probate Court is required to appointment five (5) trustees at the same time, the following comments are offered:

1. The initial trustees comprising the Board of Trustees shall be selected to fill terms of five, four, three, two and one years, respectively, as determined by the Court.

2. The first and second trustees appointed by the Court shall serve terms of five and four years respectively, and shall be eligible to petition the Court for reappointment for one (1) additional five-year term.

3. The third, fourth and fifth trustees appointed by the Court shall serve terms of three, two, and one year, respectively, and shall be eligible to petition the Court for reappointment of two (2) additional five-year terms.

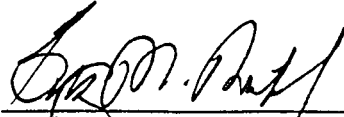
4. In the event that less than five (5) trustees are appointed at the same time, the Court shall reserve the right, as set forth above, to modify the terms of the initial trustees in order to ensure that no more than two (2) trustees' terms expire within the same year.

V. REQUEST FOR THE COURT.

Your Master respectfully request that this Honorable Court issue an Order approving the procedure for trustee selection described herein.

DATED: Honolulu, Hawaii, November 22, 1999.

OF COUNSEL:
MATSUBARA, LEE & KOTAKE
A Law Corporation



BENJAMIN M. MATSUBARA
Master

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

In the Matter of the Estate	)	EQUITY NO. 2048
)	
of	)	AFFIDAVIT OF MASTER
	)	BENJAMIN M. MATSUBARA
BERNICE P. BISHOP,)	
)	
Deceased.)	
_____)	

AFFIDAVIT OF MASTER
BENJAMIN M. MATSUBARA

STATE OF HAWAI'I)	
	)	ss.
CITY AND COUNTY OF HONOLULU)	

BENJAMIN M. MATSUBARA, being first duly sworn, on oath, deposes and says:

1. Affiant was appointed the Master pursuant to that Order of Reference to Master, filed on August 9, 1999, to report on the Petition for the Establishment of a Procedure for Selection of Future Trustees; Exhibit "A", filed on August 6, 1999, by the Petitioners herein.

2. On October 3, 6 and 8, 1999, Public Notices regarding Comment Sought On Bishop Estate Trustee Selection Procedure were published in The Honolulu Advertiser, Honolulu Star-Bulletin, The Garden Island, Maui News, West Hawaii Today and Hawaii Tribune-Herald.

3. Attached hereto as Exhibit "A" is a true and correct copy of what the document purports to be;

4. Attached hereto as Exhibit "B" is a true and correct copy of what the document purports to be;

5. Attached hereto as Exhibit "C" is a true and correct copy of what the document purports to be;

5. Affiant received thirty-five (35) written comments and five (5) telephone messages by the October 15, 1999 deadline. Additionally, eleven (11) written comments were received during the week after the deadline. Copies of the written submissions by mail and facsimile, including the description of the telephone messages, are attached hereto as Exhibit "D" and is a true and correct copy of what the documents purports to be;

6. Attached hereto as Exhibit "E" is a true and correct copy of what the document purports to be;

All the facts and materials contained in the Master's Report On The Petition For The Establishment Of A Procedure For Selection Of Trustees are true and accurate to the best of his knowledge; and


Further Affiant Sayeth Naught.

DATED: Honolulu, Hawai'i, November 22, 1999.



BENJAMIN M. MATSUBARA
Master

Subscribed and sworn to before me
this 22nd day of Nov, 1999


Name: Erica T. Tuffin
Notary Public, State of Hawai'i
My commission expires: 8-17-2002

Will of Bernice Pauahi Bishop

Know all Men by these Presents, That I, Bernice Pauahi Bishop, the wife of Charles B. Bishop, of Honolulu, Island of Oahu, Hawaiian Islands, being of sound mind and memory, but conscious of the uncertainty of life, do make, publish and declare this my last Will and Testament in manner following, hereby revoking all former wills by me made:

First. I give and bequeath unto my namesakes, E. Bernice Bishop Dunham, niece of my husband, now residing in San Joaquin County, California, Bernice Parke, daughter of W. C. Parke Esq., of Honolulu, Bernice Bishop Bernard, daughter of the late John E. Bernard Esq. of Honolulu, Bernice Bates, daughter of Mr. Dudley C. Bates, of San Francisco, California, Annie Pauahi Cleg-horn of Honolulu, Lillah Bernice Wodehouse, daughter of Major J. H. Wodehouse, of Honolulu, and Pauahi Judd the daughter of Col. Charles H. Judd of Honolulu, the sum of Two hundred Dollars (\$200.) each.

Second. I give and bequeath unto Mrs. William F. Allen, Mrs. Amos Haelele, Mrs. Antone Ross, and Mrs. Nancy Ellis, the sum of Two Hundred Dollars (\$200.) each.

Third. I give and bequeath unto Mrs. Caroline Bush, widow of A. W. Bush, Mrs. Sarah Parmenter, wife of Gilbert Parmenter Mrs. Koomailani Taylor, wife of Mr. Wray Taylor, to their sole and separate use free from the control of their husbands, and to Mrs. Emma Bernard, widow of the late John E. Bernard Esq. the sum of Five hundred dollars (\$500.) each.

