

CADES SCHUTTE  
A Limited Liability Law Partnership

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**Electronically Filed**  
**FIRST CIRCUIT**  
**1EQ000002048**  
**10-MAY-2022**  
**09:05 AM**  
**Dkt. 5129 PET**

Attorneys for the Trustees under the Will  
and of the Estate of Bernice Pauahi Bishop,  
Deceased

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

In the Matter of the Estate

of

BERNICE P. BISHOP,

Deceased.

EQUITY NO. 2048

TRUSTEES’ PETITION FOR REVIEW OF  
TRUSTEE SELECTION PROCESS AND  
TRUSTEE TERMS; EXHIBITS “A” – “D”;  
DECLARATION OF COUNSEL;  
CERTIFICATE OF SERVICE

Hearing:

Date: \_\_\_\_\_

Time: 10:00 a.m.

Judge: Presiding Judge

**TRUSTEES’ PETITION FOR REVIEW OF TRUSTEE  
SELECTION PROCESS AND TRUSTEE TERMS**

ROBERT K. W. H. NOBRIGA (Chair of the Board of Trustees), LANCE KEAWE  
WILHELM, ELLIOT K. MILLS, CRYSTAL KAUILANI ROSE, and DR. JENNIFER  
GOODYEAR-KA‘OPUA, as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP,  
acting in their fiduciary and not in their individual capacities, as Petitioners, by and through their  
counsel, hereby petition this Court and respectfully show as follows:

**A. PROBATE RULE 126(C) STATEMENTS**

1. Petitioners' post office address is P.O. Box 3466, Honolulu, Hawai'i 96801; Petitioners' business address is Kawaiaha'o Plaza, Suite 200, 567 South King Street, Honolulu, Hawai'i 96813.

2. Petitioners ROBERT K.W.H. NOBRIGA, LANCE KEAWE WILHELM, ELLIOT K. MILLS, CRYSTAL KAUILANI ROSE, and DR. JENNIFER GOODYEAR-KA'OPUA are residents of the City and County of Honolulu, State of Hawai'i.

3. The assets of the Trust Estate consist of real, personal and other properties (including without limitation, all assets and properties, and all rights and interest in corporations, partnerships and other entities and investments owned, held, controlled or managed by or vested in Petitioners in their fiduciary capacities as Trustees of the Estate of Bernice Pauahi Bishop, whether directly or indirectly) and have an estimated value of approximately \$11.9 billion as determined in accordance with generally accepted accounting principles as of June 30, 2021. The fair value of the Trust Estate's endowment as of that date was approximately \$14.7 billion. The fair value of the Trust Estate's endowment is used for trust spending purposes.

4. The Trust Estate exists solely for the support of the Kamehameha Schools and the educational purposes set forth in the Will.

5. The Trust Estate is a perpetual, charitable educational trust for the purpose of education of native Hawaiians and has no ascertainable beneficiaries. The Attorney General of the State of Hawai'i represents all beneficiaries as *parens patriae*, and will be given notice of this Petition.

6. This Court has jurisdiction of this matter pursuant to Hawai'i Revised Statutes ("H.R.S.") §§ 554D-202, 554D-203, and 603-21.7(a)(3). This Petition is submitted pursuant to

H.R.S. § 554D-201(c) and Rules 1, 3, and 126(a) of the Hawai'i Probate Rules. Venue is proper pursuant to H.R.S. §§ 554D-204 and 603-36(3).

**B. THIS PETITION**

7. The purpose of this Petition is to ask this Court to appoint one or more Special Masters as the Court deems appropriate to review the Procedure for Selection of Future Trustees that was approved by this Court in the Order Granting Petition for the Establishment of a Procedure for Selection of Future Trustees dated January 6, 2000, a true and correct copy of which is attached hereto as Exhibit A. In that Order, the Court adopted then Master Benjamin M. Matsubara's November 22, 1999, Master's Report on the Petition for the Establishment of a Procedure for Selection of Trustees, a true and correct copy of which is attached hereto as Exhibit B. The selection process that was adopted by the Court is set forth in pages 27 through 38 of the Report and shall be referred to as the "Trustee Selection Process."

8. Petitioners suggest that the Court consider appointing individuals who helped formulate the Trustee Selection Process, who have gone through the process as an applicant, and/or who have served on the Trustee Screening Committee, or others who are familiar with the trustee selection process, to serve as the Special Master(s).

9. Over the years, there have been various efforts to smooth the transition of Trustees on and off the Board so that the Board can function seamlessly and efficiently. For example, in its Order Granting Trustees' Petition for Approval of the One Hundred Twenty Fifth Annual Account (FYE June 30, 2010), filed January 24, 2012, the Court adopted former Master David Fairbanks' recommendation that the Court appoint a committee to study the advisability of changing the trustee rotation from 1-year to 2-years. In lieu of a Court-appointed Committee, the then Trustees, the Attorney General, and the Court Master (David Fairbanks) entered into a

Stipulation to Approve Trustees Rotation Off and On the Board of Trustees, and Order dated March 25, 2013, a true and correct copy of which is attached hereto as Exhibit C.

10. The trustee rotation was further modified by Stipulation to Modify Current Trustees Rotation Off and On the Board of Trustees, filed herein on April 12, 2017, a true and correct copy of which is attached hereto as Exhibit D. This modification was prompted by the denial of former Trustee Janeen-Ann Ahulani Olds' Petition for Reappointment and the unanticipated delay in appointing her successor, which disrupted the 2-year rotation schedule. As a result of this stipulation, the terms of current Trustees Lance Keawe Wilhelm and Robert K.W.H. Nobriga were extended one year so that the 2-year rotation schedule could be maintained.

11. This Trustee Selection Process has now been in effect for more than 20 years.

12. Two years ago, Petitioners suggested a re-evaluation of the Trustee Selection Process in their comments on House Concurrent Resolution No. 133, filed on August 22, 2019. (*See* Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, Deceased's Memorandum Regarding House Concurrent Resolution No. 133, filed on 8/22/19). Although the subject of their filing was HCR 133, which focused on the role of KS stakeholders in the Trustee screening process, Petitioners suggested a re-evaluation of the entire selection process to determine if improvements could be made. By way of example, Petitioners noted that the 2-year rotation described above resulted in the Trustee Selection Process being undertaken every other year, which could have a negative impact on the pool of potential trustee candidates as well as pool of trustee selection committee members.

13. The Court, among other things, observed that the Petitioners' suggestion was more appropriately brought by way of a Petition upon which the Court could act. This is the reason for the instant Petition.

14. As before, Petitioners do not mean to imply any dissatisfaction with the January 6, 2000 Order which adopted the recommendations of Master Ben Matsubara for the current Trustee Selection Process, or with the outcome of the selection processes over the last two decades. Just as the Trustees periodically review the policies and procedures that apply to KS and the Trust's administration to ensure that they reflect best practices, Petitioners believe that it is prudent to have the Trustee Selection Process reviewed periodically and finetuned as necessary to ensure that KS receive the benefit of the best Trustee candidates and that transitions of Trustees on and off the Board can be undertaken effectively.

15. Petitioners anticipate that the review will involve the Special Masters interviewing those who have participated in the Trustee Selection Process (such as former members of the Trustee Screening Committee and its consultants), the Trustees, and KS stakeholders, and possibly reviewing trustee selection processes of other large charitable trusts.

WHEREFORE, Petitioners pray as follows:

A. That this Honorable Court make and enter its Order fixing a date and time for hearing of this Petition;

B. That this Court appoint one or more individuals to serve as Special Masters to review the Trustee Selection Process and Trustee Terms in such manner as they deem appropriate and report on the matters raised in this Petition; and

C. That this Honorable Court make and enter such orders, judgments and decrees and provide Petitioners such other and further relief as this Honorable Court shall deem just and equitable in the premises.

DATED: Honolulu, Hawaii, May 9, 2022.

*/s/ Rhonda L. Griswold* \_\_\_\_\_  
RHONDA L. GRISWOLD  
PŌHAI NU‘UHIWA CAMPBELL  
Attorneys for Trustees Under the Will and of the  
Estate of Bernice Pauahi Bishop, Deceased

Hawai’i Probate Rule 5(b) Certification:

*/s/ Rhonda L. Griswold* \_\_\_\_\_  
RHONDA L. GRISWOLD  
PŌHAI NU‘UHIWA CAMPBELL  
Attorneys for the Trustees Under the Will  
and of the Estate of Bernice Pauahi Bishop,  
Deceased

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**TRUSTEES’ PETITION FOR REVIEW OF TRUSTEE SELECTION PROCESS AND TRUSTEE TERMS, In the Matter of the Estate of Bernice P. Bishop, Deceased, EQUITY NO. 2048.**

*BRUCE GRAHAM, JR.*

FIRST DISTRICT COURT  
STATE OF HAWAII  
HONOLULU

2000 JAN -6 AM 9:34

D. SATO  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

In the Matter of the Estate of	)	EQUITY NO. 2048
	)	
BERNICE P. BISHOP,	)	ORDER GRANTING PETITION
	)	FOR THE ESTABLISHMENT OF
Deceased.	)	A PROCEDURE FOR SELECTION
_____	)	OF FUTURE TRUSTEES; EXHIBIT "A".

ORDER GRANTING PETITION FOR THE ESTABLISHMENT OF A  
PROCEDURE FOR SELECTION OF FUTURE TRUSTEES

On August 6, 1999, Robert Kalani Uichi Kihune, David Paul Coon, Francis Ahloy Keala, Constance Hee Lau and Ronald Dale Libkuman, Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, filed a Petition For The Establishment Of A Procedure For Selection Of Future Trustees ("Petition"). A hearing on the Petition was held on December 17, 1999. Present were attorney Robert Bruce Graham, Jr. for Petitioners Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, attorney Harry Yee for Henry Haalilio Peters, Deputy Attorney Generals

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

*D. Sato*  
Clerk, Circuit Court, First Circuit  
State of Hawaii

Dorothy D. Sellers and Daniel A. Morris appeared for the Attorney General as parens patriae, and Benjamin M. Matsubara, the Court appointed Master.

After considering the written submissions and the arguments of counsel, the Master's Report and accompanying exhibits, and the record and file herein, the Court states the following with regard to the Petition.

Under the Will of Bernice Pauahi Bishop ("Will"), the Justices of the Supreme Court of Hawaii are delegated the power to appoint the Trustees of the Estate of Bernice Pauahi Bishop, Deceased ("Trust Estate"). In pertinent part, Article Fourteenth of the Will states the following, "[trustee] vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court."

Significantly, on December 20, 1997, four of the five incumbent Justices of the Supreme Court declared, in their individual capacities, that they "will not exercise the powers to appoint trustees to the Board of Bishop Estate granted by the will of Princess Bernice Pauahi Bishop." In a letter dated April 19, 1999, and filed in Equity No. 2048, Chief Justice Ronald T.Y. Moon, and Justices Steven H. Levinson, Paula A. Nakayama and Mario R. Ramil ("Four Justices") confirmed that they would no longer exercise the power to appoint trustees of the Board of Trustees of the Trust Estate.

The Court appointed Master, Benjamin M. Matsubara, met with Justice Robert G.



Klein on September 23, 1999, and has reported that Justice Klein concurs that a literal reading of the Will requires action by a "majority" of the Justices of the Supreme Court, and that as a result of the withdrawal by the Four Justices from the selection process, that Justice Klein acting alone would not constitute a "majority" for trustee appointment as required by the Will.

Based on the foregoing, the Court finds that the mechanism for trustee selection established in the Will has been rendered inoperable.

The mechanism has been rendered inoperable by the declaration of four of the five incumbent Justices of the Supreme Court that they would no longer exercise the appointment power granted to them under the Will.

The Court notes that the declaration of the the Four Justices is made in their individual capacities, respectively, and that the Four Justices are speaking only for themselves, and not for future Justices of the Supreme Court. The Four Justices left open the possibility that future Justices of the Supreme Court may choose to exercise the power granted to them under the Will to appoint trustees of the Board of Trustees of the Trust Estate.

