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

CIRCUIT COURT  
STATE OF HAWAII  
FILED

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D. SATO  
CLERK

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

)  
) FINDINGS OF FACT, CONCLUSIONS  
) OF LAW AND ORDER GRANTING  
) PETITION OF THE TRUSTEES FOR  
) INSTRUCTIONS FILED ON MAY 14,  
) 1997

) Date: June 27, 1997

) Time: 10:00 a.m.

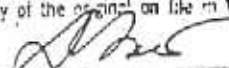
) Judge: Colleen K. Hirai

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER GRANTING PETITION OF THE TRUSTEES  
FOR INSTRUCTIONS FILED ON MAY 14, 1997

The above-entitled matter came on regularly for hearing before the Honorable Colleen K. Hirai on Friday, June 27, 1997, at 10:00 a.m., upon the Petition of The Trustees For Instructions filed herein on May 14, 1997 (the "Trustees' Petition").

Appearing were ROBERT BRUCE GRAHAM, JR., for the Trustees, and KEVIN T.

I do hereby certify that this is a full and  
correct copy of the original on file in 1997.

  
\_\_\_\_\_  
Clerk, Circuit Court, First Circuit  
State of Hawaii

WAKAYAMA, Deputy Attorney General, for Margery S. Bronster, Attorney General, State of Hawai'i. Also appearing was NATHAN T. K. AIPA, general counsel to the Trustees.

The Court has received, reviewed and considered the Trustees' Petition herein, the Response of the Attorney General thereto, and the record and files herein. The Court has examined counsel for the Trustees and the Deputy Attorney General. Each of them having had an opportunity to be heard and the Court being fully advised in the premises, the Court makes the following:

#### FINDINGS OF FACT

1. Petitioners Richard Sung Hung Wong, Oswald Kofoad Stender, Marion Mae Lokelani Lindsey, Gerard Aulama Jervis and Henry Haalilio Peters are the duly appointed, qualified and acting Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased.
2. As more particularly set forth in the Trustees' Petition, there now exists an internal situation arising from various allegations, rumors and innuendo concerning the management and administration of the Kamehameha Schools (the "Controversy").
3. The nature of the situation warrants the selection of a neutral and impartial third-party charged with the obligation to ascertain the material and relevant facts concerning the Controversy (the "Fact Finder").
4. In the interest of actual and apparent fairness to all concerned and for the good of the Kamehameha Schools, the Fact Finder must be a person of unquestioned probity whose fairness and integrity will be recognized by all reasonable persons.

5. Patrick K. S. L. Yim is such a person. Judge Yim is a retired judge of the Circuit Court, State of Hawai'i. He now acts as a commercial mediator and arbitrator and is active in Alternative Dispute Resolution. He is familiar with the principles of neutral fact-finding and alternative dispute resolution. He appreciates the sensitive nature of the Controversy and can be expected to be sensitive to the impact that his inquiry and findings may have upon the Kamehameha Schools Bernice Pauahi Bishop Estate and its 'ohana. As a retired judge and active mediator, he is competent to hear and assess allegations, to synthesize and assemble facts and to respect appropriate confidences and privileges.

6. Judge Yim has indicated his willingness to serve as the Fact Finder.

7. Judge Yim has made full disclosure to the Court of his acquaintance and involvement with the Kamehameha Schools Bernice Pauahi Bishop Estate and its 'ohana.

8. The Attorney General generally concurs in the Trustees' Petition. The Attorney General approves the appointment of the requested Fact Finder and endorses the appointment of Patrick K. S. L. Yim as the Fact Finder.

9. In her Response and at hearing herein, the Attorney General made certain recommendations concerning the authority and procedures of the Fact Finder, the filing of his report and the privileges that may attach thereto.

10. At hearing herein, the Trustees accepted the recommendations of the Attorney General.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law, which, insofar as they may be considered findings of fact, are also found by this Court to be true in all respects:

## CONCLUSIONS OF LAW

1. This Court has personal jurisdiction of the parties to and the subject matter of the Trustees' Petition.
2. All persons whose joinder is necessary and proper to the adjudication of this action are parties to the action.
3. The Trustees are authorized to delegate to the Fact Finder requisite power and authority to undertake the work described in the following Order:
  - a. to conduct an inquiry into the Controversy;
  - b. to act as a mediator with full authority to inquire concerning the Controversy;
  - c. to render a written report of his findings of material and relevant facts concerning the Controversy; and
  - d. to render advice and counsel with respect to resolution of the Controversy.
4. Section 554-8, Hawai'i Revised Statutes, authorizes payment out of the Trust Estate of all reasonable and necessary expenses incurred by the Attorney General in such reasonable amount as the Court may order.

## ORDER GRANTING PETITION OF THE TRUSTEES FOR INSTRUCTIONS

In accordance with the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition of the Trustees for Instructions is granted as follows:

1. PATRICK K. S. L. YIM is hereby appointed as the Fact Finder herein, to serve as such without bond.
2. The Trustees shall pay the reasonable fees and expenses of the Fact Finder out of the Trust Estate. The Fact Finder's fees and expenses first shall be submitted to the Court for its review and approval as to amount.
3. The Fact Finder shall give a full and fair opportunity to be heard to, and use his best efforts to resolve the concerns of, all persons who are involved in or who may have information relevant to the Controversy.
4. The Fact Finder is authorized and empowered:
  - a. to inquire of and meet with any persons or group of persons who have or may claim to have relevant information concerning the Controversy, including, but not limited to trustees, retired trustees, staff, employees, parents, students, alumni, teachers, retired teachers, administrators, retired administrators, friends and supporters of the Kamehameha Schools ("Witnesses");
  - b. to receive statements, testimony and information from Witnesses with such assurances to them of confidentiality as he reasonably deems appropriate;
  - c. to establish and make known such rules and procedures for the receipt of information from Witnesses as he reasonably deems appropriate;
  - d. to maintain a dedicated post office box address, facsimile machine and telephone if he deems it appropriate to do so;
  - e. to meet at the Kamehameha Schools or elsewhere in the State of Hawai'i with Witnesses;

f. to meet with such Witnesses as may be absent from the State of Hawai'i in such circumstances, at such times and in such manner as he reasonably deems appropriate, and to incur reasonable travel expenses for himself or any Witness; and

g. to retain the services of such independent professionals as the Fact Finder reasonably shall deem necessary or appropriate to assist him in the circumstances, including persons and organizations expert in education and school administration, and others whose professional skills or services he reasonably requires; and

h. to retain the services or otherwise to involve national educational and scholastic accrediting services, institutes or associations as he reasonably deems appropriate.

5. The Fact Finder shall establish procedures to assure the confidentiality of Witnesses and shall hold in confidence the identity of Witnesses and information gained from Witnesses that could lead to their identification. No such confidence shall be broken by the Fact Finder except with the express approval of the Witness concerned or except as required by law. The records, notes, logs and other materials assembled or produced by the Fact Finder shall be and remain his confidential work product.

6. The Fact Finder shall endeavor to complete his work as promptly as possible while performing a thorough investigation, analysis and review. He shall file a report with this Court not later than August 29, 1997, concerning his progress and the status of his efforts.

7. The Fact Finder's costs and expenses shall be subject to the approval of the Court. The Fact Finder may make application to the Court for periodic reimbursement of his reasonable out of pocket costs and expenses. The Fact Finder may consult with the Court concerning

proposed expenditures. If the Fact Finder deems it necessary to conceal the identity of persons he travels to meet, he shall file a sealed statement to that effect with any reimbursement request and the statement shall be subject to seal or unseal as provided in Paragraph 9 *et seq.* of these Conclusions of Law.

8. At the conclusion of his efforts, the Fact Finder shall render a report thereof to the Court (the "Report"). No particular form of Report is established or required by this Order.

9. Prior to filing his Report, the Fact Finder shall make a good faith determination as to (a) whether any information contained therein is (i) privileged to any person, including any Witness, (ii) subject to a confidentiality agreement between the Fact Finder and any Witness, or between any Witness and a third party, or (b) whether publication of any information therein poses a serious and imminent threat likely to lead to loss, detriment or disadvantage to any person or to the Kamehameha Schools Bernice Pauahi Bishop Estate. In any of the foregoing events, the Fact Finder shall afford the Court adequate opportunity to determine the reasonable necessity of publication of such information. Such information is hereinafter referred to as "Confidential Information".

10. The Trustees or the Attorney General may petition the Court for a protective order to seal any Confidential Information and, upon a showing that such Confidential Information is privileged, subject to a valid confidentiality agreement, or that its publication poses a serious and imminent threat likely to lead to loss, detriment or disadvantage to any person or the Kamehameha Schools Bernice Pauahi Bishop Estate, and after the Trustees and the Attorney General are afforded a reasonable opportunity to be heard, the Court may grant a petition for a protective order to seal such Confidential Information upon such terms and conditions as the

Court shall determine by its final order. The party seeking to maintain the seal shall have the continuing burden to show such continuing privilege, confidentiality or prejudice.

11. The entire contents of the Report shall be filed with the clerk of the Court with such portion or portions as contain Confidential Information covered with the superimposed statement "Disclosure of this information is subject to order of the Court to seal or unseal."

12. The entire contents of the Report shall be delivered unredacted to the judge of this Court, the Attorney General and the Trustees. The Confidential Information contained therein shall be held by each of them in strict confidence and none of them shall release, publish or disclose such Confidential Information except upon final order of this Court to unseal the same.

13. The Court shall have continuing jurisdiction of this matter to instruct the Fact Finder, the Trustees and the Attorney General as to any matters that may arise concerning the Fact Finder's efforts, authority or powers herein.

14. In the event that the Fact Finder reasonably shall determine that a process of mediation, conciliation or other mechanism of alternative dispute resolution is appropriate, he shall have the authority to proceed with such process under such reasonable rules and procedures as he may establish in agreement and coordination with the persons involved therein. The Fact Finder shall not have the powers of an arbitrator under Chapter 658, Hawai'i Revised Statutes, as to any matter unless all persons involved in such arbitration shall have expressly and in writing agreed to submit the matter to arbitration.

15. The Attorney General shall be entitled to recover reasonable fees for services herein as by law provided.



16. There being no just reason for delay and the foregoing Order fully addressing all claims raised in the Trustees' Petition filed herein, this shall be an express direction that, pursuant to Rule 34(a) of the Hawai'i Probate Rules, judgment be entered in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure.

DATED: Honolulu, Hawai'i, JUL 10, 1997.

COLLEEN K. HIRAI


Judge of the above-entitled Court



APPROVED AS TO FORM:

  
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KEVIN T. WAKAYAMA  
Deputy Attorney General, State of Hawai'i

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ROBERT BRUCE GRAHAM, JR.  
Attorney for Petitioners, The Trustees  
under the Will and of the Estate of Bernice  
Pauahi Bishop, Deceased

EQUITY NO. 2048  
IN THE MATTER OF THE ESTATE OF BERNICE P. BISHOP, DECEASED  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
APPROVING PETITION OF TRUSTEES FOR INSTRUCTIONS  
AND APPOINTING PATRICK K. S. L. YEM AS FACT FINDER