Public Notice

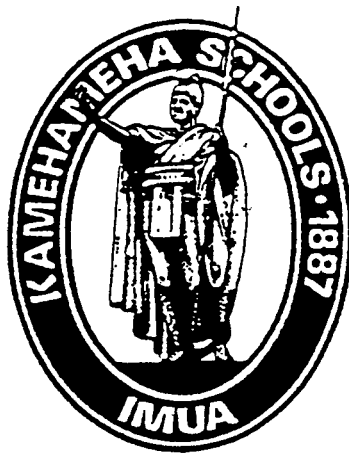
Comment Sought On Bishop Estate Trustee Selection Procedure

The Hawai'i State Probate Court has appointed Benjamin M. Matsubara as Special Master to report on the Petition For The Establishment Of A Procedure For Selection Of Trustees, Filed August 5, 1999, by Interim Trustees of the Estate of Bernice Pauahi Bishop. In reporting on the subject of the Petition, the Master requests written comments from any interested person regarding the establishment of a procedure for Trustee selection. All comments must be typed and double-spaced and are to be submitted by Friday, October 15, 1999 at the following address:

**Benjamin M. Matsubara, Master
P.O. Box 202
Honolulu, Hawaii 96810**

Exhibit "B"
End of Exhibit "B"

KAMEHAMEHA SCHOOLS
BERNICE PAUahi BISHOP ESTATE



GOVERNANCE POLICY

August 18, 1999

Trustee Selection
Documents Received Log
as of 10/25/99

<u>No.</u>	<u>Date Received</u>	<u>Name</u>	<u>Organization</u>	<u>Comments</u>
1	October 5, 1999	Edmund M.Y. Leong	None	
2	October 5, 1999	John W. Pearson	None	
3	October 5, 1999	Col. & Mrs. Frederick A. Holck, Retired	None	
4	October 5, 1999	Alan R. Cason	None	
5	October 5, 1999 (Voicemail)	Moke	None	
6	October 6, 1999	Gavan Daws	None	
7	October 7, 1999	Robert Rossman	None	
8	October 7, 1999	Volker Hildebrandt	None	
9	October 7, 1999	George F. Fike	None	
10	October 7, 1999	Edwina A.L. Wong	None	
11	October 8, 1999	James P. Gannon	None	
12	October 8, 1999	Robert B. Buchele	None	
13	October 8, 1999	Robert E. Cooper	None	
14	October 8, 1999	Kiyomi Nishi Berry	None	
15	October 8, 1999	Emil M. Muller III	None	

The Honorable Ronald T. Y. Moon
The Honorable Robert G. Klein
The Honorable Steven H. Levinson
The Honorable Paula A. Nakayama
The Honorable Mario R. Ramil
September 15, 1999
Page 2

"interested persons" notwithstanding your April 21, 1999 notice to the Circuit Court (Exhibit "A" to the Petition), we are making service upon you of the Petition and orders in this matter and will file a certificate of service to that effect. Any future filings by the Interim Trustees in connection with the Petition will be forwarded to you as well.

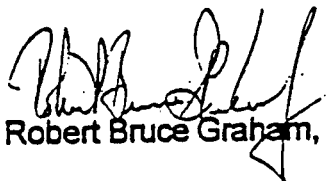
You are under no obligation to appear or respond with respect to the Petition. Any response or objection by you is due within thirty-two days of mailing. Hearing is presently scheduled for October 1, 1999 before Judge Chang. I believe the Master intends to seek an extension of that hearing date. I will inform you of any new date. In the event that hearing proceeds on October 1 and you have not responded or objected by that date, I will inform the Circuit Court of this service and of the time then remaining to you to respond or object.

This letter is addressed to each of you in your individual capacities and not in your collective or official capacity as the Supreme Court of Hawai'i.

Please contact me at your convenience if you have any questions concerning this matter.

Very truly yours,

ASHFORD & WRISTON


By Robert Bruce Graham, Jr.

Enclosures

cc: Robert Kalani Uichi Kihune
David Paul Coon
Francis Ahloy Keala
Constance Hee Lau
Ronald Dale Libkuman

Nathan T. K. Aipa, Esq.
Colleen I. Wong, Esq.
Dorothy D. Sellers, Esq.
✓ Benjamin M. Matsubara, Esq.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

In the Matter of the Estate) EQUITY NO. 2048
)
of) CERTIFICATE OF SERVICE
)
BERNICE P. BISHOP,)
)
Deceased.)
)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct filed copy of the foregoing document was via U.S. Mail, Postage prepaid and/or hand delivery to the following persons at their last-known address on November 22, 1999:

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DOROTHY D. SELLERS, ESQ.
Deputy Attorney General
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Constance Hee Lau and Ronald Dale
Libkuman, Trustees of the Kamehameha
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THE HONORABLE RONALD T. Y. MOON
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Supreme Court of Hawai'i
Ali'iolani Hale
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