In the event that a majority of future Justices of the Supreme Court choose to exercise the appointment power granted to them under the Will in their individual

capacities, the Court further finds that the selection mechanism established by the Will is valid and should be respected and followed.

The Court also finds and concludes that the Probate Court has the authority and jurisdiction to exercise the power of appointment and to establish a selection procedure because the selection mechanism established by the Will has been rendered inoperable by the declaration of the four Justices of the Hawaii Supreme Court. Hawaii Revised Statutes §§ 560:1-302, 560:7-201, 603-21.6 and 603-21.7.

The Court has carefully reviewed and considered the Master's Report On The Petition For The Establishment Of A Procedure For Selection Of Trustees, Filed August 5, 1999, filed on November 22, 1999, and the exhibits to the Master's Report. The Master's Report is well researched, thoughtfully prepared, reasonable and correct in its conclusions and recommendations.

Considering that the selection mechanism established by the Will has been rendered inoperable, the Court finds that the selection process recommended by the Master is consistent with the Will and in accordance with the statutory and inherent power of the Probate Court. It is significant to the Court that Bernice Pauahi Bishop acknowledged the ultimate power of the Probate Court to enforce the terms and conditions of her trust and that the Will has been submitted to Probate.

The Attorney General's suggestion that the Judges of the Intermediate Court of Appeals of Hawaii select and appoint trustees of the Board of Trustees of the Trust Estate is illogical and unpersuasive.

In summary, the Attorney General would have individuals not identified in the Will or authorized by statute assume and exercise the power of appointment in a closed process. The Attorney General's proposal that Intermediate Court of Appeals Judges exercise the appointment power is (1) inconsistent with the Will because it would unnecessarily expand the class of individuals under the Will that have the power of appointment to include Intermediate Court of Appeals Judges, (2) contrary to provisions of the Hawaii Revised Statutes regarding jurisdiction of the Probate Court, and (3) would not promote confidence in the Judiciary, or ultimately, in the selected Board of Trustees of the Trust Estate.

The proposal of The Justices' Working Group that the Four Justices who have declared that they will no longer exercise the power of appointment under the Will be replaced by retired Justices of the Hawaii Supreme Court is also unpersuasive for the same above stated reasons. The suggestion that the Four Justices assign their proxies to Justice Klein is unsuitable because the Master has reported that Justice Klein has stated his position that a single Justice of the Supreme Court does not constitute a

"majority" for the purposes of trustee selection under the Will.

Based on the foregoing, and considering the unprecedented circumstances described in the Master's Report, the Court grants the Petition and approves and adopts the Proposal For A Selection Process For Future Trustees presented at pages 27 to 38 of the Master's Report On The Petition For The Establishment Of A Procedure For Selection Of Trustees, Filed August 5, 1999, filed on November 22, 1999 ("Selection Process"). The Court's adoption and implementation of the Selection Process is premised upon the present inoperability of the selection mechanism established by the Will.

The Court's adoption of the Selection Process does not establish a new permanent selection process. Rather, the Selection Process was considered and adopted by the Court because the trustee selection mechanism established by the Will is inoperable. In the event that a majority of future Justices of the Supreme Court choose to exercise the appointment power granted to them under the Will in their individual capacities, the mechanism established by the Will should be followed and the Selection Process adopted by the Court may be set aside.

As part of the Selection Process, the Master recommends that the Court appoint a committee comprised of a minimum of seven (7) persons to assist the Court in

identifying qualified individuals to fill vacant trustee positions and to select finalists for vacant trustee positions ("Committee").

In pertinent part, "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" and "[e]ach 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." Master's Report at pages 27-28 and 30.

The Court finds that each of the following individuals is well qualified to serve as a member of the Committee to assist the Court in the Selection Process: Winona Beamer, Roy Leonard Benham, Kenneth F. Brown, Melody K. MacKenzie, Colbert M. Matsumoto, Allan A. Smith and Kelvin H. Taketa. Copies of resumes pertaining to the foregoing individuals are attached to this Order as Exhibit "A".

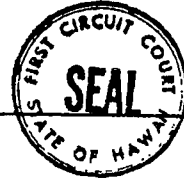
Based on the foregoing, the Court hereby appoints Winona Beamer, Roy Leonard Benham, Kenneth F. Brown, Melody K. MacKenzie, Allan A. Smith, Colbert M. Matsumoto and Kelvin H. Taketa to serve as members of the Committee and to assist the Court in the Selection Process on the terms and conditions stated in the Master's Report. All of the members of the Committee are committed to their community and to promoting educational opportunities for Hawaiian children.

The aforesaid members of the Committee shall serve in accordance with Rules 28 and 113 of the Hawaii Probate Rules and until further order of the Court.

The Committee may petition the Court upon an expedited basis for further instructions or modifications of this Order.

DATED: Honolulu, Hawaii JAN 06 2000

  
\_\_\_\_\_  
JUDGE KEVIN S.C. CHANG



## Nona Beamer - Hawaiiana Personified



Every culture has their elders. Those people that have earned the respect of their community through years of research, teaching, and keeping alive the spirit of their people. In Hawaii, the elders are known as *kūpuna*, and none is more deserving of such respect than Nona Beamer.

Through the <sup>years</sup> years, Nona has become recognized as a historian for her work in documenting the nearly 240 different styles of *hula* in the history of Hawai'i. Her mastery of chant, dance, music and storytelling has touched the hearts of many, and her nearly 40 years of teaching at the Kamehameha schools for children of Hawaiian ancestry has helped re-plant the seed of pride among the Hawaiian people. She has authored several books, directed many theater events, and is often requested as a lecturer and technical advisor on Hawaiian history. There have been several documentaries done about Nona Beamer and her family. In 1996, she released her first CD entitled *The Golden Lehua Tree*, a collection of stories and music from the Heart of Hawai'i's Beamer Family.

The fascinating history of Nona's family can be traced back to the 15th century, to such distinguished *kūpuna* as Ahikamāi Kū'eki'e, queen of the island of *Hawaii*, one of the *kapu* (sacred) twins born of Kameiamoku, favored wife of Kamehameha Nui. In traditional Hawaiian society, *ali'i* (royalty) such as these recognized that sounded words possess *mana* (spiritual power). They encouraged musical expression as a way to preserve information and communicate with one another and the gods.

Nona's long standing association with Kamehameha schools had an interesting start. When the school was first formed, Hawaiian culture, dance, chant, music and language were strictly forbidden. Nona was expelled twice for dancing during her years there as a student. Through her efforts as both a student and a teacher, Kamehameha schools became transformed into a platform for Hawaiian students to learn of their history, learn about their language, and experience their culture.

Throughout her illustrious career, Nona has been the recipient of many prestigious awards, including a Guggenheim Grant for study at Bernard College, appointment to the Hawaiian Entertainment Hall of Fame, Delegate to the Native Hawaiian Study Commission (Appointed by President Ronald Reagan), Hawai'i Association for Education of Young Children for Contributions in Culture and the Arts to the Children of Hawai'i, Tusitala Award (honoring Robert Louis Stevenson), David Malo Award - Outstanding Hawaiian of the Year by the Rotary Club of West Honolulu, Recognition by the Hawaiian Legislature as a member of the Beamer Family for contributions to Hawaiian Music, and a *Na Hoku Hanohano* Award (Hawaiian Grammy) for Lifetime Achievement in Hawaiian Music.

'Auntie' Nona was the first to record *hula* by Labanotation (a technique that provides a means of simultaneously combining precise movement with precise rhythm notation). This work was documented by the Library of Congress. She has been a leader in the documentation of chant and dances through the years, and still today, continues her research.

Winona 'Nona' Beamer was born in Honolulu, HI on August 15, 1923 to Francis Pono Beamer and Louise Leimalamā W. Beamer. She attended the Kamehameha school for Girls in Honolulu, then continued her education at Colorado Women's College, Bernard College, and Columbia University. Today she resides beneath Kilauea in the rain forest near Pahoa on the big island of Hawai'i. Semi-retired, she continues to be in demand for teaching, performances, and personal appearances.

StarScope Music P.O. Box 589 Felton, CA 95018 Tel: 408-465-9183 Fax: 408-465-9187 E-Mail: [imbleirke@bc.edu](mailto:imbleirke@bc.edu)

" EXHIBIT A "

12/7/11  
Maui

Fax to: Ken Matsubara (ph# 539-9101)  
# 538-3840

From: Nona Beamer  
808 1245  
Paheo, Hawaii  
96778  
ph-965-7647

Nona K. Decha Beamer

Hawaiian mother

Retired Kamehameha Teacher

Longtime advocate of education

for Hawaii's keiki  
Raised in Hawaii:

Nihoa, Hilo, Waimea

Educated in Hawaii:

Kapalama Elementary School

Kamehameha School for girls

University of Hawaii - Manoa

Educated on the mainland

Colorado Woman's College

Barnard & Columbia Univ. New York City

Foresees this selection committee  
as an honor for the people

& the world  
to bind us together

more lovingly  
in Aloha!

WB



# ROY LEONARD BENHAM

246 Opitihao Way, Honolulu, Hawaii, 96825 - (808)304-0801

## PERSONAL DATA

BORN: April 19, 1923, Kahuku, Oahu, T. H.  
WIFE: Jacqueline K. Booth Benham  
DAUGHTERS: Sarah Kaniaulono Benham  
Christine Kalamikapu Gove  
GRANDSON: Christopher Kalamianaole Little  
MOTHER: Rae Kamiki Benham (deceased)  
FATHER: William Asher Benham (deceased)  
SISTERS: Eula Piliame Sugarman  
Eloise Linahaunpuakekoolau Pavich  
BROTHERS: Clayton William Benham  
Howard Kaimi Benham

## EDUCATION

Kahuku Elementary School	1929 - 1935
Kamehameha School for Boys	1935 - 1941
Berea College (Kentucky) }	1941 - 1948
San Mateo J.C. (California) }	U.S. Navy,
University of Hawaii }	WWII
University of California, Berkeley	1948 - 1949
DEGREE:	Major, Art
	Minor, History

## OTHER EDUCATION

Teacher's Certification, U. H.	1955
Harvard Business Seminar, U. H.	1975
Berkeley Fed. Mgmt. Conf., U. C. Berkeley	1980

## CAREER

Summer Student Employee, Kahuku Plantation	1939 & 1940
Summer Student Employee, Libby's Cannery	1941
Teacher, Kamehameha School for Boys	1949 - 1956
Pan American Airways	1956 - 1957
Federal Government Civilian Employee	
U.S. Army, Hawaii, Training Officer	1956 - 1960
Dept. of Army, DCSPER, Field Representative	1960 - 1962
U.S. Army, Pacific, Personnel Management Specialist	1962 - 1964
Dept. of Army, DCSPER, Field Representative	1965 - 1968
U.S. Army, Europe, Personnel Management Specialist	1968 - 1972
U.S. Army, Presidio of S.F., Personnel Officer	1972 - 1976

# ROY LEONARD BENHAM

## CAREER

U.S. Army, Hawaii, Civilian Personnel Director	1976 - 1980
RETIRED	1980
DOE Hawaiian Studies Program, Kupuna	Current

## ACTIVITIES

Elected Trustee to Office of Hawaiian Affairs	1980 - 1982
Candidate for Hawaii State House of Representatives	1982, 84, 88
Democratic Party of Hawaii, Member	Current
Precinct President	Current
Prince Kuhio Hawaiian Civic Club, President	1980
Aloha Week Parade Chairperson	1979, 80, 81
American Cancer Society, District Chairperson	1981 - 1982
Haw'a. Business/Prof. Assn./Native Haw'a. C of C	1978-1996
Association of Hawaiian Civic Clubs, Director	1985
Neighborhood Board Member, Hawaii Kai	1979-1983
Kamehameha Day Celebration Commission	1979
Kamehameha Alumni Association, President	1979-80, 97-
Japanese Chamber of Commerce	Current
Honolulu Zoological Society, Member	Current
U.C. Alumni Association, Hawaii, Member	Current
Bishop Museum Association, Member	Current
American Society of Retired Persons, Member	Current
Benevolent and Protective Order of Elks, Member	Current
Northern California Fed. Personnel Council, President	1975
Friends of Iolani Palace, Member	Current
Kawaihau Church, Member	Current
Board of Trustees, Chairperson	1994 - 1995
Kapiolani Comm. College Comm. Advisory Committee	Current
Kamehameha Schools Advisory Council	1980 - 1982
Environmental Council, State of Hawaii	1995 - 1997
Hui Ima Advisory Council for Haw'a. Svcs., Chairperson	1997
Na Pua a Keali Pauahi, Director	1997 - 1998
Native Hawaiian Education Council	1997 - 1998
Native Hawaiian Constitutional Convention Delegate	Current

KENNETH F. BROWN

Personal

Born in Honolulu, October 28, 1919  
Married to Honolulu-born Joan Schaefer  
Father of Laura, Frances and Bernice

Education

Punahou and Hotchkiss Preparatory  
Princeton University - Magna Cum Laude, B.A. Architecture,  
Phi Beta Kappa, 1941

Business and Profession

Architect, F.A.I.A.  
Chairman of the Board, Ainamalu Properties, Inc.; Mauna  
Lani Resort, Inc.; Oceanic Cablevision, Inc.

