

Joint statement by
Nā Pua a Ke Ali'i Pauahi, Inc.
The Broken Trust Authors
Nā Kumu O Kamehameha
Kamehameha Schools Faculty Association
Kamehameha Schools Alumni Association, Board of Presidents
(9/27/98)

The Attorney General has asked the probate court to remove all five Bishop Estate trustees. That hearing is scheduled for October 23 and probably will be assigned to Judge Colleen Hirai. In a separate action, trustees Os Stender and Gerald Jervis are seeking the removal of trustee Lokelani Lindsey. That one is scheduled for November 2 in Judge Kevin Chang's courtroom.

There is a hearing tomorrow (October 2) in Judge Hirai's courtroom involving a third legal action. This one was initiated by all five trustees years ago when they asked the probate judge to approve their annual accounting for fiscal year 1993-94. This matter has moved slowly, primarily because of difficulties encountered by the court-appointed master in getting access to essential information. But it heated up several months ago when the master submitted a 145- page report detailing a multitude of serious breaches of trust. The following are selected highlights:

- Improper diversion of \$350 million of income that was supposed to be spent educating Hawaiian children. This was in direct violation of court orders and the terms of Pauahi's will. Also, it was done without proper disclosure.
- Failure to develop a comprehensive investment plan; failure to properly investigate investment opportunities; and failure to properly monitor existing investments.
- Failure to properly account to the court and to follow a provision in Pauahi's will that mandates annual disclosure to beneficiaries.
- Improper expenditure of \$1 million of trust funds to fight federal legislation that posed a threat only to trustees personally.
- Failure to properly monitor each other's actions and to communicate fully with one another.

Trust law empowers the probate court to remove one or more trustees on its own initiative whenever circumstances warrant such action. The standard to be applied is "whatever will be most beneficial to the interests of the beneficiaries."

What this means is that Judge Hirai has the power and authority to remove these trustees as soon as tomorrow.

There is ample precedent for such action, including a Supreme Court of Hawaii decision [Estate of George H. Holt, 33 Hawaii 352 (1935)]. Case law indicates that trustees can be removed for *any* of the following reasons:

- Failure to follow directions in the governing document.
- Failure to obey court orders.
- Failure to properly account to beneficiaries or the court.

- Active concealment of important information from beneficiaries or the court.
- Failure to properly monitor the actions of a co-trustee.
- Lack of mutual confidence and cooperation among co-trustees.
- Failure to invest prudently (whether or not the estate grew substantially).
- Failure to recognize and effectively address conflicts of interest.
- Failure to understand or to pursue in good faith the central mission of the trust.

Based solely on a reading of the master's report, *all* of the above appear to apply. According to trust-law professor Randall Roth, "On a scale of 1 to 10, the case for removal appears to be an 11."

We strongly believe that the interests of Kamehameha Schools Bishop Estate would be best served by the temporary removal of all five trustees at tomorrow's hearing.

In many ways it does not seem fair that Os Stender initially will be treated the same as the others, but this is the only way to get the court to remove the others now. The sorting out of individual levels of merit and culpability will take time, and our primary concern has to be the best interests of the beneficiaries. Our devotion to Pauahi and responsibility to protect her legacy requires no less.

We love and admire trustee Stender and expect that he eventually will be reinstated as a trustee and recognized by the entire state of Hawaii as the hero we know him to be.

We are not asking that the other trustees be removed permanently, without any opportunity to fully present their side of the situation. Each of them should be free to seek reinstatement. But it could be years before that is fully and finally litigated, and too much is at stake to leave them in power during what for them is likely to be a challenging process.

A majority of trustees has squandered estate funds over the past year in a transparent attempt to derail the Attorney General's investigation and to improperly influence public opinion. We are particularly troubled by the \$85,000 to \$100,000 reportedly being paid out of trust funds to the McCarriston law firm *each month*. This and similar examples of seemingly apparent abuse, including many that directly affect Kamehameha School students and faculty, are likely to continue until trustees have been removed.

Like most observers, we are concerned about what will follow the removal of trustees. But we would rather place our faith in the ability and good will of Judges Chang and Hirai, Master Colbert Matsumoto and Attorney General Margery Bronster, than to suffer any longer from the incompetence and self-serving behavior of certain current trustees.

I mua Kamehameha.

Nā Pua a Ke Ali'i Pauahi, Inc.
 The Broken Trust Authors
 Nā Kumu O Kamehameha
 Kamehameha Schools Faculty Association
 Kamehameha Schools Alumni Association, Board of Presidents