Political Experience

Hawaii State Senate, Seventh Senatorial District, 1968-1974  
Assistant Majority Floor Leader; Chairman of Committee  
on Ecology, Environment and Recreation

Community Service (Current)

Chairman, Friends of the Future  
Member of Senior Advisory Council, the Japan-America  
Society of Honolulu  
Vice Chairman, Hawaii Maritime Center  
Member of Board of Governors, Boys & Girls Club of Honolulu  
Trustee, HUGS (for Hawaii's seriously ill children)  
Director, Tokyu Foundation  
Chairman, WALAHA Foundation  
Director, Hawaii Nature Center  
Member of Advisory Council, Ocean Policy Institute  
Chairman, East-West Center Foundation  
Director, Oceanic Cablevision Foundation  
Chairman, Francis H. I. Brown Foundation  
Chairman, John A. Burns Foundation  
Chairman, Marimed Foundation  
Director, Hawaii Health Foundation  
Director, Polynesian Voyaging Society

5/20/99

(Cont.d)

## Honors, Awards, Recognition

- April, 1983 -- Chosen outstanding Hawaiian businessman of 1983 by the Hawaiian Business/Professional Association
- May, 1985 -- Received honorary degree of Doctor of Science from Pacific University in Oregon
- May, 1986 -- Honored as Hawaii's Humanitarian of the Year by the Hawaii Red Cross
- May, 1987 -- Received Honorary Doctor of Humanities degree from the University of Hawaii. Also delivered the commencement address
- Dec., 1987 -- Received Na Po'okela Award, Year of the Hawaiian
- Feb., 1988 -- Honored as "Living Treasure" by the Honpa Hongwanji Mission of Hawaii
- May, 1989 -- Honored (also Mrs. Brown) by the Hawaii Nature Center for their commitment to the conservation of Hawaii's culture
- March, 1991 -- Honoree of the Hawaiian Civic Club of Honolulu 1991 Holoku Ball
- Jan., 1992 -- Received the Charles Reed Bishop Medal from Bishop Museum. This is an annual award given to two individuals who best represent the vision and integrity of Charles Reed Bishop, founder of Bishop Museum. Mr. Brown received it for his support of the Museum over many years, serving on the Board since 1982, and holding the position of Chairman for two years
- Dec., 1992 -- Honored (also Mrs. Brown) by Historic Hawaii Foundation as Kama'aina of the Year at their annual Winter Benefit
- May, 1993 -- Inducted into the Hawaii Golf Hall of Fame
- Sept., 1994 -- Ambassador of Aloha in Aloha Festival Floral Parade
- March, 1995 -- Honored by the University of Hawaii School of Architecture in recognition of his many accomplishments, the Kenneth F. Brown Asia Pacific Culture and Architecture Design Award was presented to five winners of architectural projects at the First International Symposium on Asia Pacific Architecture held in Honolulu
- May, 1995 -- Delivered the keynote address at the University of Hawaii School of Architecture Commencement Ceremony

- Sept., 1996 -- Received Kaonohi Award from Papa Ola Lokahi, in recognition of his significant contribution to Hawaiian health
- Jan., 1997 -- Received the David Malo Award from the Rotary Club of West Honolulu. This Award, given yearly, recognizes and honors a person of Hawaiian Ancestry whose accomplishments and life exemplify the ideal of high achievement and community service for the betterment of the world.
- Nov., 1997 -- Received Certificate of Recognition from the Council of the City and County of Honolulu for his dedication and commitment to Hawaii and its people.
- Dec., 1997 -- Received the Gordon W. Bradley Humanitarian Award from the American Institute of Architects, Honolulu Chapter, in recognition of his exemplary service to the community.
- Dec., 1997 -- Honored by The Queen's Health Systems family with a bronze plaque, displayed at The Queen's Medical Center, to commemorate his service to Queen's and the people of Hawaii.
- Oct., 1998 -- Honored by March of Dimes Chapter of the Pacific with the National Lifetime Achievement Award at the 1998 Governor's Ball. This Award is presented to individuals whose lives and philosophies have been instrumental in establishing the necessary community resources, both human and financial, to help communities improve their quality of life and the continuing development of the human spirit.
- Feb., 1999 -- Resolutions passed by the State of Hawaii Senate and House of Representatives honoring Kenneth Brown upon his retirement as Chairman of The Queen's Health Systems.

**MELODY KAPILIALOHA MACKENZIE**

579 Kane'apu Place  
Kailua, Hawai'i 96734  
(808) 262-6301

e-mail: kaneapu@worldnet.att.net

**WORK EXPERIENCE**

February 1992 to  
October 1999

Executive Director, Hawaiian Claims Office,  
Department of Commerce and Consumer Affairs,  
State of Hawai'i

Executive director of division within DCCA providing administrative and legal support to the Hawaiian Home Lands Trust Individual Claims Review Panel. The Claims Review Panel received and reviewed claims by individual Hawaiian Home Lands' beneficiaries for trust breaches arising from an act or omission of a state official. Duties included staff hiring and supervision, coordination of staff work product, budget preparation, formulating legislation and presenting testimony, and sitting as a Hearings Officer to receive evidence and make recommendations to the Panel on individual claims. Responsible for establishing procedures and drafting the administrative rules to implement and administer the claims review process.

October 1986 to  
February 1992

Senior Staff Attorney, Native Hawaiian Legal Corporation

Senior staff attorney in non-profit organization providing legal services to the Hawaiian community. Caseload responsibilities included federal and state court litigation on the ceded lands trust and Hawaiian religious claims on public lands, quiet title litigation, management of complex class action lawsuits, and research and writing on all aspects of Native Hawaiian rights.

August 1987 to  
July 1991

Per Diem District Court Judge, District Court of the First  
Circuit, State of Hawaii

Appointed by Chief Justice of Hawaii Supreme Court to serve as a per diem judge handling small claims, traffic cases, civil matters involving amounts under \$10,000, and misdemeanor criminal trials.

October 1982 to  
September 1986

Executive Director, Native Hawaiian Legal Corporation

Chief executive of non-profit corporation providing legal services to the Hawaiian community. Funding received from the Office of Hawaiian Affairs and the federal Legal Services Corporation. Responsible for program administration including budgetary matters, compliance with state and federal funding requirements, resource allocation, coordination of staff work product, training, fundraising, personnel, staff supervision, and community relations. Maintained full caseload as staff attorney.

December 1980 to  
September 1982

Staff Attorney, Native Hawaiian Legal Corporation

Developed factual and legal arguments for Hawaiian reparations in report to the Native Hawaiians Study Commission (NHSC). Extensively researched and wrote portion of NHSC minority report on ceded lands. Advised OHA on fiduciary responsibilities and was a consultant to OHA on specific issues relative to public land trust. Other responsibilities included land title litigation and kuleana access cases.

October 1978 to  
November 1980

Administrative Law Clerk to Chief Justice William S. Richardson, Hawaii Supreme Court

In addition to regular law clerk duties, responsibilities included drafting a law review article on the administration of the Hawaii judiciary, working on implementing legislation for the intermediate court of appeals, writing speeches for the Chief Justice, and acting as liaison between the Administrative Director of the Courts and the Supreme Court law clerks.

July 1978 to  
September 1978

Committee Clerk to the Committee on the Executive, 1978 Constitutional Convention

Responsible for committee operations including preparing hearing notices, coordinating hearings and meetings, and organizing proposals and testimonies. Also drafted committee proposals, wrote committee reports and floor speeches in support of committee proposals, and aided other committees in writing their proposals and committee reports.

April 1977 to  
June 1978

Law Clerk to Chief Justice William S. Richardson

Responsibilities involved analyzing briefs, statutes and prior judicial decisions and preparing legal memoranda and draft opinions for the court. Also researched and wrote a special report discussing proposed amendments to the judicial article of the state constitution.

PERSONAL

Born: July 27, 1948, Honolulu, Hawaii.

Education:

May 1976 Juris Doctor, William S. Richardson School of Law.  
Attended Antioch Law School in Washington D.C., transferred to complete degree at William S. Richardson School of Law.

June 1970 B.A. *cum laude*, in Religious Studies/Anthropology,  
Beloit College, Beloit, Wisconsin.

Admitted to  
Practice Law: United States Court of Appeals for the Ninth Circuit.  
United States District Court for the District of Hawaii.  
Hawaii State Bar.

1976 to present Halau Mohala 'Ilima, student and 1989 kumu hula graduate.

### ORGANIZATIONS AND OTHER EXPERIENCES

1980 to present Hawaii State Board of Bar Examiners, currently Chair of the Applications Review Committee.

1999 Board of Directors, Hawai'i Justice Foundation.

1994 to 1998 Appointed by Chief Justice Moon to the Board of Directors, Judiciary History Center.

1992 Founding member, Native Hawaiian Bar Association.

Spring 1984 and 1985 Adjunct Professor of Law, William S. Richardson School of Law: Co-taught Native Hawaiian rights class covering areas such as land tenure system and evolution of private property rights, creation and development of the Hawaiian Homes program, ceded lands, and water rights.

### SPEECHES AND PRESENTATIONS

June 1999 Panelist, Native Hawaiian Convention, "Statehood and Hawaiian Rights."

May 1997 Presenter, Ho'omalua Ma Kualoa, "Protection of Native Hawaiian Religious Rights under Federal and State Law."

January 1995 Faculty, Hawaii Institute of Continuing Legal Education, Kamehameha Schools/Bishop Estate Conference on Native Hawaiian Land Rights, Eminent Domain, and Regulatory Takings, "Native Hawaiian Land Rights."

December 1994 Panelist, Native Hawaiian Bar Association, Symposium on Hawaiian Sovereignty, "Hawaiian Customs and Traditions - Fundamentals Every Lawyer Should Know."

December 1993 Faculty, Hawaii Institute for Continuing Legal Education, Symposium on Recent Developments in Land Use Law, "Pele Defense Fund, PASH and Native Hawaiian Rights."

### PUBLICATIONS AND ARTICLES

1993 Review of Native Lands and Foreign Desires by Lilikala Kame'eleihiwa in Hawaiian Journal of History, Vol. 27.

1993 "1893-1993: Overthrow, Annexation and Sovereignty," Hawaii Bar Journal, January 1993.



1992 *The Lum Court and Native Hawaiian Rights*, 14 U. Haw. L. Rev. (Summer 1992). An article discussing the Hawaii Supreme Court's treatment of Native Hawaiian rights issues.

1991 Editor, *Native Hawaiian Rights Handbook* (1991). Substantial contributor and overall editor of book analyzing case law, legislation, and public policies relating to Hawaiians in areas ranging from the Hawaiian land trusts and self-determination to religious and customary rights.

Review of Native American Estate: The Struggle over Indian and Hawaiian Lands, in The Contemporary Pacific (Spring 1991).

### HONORS AND AWARDS

1992 Award by Na Loio no na Kanaka for commitment to advancing Hawaiian rights and justice.

1991 Commendation by Governor John Waihee on publication of the *Native Hawaiian Rights Handbook*.

Resolution by 1991 Hawai'i State Senate in recognition of contributions as an attorney, advocate, and scholar in advancing the rights of Native Hawaiians.

1989 Commendation by Governor John Waihee on graduation as a kumu hula.

1983 Recognition by Alu Like, Inc., for Outstanding Service to Hawai'i.

1982 Commendation by the Office of Hawaiian Affairs for contributing to the betterment of all Hawaiians.

### REFERENCES AVAILABLE UPON REQUEST

**COLBERT M. MATSUMOTO**  
1022 Bethel Street  
Honolulu, Hawaii 96813  
Phone: (808) 545-8132  
Fax: (808) 545-8170

**EMPLOYMENT HISTORY:**

- 1999 - present      Chairman & CEO, Island Insurance Company, Ltd.
- 1994 - 1998      Director & Secretary-Treasurer, Matsumoto LaFontaine & Chow,  
Attorneys at Law, A Law Corporation.
- 1981 - 1994      Director, Fujiyama, Duffy & Fujiyama, Attorneys at Law, A Law  
Corporation.
- 1980 - 1981      Associate Attorney, Gill, Park & Park, Attorneys at Law.
- 1978 - 1980      Self-employed, Law offices of Colbert M. Matsumoto.

**EDUCATION:**

University of California at Berkeley, Boalt Hall School of Law, J.D. - 1978

University of San Francisco, B.A., *magna cum laude* - 1974.

**CURRENT AFFILIATIONS:**

- 1999 - Present      Director, Island Insurance Company, Ltd.
- 1998 - Present      Director, City Bank, Ltd.
- 1997 - Present      Director, Hawaiian Host, Inc.
- 1994 - Present      Director, National Mortgage & Finance Company, Ltd.
- 1995 - Present      Member, Board of Land and Natural Resources, State of  
Hawaii
- 1991 - Present      Member, Japanese American Citizens League - Honolulu  
Chapter. (Past President and Director).
- 1989 - Present      Member, National Asian Pacific American Bar Association,  
Honolulu Chapter. (Hawaii Chapter organizer and founding  
President - 1989-92).

1978 - Present Member, Hawaii State Bar Association.  
1984 - Present Member, Defense Research Institute.  
1990 - Present Member, Hawaii Defense Lawyers Association.  
1979 - Present Director & Secretary, Daihonzan Chozen-ji - International Zen Dojo.  
1997 - Present Member, Jikoen Hongwan-ji Mission  
1995 - Present Member, Japanese Cultural Center of Hawaii  
1995 - Present Member, Japanese American National Museum

**PERSONAL INFORMATION:**

Born: January 17, 1953, Lanai City, Hawaii

Wife: Gail S. Matsumoto

Children: Two

ALLAN A. SMITH  
4007 Mapu Place  
Lihue, HI 96766

(808) 245-3678 (business)

EDUCATION

University of Hawaii at Manoa - BACHELOR OF SCIENCE in  
Agricultural Economics (January 1968)

Kamehameha Schools - Honolulu, Hawaii (1957-63)  
St. Theresa Grade School - Kekaha, Kauai, Hawaii (1951-57)  
Others: Stanford University - Stanford, California -  
completed the Stanford Executive Program (July  
1991)

Zenger-Miller Management Course - (1980)  
Rotary International - Group Study Exchange Team  
Member, Mexico (1977)  
International Career Management Institute - (1973)  
Dale Carnegie Course - (1970)  
General Building/General Engineering Contractor's  
License, Responsible Managing Employee (RME) -  
ABC 13921  
Real Estate License - RS 40886 (Active)

MARRIED - Linda L. T. Smith - Principal, Kauai High &  
Intermediate School

PROFESSIONAL EXPERIENCE

GROVE FARM COMPANY, INCORPORATED - VICE PRESIDENT AND CHIEF  
OPERATING OFFICER

AMFAC, INC. - JANUARY 1968 TO AUGUST 1987  
The Lihue Plantation Co., Ltd. - FIELD SUPERINTENDENT  
(January 1981 - August 1987)

The Lihue Plantation Co., Ltd. - IRRIGATION SUPERINTENDENT  
(July 1978 - January 1981)

Kekaha Sugar Co., Ltd. - MECHANICAL OPERATIONS SUPERINTENDENT  
(January 1975 - July 1978)

The Lihue Plantation Co., Ltd. - SUPERVISORY POSITIONS (June  
1969 - January 1975)

Amfac, Inc. - AGRICULTURAL TRAINEE (January 1968 - June 1969)

BUSINESS/COMMUNITY ASSOCIATIONS

Kamehameha Alumni Association - Life Member  
Kamehameha Schools Association of Kauai - President (1982-84)  
Waimea Foreign Church - Member  
Governor's Task Force on Streamlining Land Use Application  
Process for Housing Construction in Hawaii (Act 227) -  
Member (1992 - Present)

Kauai Chamber of Commerce - Board Member and Economic  
Development and Energy Committee Chairperson (1992 -  
Present)

Kauai Economic Development Board - Agricultural Committee  
Chairperson (1991 - Present); Secretary (1992);  
President Elect (1994)

Na Ala Hele Trails and Access Advisory Board - Vice President  
and Member (1991 - 1993)

Parents in Support of Raider Students (P.A.I.R.S. - Kauai High  
School's Parent Organization) - Board Member (1989 -  
Present); President (1991 - 1993)

School/Community Based Management (SCBM) Task Force - Member  
(1991 - Present)

Project Ke Au Hou Task Force (Kauai Department of Education) -  
Member (1992 - Present)

Kauai Farm Bureau - Member (1987 - Present)

Contractors Association - Member (1987 - Present)

Hale Opi'o, Inc. - Board Member (1986 - 1993)

Mayor's Task Force on Traffic - Member (1985-86)

Hawaiian Sugar Technologists - Member, Board of Governors  
(1982, 1986)

Wailua/Kapaa Development Plan Committee - Member (1985)

Lihue Airport Technical Advisory Committee - Member (1984)

Kakaha Community Association - President (1975-77)

The Queen's Health System - Community Council Member (1994)

Central Pacific Bank - Advisory Board Member (1994 - Present)

University of Hawaii Foundation's Committee on Community  
Colleges - Member (1994)

Queen's Medical Center - Trustee (1994 - Present)

Agribusiness Development Corporation - Director (1994 -  
Present)

Rural Economic Transition Assistance - Hawaii - Oversight  
Committee Member (1995 - Present)

2/2/99

## KELVIN H. TAKETA

---

### PROFESSIONAL EXPERIENCE:

July 1998 - Present

President/Chief Executive Officer  
Hawai'i Community Foundation

- The Hawai'i Community Foundation is a public charity which strives to improve and enrich the lives of the people of Hawai'i through its grantmaking, advisory services to donors and partners, and leadership on key issues in the community. The Foundation is governed by a 24-member Board and has a 40-person staff and permanent assets of over \$260 million.
- The President/CEO is responsible for building and maintaining the Hawai'i Community Foundation as a leading, high-impact philanthropic organization that inspires people to seek out its services and support its programs and initiatives. The President/CEO works closely with the Board of Governors to define the vision, mission, policies, strategies and values of the Foundation and leads the staff and volunteers in carrying them out.

December 1994 - June 1998

Vice-President/Executive Director, Asia/Pacific Region  
The Nature Conservancy, Asia/Pacific Regional Office - Honolulu, Hawaii

- Senior executive in charge of all programs and activities for the region, which included conservation programs in Hawaii, Micronesia, the South Pacific, Indonesia and China, government relations with U.S. agencies, multi-lateral and regional agencies and government aid and private sector alliances in Japan, Hong Kong, Taiwan and Singapore. During his tenure, the Asia/Pacific Region was the fastest growing regional program of The Nature Conservancy with offices in 19 locations spread across 14 time zones, and a program budget of \$11 million in FY98.
- Primary responsibilities included key strategic issues such as community enterprise development, recruitment of volunteer and staff leadership, private fundraising and alliances with major institutions such as the World Bank. The Conservancy was recognized throughout the region for its work in community-based resource management, capacity building in local organizations, nonprofits and government agencies and regional policy and resource development programs.

June 1989 - December 1994

Vice President/Director, Hawaii and Pacific Programs

The Nature Conservancy, Asia/Pacific Regional Office - Honolulu, Hawaii

- Served as chief executive of The Nature Conservancy of Hawaii. Led staff, trustees and key constituents through a major strategic planning process and launched a series of new initiatives including a State government matching fund for private land management, a broad-based coalition to address alien species introductions and the establishment of community-based management partnerships on Maui and Molokai.
- Beginning in 1990, led the development of the Asia/Pacific program from initial evaluation and strategic planning, through acquisition of initial start-up funds, establishment of field offices and partnerships to provide technical assistance to local governments, NGOs and communities and development of regional support programs.

October 1987 - June 1989

Vice-President / Director of Resources

The Nature Conservancy, Headquarters Office - Arlington, Virginia

- First Director of Resources Division with responsibility for fundraising, membership, government relations, communications and public relations functions for the organization. Reorganized operating departments to better integrate the division and guided it through a period of rapid growth and expansion, including record growth in revenue and membership.

September 1980 - October 1987

Executive Director, Field Representative

The Nature Conservancy of Hawaii - Honolulu, Hawaii

- Beginning as field representative for two years, coordinated all real estate, government and community relations activities for the newly established state program. Built strong alliances with private landowners, local communities, state and federal government agencies, and scientific institutions. Promoted in 1982 to Executive Director, led the organization through a period of major growth and the development of a comprehensive state program for the conservation of Hawaii's biological diversity.
- Over the decade of the 1980s (Kelvin retained senior management responsibilities for the Hawaii program during his tenure as Director of Resources), the program completed two major capital campaigns raising over \$13 million as membership grew from 300 in 1980 to over 8,000 in 1990; helped protect more than 40,000 acres, including the establishment of 8 new preserves and launched a series of cooperative initiatives with the state and federal government and scientific institutions across the United States.

**EDUCATION:**

Admitted to the Bar, State of Hawaii - 1980

University of California, Hastings College of the Law, Juris Doctor - 1980

Colorado College, Bachelor of Arts, English - 1977

**AWARDS / OTHER ACTIVITIES:**

Conservation Service Award, *U.S. Department of Interior* - 1983

Conservation Award, *Chevron Corporation* - 1988

Former Board Member / First Chairman of the Environment Committee; *Hawaii Visitors Bureau*

Board Member and Audit Committee Member, *Hawaiian Electric Industries*

Board Member, *Hawaiian Electric Industries Power Corporation*

Board Member and Executive Committee member, *Sustainable Conservation* (non-profit)

Trustee, *Ho'okupu Fund* (non-profit)

Past volunteer work includes strategic planning facilitator for non-profit organizations, including

*Makiki Environmental Education Center* (now *Hawaii Nature Center*), *Historic Hawaii*

*Foundation*, *Palau Conservation Society* and *Sustainable Conservation*

Publications and references available on request.



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Charles R. Kendall Building  
888 Mililani Street, 8th Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 526-9566

Master

COURT  
STATE OF HAWAII  
FILED

NOV 22 AM 10:35

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
	)	

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

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OF COUNSEL:  
MATSUBARA, LEE & KOTAKE  
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888 Mililani Street, 8th Floor  
Honolulu, Hawaii 96813  
Telephone: (808) 526-9566

Master

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
BERNICE P. BISHOP,	)	ESTABLISHMENT OF A
	)	PROCEDURE FOR SELECTION OF
Deceased.	)	TRUSTEES, FILED AUGUST
	)	5, 1999
	)	

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.<sup>1</sup> 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;<sup>2</sup>

---

<sup>1</sup> 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.

<sup>2</sup> 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;<sup>3</sup>
3. The resignations of Trustees Stender and Jervis;<sup>4</sup>
4. Criminal proceedings have been filed against Trustees Richard Wong and Henry Peters;<sup>5</sup>

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.<sup>6</sup>

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,

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<sup>6</sup> 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");<sup>7</sup>
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

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<sup>7</sup> 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");<sup>8</sup>

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");<sup>9</sup>
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

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<sup>8</sup> 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).

<sup>9</sup> 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 management<sup>10</sup> which incorporates a formal governance policy to more clearly define the roles of the Board of Trustees and that of the CEO.<sup>11</sup>

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.<sup>12</sup> 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").<sup>13</sup> 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.<sup>14</sup> In summary, the Governance Policy describes the

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<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> Id. at 10-14.

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

<sup>14</sup> 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:

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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.<sup>15</sup> The Court subsequently entered its Order Granting Petition

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<sup>15</sup> 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?"<sup>16</sup>

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.

<sup>16</sup> 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,<sup>17</sup> notwithstanding their withdrawal from the trustee selection process.<sup>18</sup> 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.

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

<sup>18</sup> 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. Kawanakoa, 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.<sup>19</sup>

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<sup>19</sup> 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.<sup>20</sup> 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' desire to preserve the integrity of the Judiciary. See generally Justices' Statement.

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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).

<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

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

<sup>22</sup> 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 Judges<sup>23</sup> or the Retired Justices.<sup>24</sup> Any

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<sup>23</sup> 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 Jervis 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

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<sup>24</sup> 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.<sup>25</sup> 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

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<sup>25</sup> 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 master<sup>26</sup> 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.

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<sup>26</sup> 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).<sup>27</sup> 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.

---

<sup>27</sup> 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), lokomaika'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.

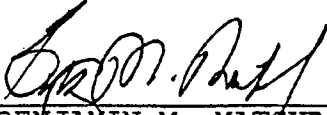
4. In the event that less than five (5) trustees are appointed at the same time, the Court shall reserve the right, as set forth above, to modify the terms of the initial trustees in order to ensure that no more than two (2) trustees' terms expire within the same year.

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

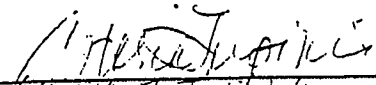
Further Affiant Sayeth Naught.

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



BENJAMIN M. MATSUBARA  
Master

Subscribed and sworn to before me  
this 22<sup>nd</sup> day of Nov, 1999

15  
  
Name: Elizabeth T. Tuttle  
Notary Public, State of Hawai'i  
My commission expires: 8-15-2002



## 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 Clegborn 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 Healelea, Mrs. Antone Boss, 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. Koomallani 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:

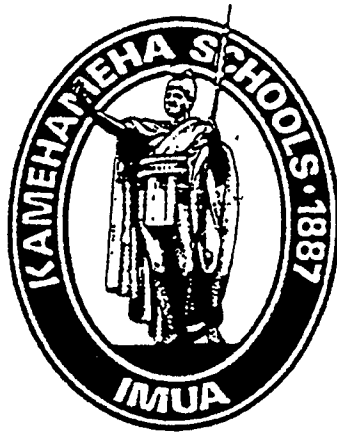
**Benjamin M. Matsubara, Master  
P.O. Box 202  
Honolulu, Hawaii 96810**

Exhibit "B"  
End of Exhibit "B"





KAMEHAMEHA SCHOOLS  
BERNICE PAUAHI BISHOP ESTATE



GOVERNANCE POLICY

August 18, 1999

Exhibit "C"



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	



( ASHFORD & WRISTON

ATTORNEYS AT LAW

Paul S. Bell  
Walter C. Bell  
John W. Bell  
Thomas G. Bell  
James S. Bell

Richard T. Bell  
Margaret W. Bell  
Robert Bruce Bell  
James P. Bell  
James A. Bell

John S. Bell  
John G. Bell  
John A. Bell  
James A. Bell  
John S. Bell

James S. Bell  
Mary S. Bell  
James S. Bell  
James S. Bell  
James S. Bell

James S. Bell  
Paul S. Bell  
James S. Bell  
James S. Bell  
James S. Bell

David C. Bell  
Matthew G. Bell  
James A. Bell  
James S. Bell  
Paul S. Bell

OF COUNSEL  
James S. Bell  
James S. Bell  
James S. Bell  
James S. Bell

September 15, 1999

The Honorable Ronald T. Y. Moon  
Chief Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable Paula A. Nakayama  
Associate Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable Robert G. Klein  
Associate Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable Mario R. Ramil  
Associate Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable Steven H. Levinson  
Associate Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

**Re: Trustee Selection - Kamehameha Schools Bernice Pauahi Bishop Estate**

Dear Chief Justice Moon and Justices:

Enclosed please find copies of the Petition filed by the Interim Trustees of the Kamehameha Schools Bernice Pauahi Bishop Estate concerning the selection process for future trustees; the order of reference to a master (Benjamin Matsubara); the order setting time and place of hearing; and a Supplement to the Petition filed as an accommodation to others.

In recent pleadings, it has been asserted that the Justices are "interested persons" within the meaning of the Hawaii Probate Code and should, therefore, be given formal notice of the proceedings. Rather than question whether you remain

Exhibit "E"

HONOLULU OFFICE  
Mailing Address:  
Post Office Box 131  
Honolulu, HI 96810

Street Address:  
Aili Plaza, Suite 1400  
1099 Alakea Street  
Honolulu, HI 96813

Telephone:  
(808) 539-0400  
Facsimile:  
(808) 533-4945

KAILUA-KONA OFFICE  
Kualini Tower, Suite 208  
75-5722 Kuakini Hwy.  
Kailua-Kona, HI 96740

Telephone:  
(808) 329-7706  
Facsimile:  
(808) 329-7528

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.

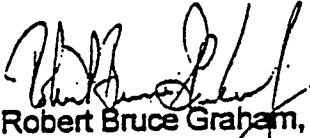
You are under no obligation to appear or respond with respect to the Petition. Any response or objection by you is due within thirty-two days of mailing. Hearing is presently scheduled for October 1, 1999 before Judge Chang. I believe the Master intends to seek an extension of that hearing date. I will 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. Alpa, 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  
  ) )  
  ) CERTIFICATE OF SERVICE  
  ) )  
of   ) )  
  ) )  
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:

EARL ANZAI, ESQ.  
Attorney General  
DOROTHY D. SELLERS, ESQ.  
Deputy Attorney General  
Department of the Attorney General  
State of Hawai'i  
Hale Auhau Building  
425 Queen Street  
Honolulu, Hawai'i 96813

State of Hawai'i

ROBERT BRUCE GRAHAM, JR., ESQ.  
Ashford & Wriston  
Alii Place, Suite 1400  
1099 Alakea Street  
Honolulu, Hawai'i 96813

Attorney for Robert Kalani Uichi Kihune,  
David Paul Coon, Francis Ahloy Keala,  
Constance Hee Lau and Ronald Dale  
Libkuman, Trustees of the Kamehameha  
Schools Bernice Pauahi Bishop Estate



RONALD R. SAKAMOTO, ESQ.  
Suite 850, Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawai'i 96813

Attorney for Trustee Gerard Aulama Jervis

CRYSTAL K. ROSE, ESQ.  
16th Floor, Alii Place  
1099 Alakea Street  
Honolulu, Hawai'i 96813

Attorney for Trustee Oswald Kofoad Stender

RENEE M. L. YUEN, ESQ.  
Suite 702A, Haseko Center  
820 Mililani Street  
Honolulu, Hawai'i 96813

Attorney for Trustee Henry Haalilio Peters

MICHAEL J. GREEN, ESQ.  
DAVID J. GIERLACH, ESQ.  
Second Floor, Media Five Building  
345 Queen Street  
Honolulu, Hawai'i 96813

Attorney for Trustee Marion Mae Lokelani Lindsey

WAYNE M. SAKAI, ESQ.  
Suite 3100, Mauka Tower  
Grosvenor Center  
737 Bishop Street  
Honolulu, Hawai'i 96813

Attorney for Trustee Richard Sung Hong Wong

THE HONORABLE RONALD T. Y. MOON  
Chief Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

COLLEEN I. WONG 3270-0  
ERIC H. SONNENBERG 4024-0  
Kamehameha Schools  
567 South King Street, Suite 310  
Honolulu, Hawaii 96813  
Telephone No. (808) 523-6364

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED  
2013 MAR 25 PM 1:10

F. PAGAY  
CLERK

Attorneys for the Trustees Under the Will  
and of the Estate of Bernice Pauahi Bishop,  
Deceased

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate ) EQUITY NO. 2048  
 )  
Of ) STIPULATION TO APPROVE  
 ) TRUSTEES ROTATION OFF AND  
 ) ON THE BOARD OF TRUSTEES <sup>AND</sup>  
 ) ORDER  
BERNICE P. BISHOP, )  
 )  
Deceased. )  
\_\_\_\_\_ )

STIPULATION TO APPROVE  
TRUSTEES ROTATION OFF AND ON THE BOARD OF TRUSTEES

This Stipulation is entered into among MICAH A. KANE (Chair of the Board of Trustees), CORBETT AARON KAMOHAIKIOKALANI KALAMA, ROBERT K. W. H. NOBRIGA, JANEEN-ANN AHULANI OLDS, and LANCE KEAWE WILHELM, the duly appointed, qualified and acting Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, acting in their fiduciary and not in their individual capacities (herein the "Trustees"), by and through their attorneys; DAVID M. LOUIE, ESQ., Attorney General of the State of Hawaii, as *parens patriae* (herein in such capacity the "Attorney General"), by and

I do hereby certify that this is a true, and correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit  
State of Hawaii

**EXHIBIT C**

through his Deputy Attorney General, HUGH R. JONES; and DAVID L. FAIRBANKS, ESQ., the duly appointed Master.

1. Pursuant to the *Order Granting Trustees' Petition for Approval of the One Hundred Twenty Fifth Annual Account (FYE June 30, 2010)*, filed January 24, 2012 (the "2012 Order"), this Court approved the Trustees' petition, subject to the three recommendations of the Master that were approved and adopted. The third recommendation of the Master specified:

c. Appointment of Committee to Study Time Period for Trustee Rotation Off and On the KS Board. Your Master recommends that the Court appoint a committee to study the advisability of modifying the current practice for KS Trustees rotating off the Board after having served the maximum number of terms (2) and years (10). At present, that rotation period is five (5) years and involves a new selection and appointment process each year for five (5) years. Concerns have been raised that this practice does not permit sufficient time for the adequate orientation of Successor Trustees to make them fully effective Trustees, results in the total replacement of the Board over a very short period of time and jeopardizes the smooth, if not hoped for, seamless, transition of Trustees on and off the Board. In addition, there is concern that the current practice perhaps unduly burdens the volunteer screening committees appointed by this Court to evaluate candidates for the Board and may even have a detrimental effect on the quality of the applicant pool.

The study would not involve consideration of permanently modifying the limitation of terms (2) and years (10) for Trustees.

The committee should be a relatively small "Blue Ribbon" committee (perhaps five to seven people) and include the Attorney General as parens patriae, a representative from KS, and a Master appointed by this Court. The committee should have the authority to hire a consultant to assist it in the study. A written report and recommendations should be made to this Court.

2. The Trustees, Attorney General, as *parens patriae*, and the Master have further studied and reviewed the matter of the trustees' rotation off and on the board of trustees (the "Board") as identified in the third recommendation stated above and have reached agreement to modify the current practice regarding the trustees rotation off and on the Board. The specific details of the agreement to modify the current practice are set forth below in section B. The

significant change to the rotation process would result in one (1) trustee rotating off and on to the Board every other year (as opposed to one a year for five years), except in one instance of rotation, two (2) trustees would rotate off and on to the Board in one year.

3. The parties agree that the modification satisfies the recommendation in the *2012 Order*, and, therefore, negates the need to appoint a committee to study the matter and provide a report.

**A. Current Process to Select and Appoint of Trustees**

4. In that *Order Granting Petition for the Establishment of a Procedure for Selection of Future Trustees*, filed in this Court on January 6, 2000 (the “*Selection Order*”), this Court adopted and approved a process concerning the selection of trustees to serve on the Board that had been recommended by the then serving master. The recommended process was set forth in pages 27 to 38 of the *Master’s Report on the Petition for the Establishment of a Procedure for Selection of Trustees, Filed August 5, 1999*, filed in this Court on November 22, 1999 (the “*1999 Report*”). The *1999 Report* also included recommendations as to the length of term that a trustee would serve.

5. The provisions of the recommended process relevant for purposes of this Stipulation were set forth at pages 36 and 37 of the *1999 Report*, and specifically provided:

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.

\* \* \*

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.

6. At page 38 of the *1999 Report*, the master further suggested that:
  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.
7. This Court first implemented the selection of trustees pursuant to the *Selection Order* with the appointment of those five individuals as trustees as set forth that *Decree Regarding Selection of Trustees*, filed in this Court on November 22, 2000 (the “*Decree*”).
8. In the *Decree*, the Court also followed the suggestion of the master as stated in paragraph 6, above, and staggered the terms of the individuals appointed as trustees so that not more than one trustee’s term would expire in the same year. (*Decree*, at page 8.)
9. The appointment of the trustees in the *Decree* set in place the following pattern of the rotation of the trustees off and on the Board (assuming a trustee serves the maximum term of 10 years): five consecutive years where no trustee would rotate off the Board, followed by five consecutive years in which one trustee would rotate off the Board each year and a successor trustee would be appointed each year to serve on the Board.
10. From and after the date of the *Decree*, the selection process as set forth in the *Selection Order* has been followed in the circumstance of the early resignation of a trustee in 2007 (Trustee Lau) and in the four usual circumstances of a trustee having served the maximum number of years as trustee (Trustees Kihune, Thompson, Plotts and Ing).
11. The parties have had the opportunity to consider the benefits and burdens concerning a trustee’s rotation off the Board and a new trustee’s rotation on the Board. As a

result, the parties believe that the rotation of a trustee off and another trustee's rotation on the Board each year for five consecutive years is not in the best interest of the Estate and imposes a burden on the selection process for the concerns and reasons mentioned by the Master in the recommendation set forth in paragraph 1, above.

12. In addition, without any change to the timing of the rotation of the Trustees off the Board, the three most recently appointed trustees (Trustees Olds, Wilhelm and Nobriga) will rotate off the Board over a 23-month period should they each serve the maximum allowable term of 10 years. A change in a majority of the number of trustees over such a short period of time could tend to disrupt the efficient administration of the Estate. Furthermore, to constitute the Screening Committee and conduct the process on three separate occasions in less than a two-year period might impose a burden on this Court as well as the members of the Screening Committee.

13. Furthermore, the parties believe that the rotation of two trustees off and on the Board in one year would not be detrimental to or pose an undue burden on the administration of Estate. The three then acting trustees would have six, four and two years of experience as trustees, respectively, which would provide them with good and sufficient knowledge and familiarity of the Estate and its administration. Therefore, the parties agree that the recommendation in the *1999 Report* (see paragraph 5, above) that where more than one trustee is selected at one time that the terms of such trustees be staggered to ensure that no more than one trustee's term expires in the same year should not be followed.

**B. Modification of the Time Period for the Trustees' Rotation Off and On the Board**

14. The agreement reached by the parties, when fully implemented, would result in the rotation of one trustee off the Board and another trustee on the Board every other year, except in one year two (2) trustees would rotate off and on the Board.

15. Under the modification, a newly appointed trustee would have two years of service before another trustee would be appointed. In that time period, such trustee would have time to become sufficiently seasoned, acquainted and knowledgeable of the Estate, and how it is operated and administered before another new trustee would be appointed. In addition, the time period would allow the Board as a group to work together. The foregoing benefits should help to promote a seamless transition upon the exit of one trustee and the addition of a new trustee.

16. The proposed modification is based on the following parameters:

- (i) the total number of years to serve as a trustee remains at ten years, divided into two (2) five-year terms;
- (ii) no more than one instance of two trustees rotating off/on the Board at the same time; and
- (iii) the maximum total term of a currently serving trustee should not be shortened to less than ten years.

17. Based on the foregoing parameters, and in order to achieve the two-year time gap between the rotation of a trustee(s) off and another trustee(s) on the Board, the final terms of the currently serving trustees, with the exception of Trustee Kalama, will need to be lengthened when and if the trustees exercise their right to seek reappointment for their final terms as trustees. Trustee Kalama's final 5-year term as Trustee does not need to be lengthened as the two-year spacing between a trustee's rotation off and on the Board can begin upon his term end.

18. Trustee Kalama recently filed that *Petition for Reappointment of Trustee* (filed herein on January 23, 2013) seeking reappointment as trustee for a 5-year term. Upon this Court's approval of that Petition, Trustee Kalama's term as Trustee will end on June 30, 2018.

19. The four other currently appointed and serving Trustees, Kane, Olds, Wilhelm and Nobriga, will need to have their second terms as trustees lengthened as follows:

- a. Trustee Kane, by ten (10) months, for a total of five years ten months, with a term ending on June 30, 2020;

- b. Trustee Olds, by seventeen (17) months, for a total of six years five months, with a term ending on June 30, 2022;
- c. Trustee Wilhelm, by six months, for a total of five years six months, with a term ending on June 30, 2022; and
- d. Trustee Nobriga, by eighteen (18) months, for a total of six years six months, with a term ending on June 30, 2024.

20. The following schedule summarizes the above:

<u>Kalama</u> Term ending: 6/30/2018	<u>Kane</u> Term ending: 6/30/2020 (+10 months to his original term)	<u>Olds</u> Term ending: 6/30/2022 (+17 months to her original term)	<u>Wilhelm</u> Term ending: 6/30/2022 (+6 months to his original term)	<u>Nobriga</u> Term ending: 6/30/2024 (+18 months to his original term)
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21. The parties also believe that should any currently serving or successor trustee fail or be unable to serve, for any reason, his or her term as trustee, that a successor be appointed by this Court to serve only such trustee's remaining term in order to maintain the two-year spacing. For example, should a trustee resign in the third year of his or her second five-year term as trustee, then the successor trustee should be appointed by this Court only to serve the remaining two years.

22. In the case of the trustee who fails to serve his/her term as trustee, the Court, pursuant to its inherent power and authority, can determine and decide whether to appoint a successor trustee on an interim basis or to require a petition to be filed pursuant to the *Selection Order*.



NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Trustees, the Attorney General, and the Master that:

A. The modification of the trustees rotation off and on to the Board, as set forth in Paragraphs 14 to 22, above, which includes the rotation of two trustees off and on the Board in a single year, without staggering their terms, is reasonable and in the best interest of the Estate;

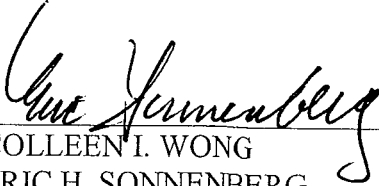
B. The modification satisfies the third recommendation of the Master, as approved and adopted by this Court in that *2012 Order*, as set forth in Paragraph 1, above, and no further study need be taken or report filed on this matter;

C. The Trustees and such successor trustees may include in applicable petitions to the Court requests for length of terms to serve on the Board consistent with the modification set forth in this Stipulation, until such modification is fully implemented;

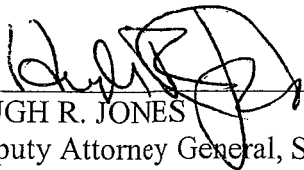
D. The Court has the inherent discretion and authority to make changes to the proposed modification as it deems appropriate; and

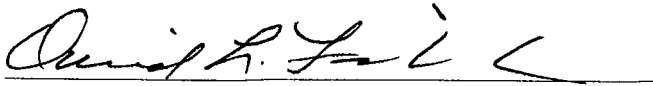
E. Except as may be modified by this Stipulation, the *Selection Order* remains in full force and effect.


DATED: Honolulu, Hawai'i, this 14th day of March, 2013.

  
\_\_\_\_\_  
COLLEEN I. WONG  
ERIC H. SONNENBERG  
Attorneys for the Trustees Under the Will and of  
the Estate of Bernice Pauahi Bishop, Deceased

DAVID M. LOUIE,  
Attorney General, as *Parens Patriae*

By:   
HUGH R. JONES  
Deputy Attorney General, State of Hawaii

  
DAVID L. FAIRBANKS  
Master

APPROVED AND SO ORDERED:  
DERRICK H.M. CHAN   
\_\_\_\_\_  
Judge of the Above-Entitled Court

In the Matter of the Estate of Bernice P. Bishop, Deceased; Equity No. 2048, Stipulation to Approve Trustees Rotation Off and On the Board of Trustees; Order  
and <sup>cc</sup>

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FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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L. WONG  
CLERK

Attorneys for the Trustees under the Will  
and of the Estate of Bernice Pauahi Bishop,  
Deceased

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

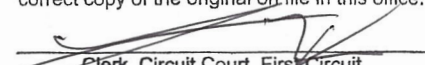
In the Matter of the Estate  
of  
BERNICE P. BISHOP,  
Deceased.

EQUITY NO. 2048  
STIPULATION TO MODIFY CURRENT  
TRUSTEES ROTATION OFF AND ON THE  
BOARD OF TRUSTEES; EXHIBIT A; AND  
ORDER

**STIPULATION TO MODIFY CURRENT TRUSTEES  
ROTATION OFF AND ON THE BOARD OF TRUSTEES**

This Stipulation is entered into among CORBETT AARON KAMOHAIKIOKALANI KALAMA (Chair of the Board of Trustees), MICAH A. KANE, LANCE KEAWE WILHELM, and ROBERT K.W.H. NOBRIGA, the duly appointed, qualified and acting Trustees (herein the "Trustees") Under the Will and of the Estate of Bernice Pauahi Bishop, Deceased (the "Estate"), acting in their fiduciary and not in their individual capacities, by and through their counsel; DOUGLAS S. CHIN, Attorney General of the State of Hawaii, as *parens patriae* (herein in such capacity the "Attorney General"), by and through his Deputy Attorney General, HUGH R. JONES; and MALIA E. SCHRECK, the duly appointed Master.

I do hereby certify that this is a full, true, and  
correct copy of the original on file in this office.

  
Clerk, Circuit Court, First Circuit  
State of Hawaii

1. On December 5, 2011, the Master for the 125<sup>th</sup> Annual Account of the Trustees of Kamehameha Schools filed his Report pursuant to Rule 29 of the Hawaii Probate Rules (“125<sup>th</sup> Master’s Report”). Therein the Master made the following recommendation:

[T]he Court appoint a committee to study the advisability of modifying the current practice for KS Trustees rotating off the Board after having served the maximum number of terms (2) and years (10). At present, that rotation period is five (5) years and involves a new selection and appointment process each year for five (5) years. Concerns have been raised that this practice does not permit sufficient time for the adequate orientation of Successor Trustees to make them fully effective Trustees, results in the total replacement of the Board over a very short period of time and jeopardizes the smooth, if not hoped for, seamless, transition of Trustees on and off the Board. In addition, there is concern that the current practice perhaps unduly burdens the volunteer screening committees appointed by this Court to evaluate candidates for the Board and may even have a detrimental effect on the quality of the applicant pool.

The committee would not involve consideration of permanently modifying the limitation of terms (2) and years (10) for Trustees.

The committee should be a relatively small “Blue Ribbon” committee (perhaps five to seven people) and include the Attorney General as parens patriate, a representative from KS, and a Master appointed by this Court. The committee should have the authority to hire a consultant to assist it in the study. A written report and recommendations should be made to this Court.

125<sup>th</sup> Master’s Report at pages 95-96.

2. In lieu of a Court-appointed committee, the Trustees, the Attorney General, and the Court Master entered into a Stipulation to Approve Trustees Rotation Off and On The Board of Trustees, and Order on March 25, 2013 (the “Stipulated Rotation Order”), a true and correct copy of which is attached hereto as Exhibit A.

3. After considering various alternatives, it was determined in the best interests of the Estate to provide for the rotation of one trustee off the Board and another trustee on the

Board every other year, instead of every year.<sup>1</sup> This rotation allows a newly appointed trustee to have two years of service before another trustee is appointed, during which time the trustee has “time to become sufficiently seasoned, acquainted and knowledgeable of the Estate, and how it is operated and administered before another new trustee would be appointed.” Stipulated Rotation Order at ¶ 15. The two-year rotation schedule was also thought to ease the burden of the Trustee Screening Committee and the Court in the trustee selection process, so that the Screening Committee would not have to convene in multiple consecutive years to appoint new trustees. Stipulated Rotation Order at ¶ 12.

4. At a hearing on October 8, 2015, this Court denied Trustee Janeen-Ann Ahulani Olds’ Petition for Reappointment, which prompted her resignation on the same date.<sup>2</sup> In the Notice of Vacancy; Stipulation for Appointment of a Master and a Trustee Screening Committee and Order filed November 16, 2015 (“Notice of Vacancy”), the Trustees and Attorney General asked that the Court appoint a Successor Trustee to serve an initial five (5) year term, beginning on July 1, 2016, with the right to petition the Court for reappointment of one additional, consecutive five-year term so that “the recommended trustee 2-year rotation schedule would be maintained.” See Notice of Vacancy at ¶ 13.

5. The Court accepted and approved Ms. Olds’ resignation on October 19, 2015, and appointed a Trustee Screening Committee on December 4, 2015. The Trustee Screening Committee is still in the process of evaluating potential trustee candidates to fill Ms. Olds’

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<sup>1</sup> To achieve the two-year rotation in a reasonable period of time, it was necessary to lengthen the terms of 4 of the 5 trustees and for two trustees to rotate off in a single year (then Trustee Olds and Trustee Wilhelm in 2022), all of which is reflected in the Stipulated Rotation Order. Stipulated Rotation Order at ¶¶ 17-20.

<sup>2</sup> Had Ms. Olds second-year term been approved, her term as trustee would have expired on June 30, 2022.

vacancy.<sup>3</sup> The appointment of a new fifth trustee is not expected to occur until mid-2017, at the earliest.

6. The second five-year term of Trustee Corbett Kalama is scheduled to end on June 30, 2018. As a result, the Estate will have two new Trustees within a one-year period.

7. The Parties believe that it is in the Estate's best interest to achieve a 2-year rotation schedule as soon as practicable to minimize disruption to the administration of the Trust Estate and to realize the full intent of the Stipulated Rotation Order, including limiting the strains and burdens on volunteer screening committees, the recruitment and selection processes, and the available applicant pool.

8. Based upon the foregoing parameters and those discussed in the Stipulated Rotation Order, the Parties believe a one-year extension of Trustee Kalama's current term to June 30, 2019 is the first step in reaching a two-year rotation schedule for the Trustees.

9. With a one-year extension of Trustee Kalama's term, a corresponding one-year extension to each of the remaining three currently appointed Trustees' terms is necessary to achieve the two-year rotation schedule. The Trustee terms would need to be extended as follows:

- a. Trustee Kane from June 30, 2020 to June 30, 2021;
- b. Trustee Wilhelm from June 30, 2022 to June 30, 2023; and
- c. Trustee Nobriga from June 30, 2024 to June 30, 2025.<sup>4</sup>

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<sup>3</sup> By Minute Order filed November 10, 2016, the Court reconvened the Trustee Selection Committee after one of the recommended candidates withdrew from consideration.

<sup>4</sup> Trustee Nobriga's current term ends December 31, 2017 and Trustee Nobriga intends to petition this Court for reappointment before the expiration of his term. If Trustee Nobriga's Petition is approved, the Order Granting his Petition should be consistent with this Stipulation. If Trustee Nobriga's Petition for Reappointment is not approved, the term of the Trustee appointed to fill Mr. Nobriga's second term should follow the two-year rotation as outlined in this Stipulation.

10. The following schedule summarizes the current terms and the proposed extended terms of the current Trustees:

	<u>Current Term Ending</u>	<u>Proposed Term Ending</u>
Kalama	June 30, 2018	June 30, 2019
Kane	June 30, 2020	June 30, 2021
Wilhelm	June 30, 2022	June 30, 2023
Nobriga	June 30, 2024 <sup>5</sup>	June 30, 2025

11. The Parties believe that the Court has the inherent authority to review and revise the Trustees' terms to achieve a two-year rotation schedule, and to ensure the quality of the trustee selection process and the work of the Trustee Screening Committee as set forth in the Stipulated Rotation Order.

12. The Parties specifically and purposefully acknowledge that this Stipulation is the consequence of several unique and unanticipated developments since the March 25, 2013 Stipulated Rotation Order. While the Parties agree that the Court has the inherent authority to review and revise the Trustees' terms, proposed changes to the trustee selection process must be weighed against other available options and must be undertaken in the best interests of the Trust Estate. The Parties believe that the confluence of the unforeseen extenuating circumstances described herein warrant the requested extension of Trustee terms.

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<sup>5</sup> See Footnote 4 above.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Trustees, the Attorney General, and the Master that:

A. The modification of the trustees rotation off and on to the Board, as set forth in Paragraphs 8 through 10 above, which will achieve a 2-year rotation, is reasonable and in the best interest of the Estate;

B. The term of Trustee Kalama is hereby extended to June 30, 2019; the term of Trustee Kane is hereby extended to June 30, 2021; and the term of Trustee Wilhelm is hereby extended to June 30, 2023.

C. Trustee Nobriga may include in any applicable petition for reappointment a request that his term be extended in accordance with the modification set forth in this Stipulation.

D. The Court has the inherent discretion and authority to make changes to the proposed modification as it deems appropriate.

E. Except as may be or have been modified by this Stipulation and the Stipulated Rotation Order, the *Order Granting Petition for the Establishment of a Procedure for Selection of Future Trustees*, filed in this Court on January 6, 2000, which approved the process recommended at pages 27-38 of the *Master's Report on the Petition for the Establishment of a Procedure for Selection of Trustees, Filed August 5, 1999*, filed in this Court on November 22, 1999, remains in full force and effect.



DATED: Honolulu, Hawai'i, April 4, 2017.

CADES SCHUTTE  
A Limited Liability Law Partnership

*Rhonda L. Griswold*

RHONDA L. GRISWOLD  
Attorney for The Trustees Under the Will and of the  
Estate of Bernice Pauahi Bishop, Deceased

DOUGLAS S. CHIN  
Attorney General of the State of Hawaii

By:

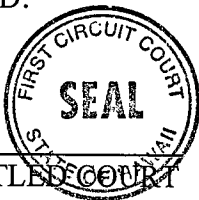
*Hugh R. Jones*  
HUGH R. JONES  
Deputy Attorney General  
*Parens Patriae*

*Malia E. Schreck*

MALIA E. SCHRECK  
Master

APPROVED AND SO ORDERED:

DERRICK H.M. CHAN



JUDGE OF THE ABOVE-ENTITLED COURT

**STIPULATION TO MODIFY CURRENT TRUSTEES ROTATION OFF AND ON THE BOARD OF TRUSTEES; EXHIBIT A; AND ORDER, In the Matter of the Estate of Bernice P. Bishop, Deceased, EQUITY NO. 2048.**

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FIRST CIRCUIT COURT  
 STATE OF HAWAII  
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F. PAGAY  
 CLERK

Attorneys for the Trustees Under the Will  
 and of the Estate of Bernice Pauahi Bishop,  
 Deceased

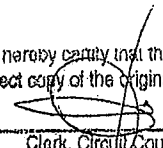
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
 STATE OF HAWAII

In the Matter of the Estate	)	EQUITY NO. 2048
	)	
Of	)	STIPULATION TO APPROVE
	)	TRUSTEES ROTATION OFF AND
	)	ON THE BOARD OF TRUSTEES, AND
	)	ORDER
BERNICE P. BISHOP,	)	
	)	
Deceased.	)	

STIPULATION TO APPROVE  
TRUSTEES ROTATION OFF AND ON THE BOARD OF TRUSTEES

This Stipulation is entered into among MICAH A. KANE (Chair of the Board of Trustees), CORBETT AARON KAMOHAIKIOKALANI KALAMA, ROBERT K. W. H. NOBRIGA, JANEEN-ANN AHULANI OLDS, and LANCE KEAWE WILHELM, the duly appointed, qualified and acting Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, acting in their fiduciary and not in their individual capacities (herein the "Trustees"), by and through their attorneys; DAVID M. LOUIE, ESQ., Attorney General of the State of Hawaii, as *parens patriae* (herein in such capacity the "Attorney General"), by and

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

  
 Clerk, Circuit Court, First Circuit  
 State of Hawaii

**EXHIBIT A**

through his Deputy Attorney General, HUGH R. JONES; and DAVID L. FAIRBANKS, ESQ., the duly appointed Master.

1. Pursuant to the *Order Granting Trustees' Petition for Approval of the One Hundred Twenty Fifth Annual Account (FYE June 30, 2010)*, filed January 24, 2012 (the "2012 Order"), this Court approved the Trustees' petition, subject to the three recommendations of the Master that were approved and adopted. The third recommendation of the Master specified:

c. Appointment of Committee to Study Time Period for Trustee Rotation Off and On the KS Board. Your Master recommends that the Court appoint a committee to study the advisability of modifying the current practice for KS Trustees rotating off the Board after having served the maximum number of terms (2) and years (10). At present, that rotation period is five (5) years and involves a new selection and appointment process each year for five (5) years. Concerns have been raised that this practice does not permit sufficient time for the adequate orientation of Successor Trustees to make them fully effective Trustees, results in the total replacement of the Board over a very short period of time and jeopardizes the smooth, if not hoped for, seamless, transition of Trustees on and off the Board. In addition, there is concern that the current practice perhaps unduly burdens the volunteer screening committees appointed by this Court to evaluate candidates for the Board and may even have a detrimental effect on the quality of the applicant pool.

The study would not involve consideration of permanently modifying the limitation of terms (2) and years (10) for Trustees.

The committee should be a relatively small "Blue Ribbon" committee (perhaps five to seven people) and include the Attorney General as parens patriae, a representative from KS, and a Master appointed by this Court. The committee should have the authority to hire a consultant to assist it in the study. A written report and recommendations should be made to this Court.

2. The Trustees, Attorney General, as *parens patriae*, and the Master have further studied and reviewed the matter of the trustees' rotation off and on the board of trustees (the "Board") as identified in the third recommendation stated above and have reached agreement to modify the current practice regarding the trustees rotation off and on the Board. The specific details of the agreement to modify the current practice are set forth below in section B. The

significant change to the rotation process would result in one (1) trustee rotating off and on to the Board every other year (as opposed to one a year for five years), except in one instance of rotation, two (2) trustees would rotate off and on to the Board in one year.

3. The parties agree that the modification satisfies the recommendation in the *2012 Order*, and, therefore, negates the need to appoint a committee to study the matter and provide a report.

A. Current Process to Select and Appoint of Trustees

4. In that *Order Granting Petition for the Establishment of a Procedure for Selection of Future Trustees*, filed in this Court on January 6, 2000 (the "*Selection Order*"), this Court adopted and approved a process concerning the selection of trustees to serve on the Board that had been recommended by the then serving master. The recommended process was set forth in pages 27 to 38 of the *Master's Report on the Petition for the Establishment of a Procedure for Selection of Trustees, Filed August 5, 1999*, filed in this Court on November 22, 1999 (the "*1999 Report*"). The *1999 Report* also included recommendations as to the length of term that a trustee would serve.

5. The provisions of the recommended process relevant for purposes of this Stipulation were set forth at pages 36 and 37 of the *1999 Report*, and specifically provided:

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.

\* \* \*

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.

6. At page 38 of the *1999 Report*, the master further suggested that:
  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.
7. This Court first implemented the selection of trustees pursuant to the *Selection Order* with the appointment of those five individuals as trustees as set forth that *Decree Regarding Selection of Trustees*, filed in this Court on November 22, 2000 (the "*Decree*").
8. In the *Decree*, the Court also followed the suggestion of the master as stated in paragraph 6, above, and staggered the terms of the individuals appointed as trustees so that not more than one trustee's term would expire in the same year. (*Decree*, at page 8.)
9. The appointment of the trustees in the *Decree* set in place the following pattern of the rotation of the trustees off and on the Board (assuming a trustee serves the maximum term of 10 years): five consecutive years where no trustee would rotate off the Board, followed by five consecutive years in which one trustee would rotate off the Board each year and a successor trustee would be appointed each year to serve on the Board.
10. From and after the date of the *Decree*, the selection process as set forth in the *Selection Order* has been followed in the circumstance of the early resignation of a trustee in 2007 (Trustee Lau) and in the four usual circumstances of a trustee having served the maximum number of years as trustee (Trustees Kihune, Thompson, Plotts and Ing).
11. The parties have had the opportunity to consider the benefits and burdens concerning a trustee's rotation off the Board and a new trustee's rotation on the Board. As a

result, the parties believe that the rotation of a trustee off and another trustee's rotation on the Board each year for five consecutive years is not in the best interest of the Estate and imposes a burden on the selection process for the concerns and reasons mentioned by the Master in the recommendation set forth in paragraph 1, above.

12. In addition, without any change to the timing of the rotation of the Trustees off the Board, the three most recently appointed trustees (Trustees Olds, Wilhelm and Nobriga) will rotate off the Board over a 23-month period should they each serve the maximum allowable term of 10 years. A change in a majority of the number of trustees over such a short period of time could tend to disrupt the efficient administration of the Estate. Furthermore, to constitute the Screening Committee and conduct the process on three separate occasions in less than a two-year period might impose a burden on this Court as well as the members of the Screening Committee.

13. Furthermore, the parties believe that the rotation of two trustees off and on the Board in one year would not be detrimental to or pose an undue burden on the administration of Estate. The three then acting trustees would have six, four and two years of experience as trustees, respectively, which would provide them with good and sufficient knowledge and familiarity of the Estate and its administration. Therefore, the parties agree that the recommendation in the *1999 Report* (see paragraph 5, above) that where more than one trustee is selected at one time that the terms of such trustees be staggered to ensure that no more than one trustee's term expires in the same year should not be followed.

**B. Modification of the Time Period for the Trustees' Rotation Off and On the Board**

14. The agreement reached by the parties, when fully implemented, would result in the rotation of one trustee off the Board and another trustee on the Board every other year, except in one year two (2) trustees would rotate off and on the Board.

15. Under the modification, a newly appointed trustee would have two years of service before another trustee would be appointed. In that time period, such trustee would have time to become sufficiently seasoned, acquainted and knowledgeable of the Estate, and how it is operated and administered before another new trustee would be appointed. In addition, the time period would allow the Board as a group to work together. The foregoing benefits should help to promote a seamless transition upon the exit of one trustee and the addition of a new trustee.

16. The proposed modification is based on the following parameters:

- (i) the total number of years to serve as a trustee remains at ten years, divided into two (2) five-year terms;
- (ii) no more than one instance of two trustees rotating off/on the Board at the same time; and
- (iii) the maximum total term of a currently serving trustee should not be shortened to less than ten years.

17. Based on the foregoing parameters, and in order to achieve the two-year time gap between the rotation of a trustee(s) off and another trustee(s) on the Board, the final terms of the currently serving trustees, with the exception of Trustee Kalama, will need to be lengthened when and if the trustees exercise their right to seek reappointment for their final terms as trustees. Trustee Kalama's final 5-year term as Trustee does not need to be lengthened as the two-year spacing between a trustee's rotation off and on the Board can begin upon his term end.

18. Trustee Kalama recently filed that *Petition for Reappointment of Trustee* (filed herein on January 23, 2013) seeking reappointment as trustee for a 5-year term. Upon this Court's approval of that Petition, Trustee Kalama's term as Trustee will end on June 30, 2018.

19. The four other currently appointed and serving Trustees, Kane, Olds, Wilhelm and Nobriga, will need to have their second terms as trustees lengthened as follows:

- a. Trustee Kane, by ten (10) months, for a total of five years ten months, with a term ending on June 30, 2020;

- b. Trustee Olds, by seventeen (17) months, for a total of six years five months, with a term ending on June 30, 2022;
- c. Trustee Wilhelm, by six months, for a total of five years six months, with a term ending on June 30, 2022; and
- d. Trustee Nobriga, by eighteen (18) months, for a total of six years six months, with a term ending on June 30, 2024.

20. The following schedule summarizes the above:

<u>Kalama</u> Term ending: 6/30/2018	<u>Kane</u> Term ending: 6/30/2020 (+10 months to his original term)	<u>Olds</u> Term ending: 6/30/2022 (+17 months to her original term)	<u>Wilhelm</u> Term ending: 6/30/2022 (+6 months to his original term)	<u>Nobriga</u> Term ending: 6/30/2024 (+18 months to his original term)
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21. The parties also believe that should any currently serving or successor trustee fail or be unable to serve, for any reason, his or her term as trustee, that a successor be appointed by this Court to serve only such trustee's remaining term in order to maintain the two-year spacing. For example, should a trustee resign in the third year of his or her second five-year term as trustee, then the successor trustee should be appointed by this Court only to serve the remaining two years.

22. In the case of the trustee who fails to serve his/her term as trustee, the Court, pursuant to its inherent power and authority, can determine and decide whether to appoint a successor trustee on an interim basis or to require a petition to be filed pursuant to the *Selection Order*.



NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Trustees, the Attorney General, and the Master that:

A. The modification of the trustees rotation off and on to the Board, as set forth in Paragraphs 14 to 22, above, which includes the rotation of two trustees off and on the Board in a single year, without staggering their terms, is reasonable and in the best interest of the Estate;

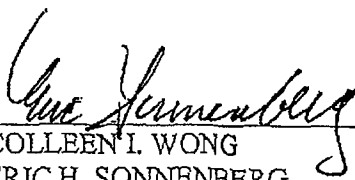
B. The modification satisfies the third recommendation of the Master, as approved and adopted by this Court in that *2012 Order*, as set forth in Paragraph 1, above, and no further study need be taken or report filed on this matter;

C. The Trustees and such successor trustees may include in applicable petitions to the Court requests for length of terms to serve on the Board consistent with the modification set forth in this Stipulation, until such modification is fully implemented;

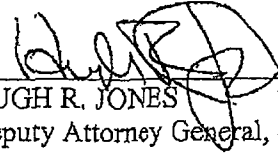
D. The Court has the inherent discretion and authority to make changes to the proposed modification as it deems appropriate; and

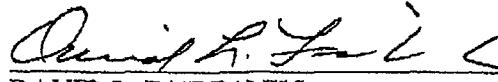
E. Except as may be modified by this Stipulation, the *Selection Order* remains in full force and effect.

DATED: Honolulu, Hawai'i, this 14th day of March, 2013.

  
COLLEEN I. WONG  
ERIC H. SONNENBERG  
Attorneys for the Trustees Under the Will and of  
the Estate of Bernice Pauahi Bishop, Deceased

DAVID M. LOUIE,  
Attorney General, as *Parens Patriae*

By:   
HUGH R. JONES  
Deputy Attorney General, State of Hawaii

  
DAVID L. FAIRBANKS  
Master

APPROVED AND SO ORDERED:

DERRICK H.M. CHAN



Judge of the Above-Entitled Court

In the Matter of the Estate of Bernice P. Bishop, Deceased; Equity No. 2048, Stipulation to Approve Trustees Rotation Off and On the Board of Trustees, Order  
and "

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate

of

BERNICE P. BISHOP,

Deceased.

EQUITY NO. 2048

DECLARATION OF COUNSEL

**DECLARATION OF COUNSEL**

I, RHONDA L. GRISWOLD, hereby declare as follows:

1. I am an attorney with the law firm of Cades Schutte A Limited Liability Law Partnership, counsel for the Trustees herein. I make this Declaration based on my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of the Order Granting Petition for the Establishment of a Procedure for Selection of Future Trustees filed herein on January 6, 2000.

3. Attached hereto as Exhibit B is a true and correct copy of the Master's Report on the Petition for the Establishment of a Procedure for Selection of Trustees, filed herein on November 22, 1999.

4. Attached hereto as Exhibit C is a true and correct copy of the Stipulation to Approve Trustees Rotation Off and On the Board of Trustees, and Order filed herein on March 25, 2013.

5. Attached hereto as Exhibit D is a true and correct copy of the Stipulation to Modify Current Trustees Rotation Off and On the Board of Trustees, filed herein on April 12, 2017.

I declare, verify, certify, and state under penalty of perjury that the foregoing is true and correct.

Executed at Honolulu, Hawaii, May 9, 2022.

*/s/ Rhonda L. Griswold*  
\_\_\_\_\_  
RHONDA L. GRISWOLD

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**DECLARATION OF COUNSEL, In the Matter of the Estate of Bernice P. Bishop, Deceased,**  
EQUITY NO. 2048

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate

of

BERNICE P. BISHOP,

Deceased.

EQUITY NO. 2048

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that file-marked copies of the foregoing document will be duly served upon the following interested persons entitled to notice by hand delivery or by depositing the same in the United States Mail, postage prepaid, immediately upon receipt of the file-marked copies of the foregoing documents from the court:

HOLLY SHIKADA, ESQ.  
KRISTIE CRUZ CHANG, ESQ.  
Department of the Attorney General  
333 Queen Street, Suite 903  
Honolulu, HI 96813  
*Parens Patriae*

By Hand Delivery

MALIA E. SCHRECK  
Lyons Brandt Cook & Hiramatsu  
Davies Pacific Ctr.,  
841 Bishop Street, Suite 1800  
Honolulu, HI 96813  
*Master*

By Hand Delivery

DATED: Honolulu, Hawai'i, May 9, 2022.

*/s/ Rhonda L. Griswold*

\_\_\_\_\_  
RHONDA L. GRISWOLD

PŌHAI NU'UHIWA CAMPBELL

Attorneys for the Trustees Under the Will and of the  
Estate of Bernice Pauahi Bishop, Deceased

# NOTICE OF ELECTRONIC FILING

**Electronically Filed  
FIRST CIRCUIT  
1EQ000002048  
10-MAY-2022  
09:05 AM  
Dkt. 5130 NEF**

An electronic filing was submitted in Case Number 1EQ000002048. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

**Case ID:** 1EQ000002048

**Title:** IN THE MATTER OF THE ESTATE OF BERNICE P BISHOP

**Filing Date / Time:** TUESDAY, MAY 10, 2022 09:05:52 AM

**Filing Parties:** Rhonda Griswold

**Case Type:** Trust

**Lead Document(s):** 5129-Petition for \_\_\_\_

**Supporting Document(s):**

**Document Name:** 5129-TRUSTEES' PETITION FOR REVIEW OF TRUSTEE SELECTION PROCESS AND TRUSTEE TERMS; EXHIBITS "A" – "D"; DECLARATION OF COUNSEL; CERTIFICATE OF SERVICE

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

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This notification is being electronically mailed to:

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Kristie K. Cruz Chang ( *kristie.c.chang@hawaii.gov* )

Malia Emerson Schreck ( *mschreck@lbchlaw.com* )

Rhonda L. Griswold ( *rgriswold@cades.com* )

First Circuit Court 3rd Division ( *3rddivision.1cc@courts.hawaii.gov* )

The following parties need to be conventionally served:

Kamehameha Schools Trustee Screening Committee c/o Inkinen E  
Converted Attorney

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