

Cronin, Fried, Sekiya, Kekina & Fairbanks

Attorneys at Law, A Law Corporation

Paul F. Cronin
Gerald Y. Sekiya
David L. Fairbanks
Stuart A. Kaneko
Keith K. H. Young
Patrick F. McTernan
Sylvia J. Luke

L. Richard Fried, Jr.
Wayne K. Kekina
John D. Thomas, Jr.
Bert S. Sakuda
Gregory L. Lui-Kwan
Geoffrey K. S. Komeya
Clarence S. K. Kekina
Denise K. H. Kawatachi

Davies Pacific Center, Suite 600
841 Bishop Street
Honolulu, Hawaii 96813-3962

Telephone (808) 524-1433
Toll Free 1 (800) 227-8601
Facsimile (808) 536-2073
E-mail cfskf@croninfried.com
www.croninfried.com

Howard G. McPherson, Of Counsel

May 5, 2006

Mr. Adrian K. Kamali`i
1050 Kina`u Street, Suite 706
Honolulu, Hawaii 96814

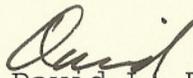
Dear Adrian:

Enclosed for your information are copies of the following:

1. Master's Report on the Petition for Appointment of Successor Trustee Filed March 13, 2006 which includes the `Ohana Council's letter of April 13, 2006 as Exhibit "B". This Report was filed with the Court on May 2, 2006.

2. Master's First Supplemental Report on the Petition for Appointment of Successor Trustee Filed March 13, 2006, to which is attached the `Ohana Council's letter of May 3, 2006 as Exhibit "C". The May 3, 2006 letter replaces the Council's letter of April 13, 2006. This Report was filed with the Court on May 5, 2006.

Sincerely,



David L. Fairbanks

DLF:jy
Enclosures

2006 MAY -2 PM 3:11

Of Counsel:
CRONIN, FRIED, SEKIYA,
KEKINA & FAIRBANKS

DAVID L. FAIRBANKS 735-0
600 Davies Pacific Center
841 Bishop Street
Honolulu, Hawai'i 96813
Telephone: (808) 524-1433

F. PAGAY
CLERK

Master

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate) EQUITY NO. 2048
)
of) MASTER DAVID L. FAIRBANKS'
) REPORT ON THE PETITION FOR
BERNICE P. BISHOP,) APPOINTMENT OF SUCCESSOR
) TRUSTEE FILED MARCH 13, 2006;
Deceased.) EXHIBITS "A"- "B"; CERTIFICATE
) OF SERVICE
)
) Hearing:
) Date: May 12, 2006
) Time: 10:00 a.m.
) Judge: Colleen K. Hirai
)
)

MASTER DAVID L. FAIRBANKS' REPORT
ON THE PETITION FOR APPOINTMENT
OF SUCCESSOR TRUSTEE FILED MARCH 13, 2006

I

INTRODUCTION AND BACKGROUND

The Petition For Appointment Of Successor Trustee
("Petition") was filed on March 13, 2006 by Petitioners JAMES
DOUGLAS KEAUKOU ING, ROBERT KALANI UICHI KIHUNE, CONSTANCE HEE
LAU, DIANE JOYCE PLOTTS and CHARLES NAINOA THOMPSON, the duly

appointed Trustees Under The Will And Of The Estate Of Bernice Pauahi Bishop, Deceased.

Paragraphs 3 and 4 of the Petition state that Petitioners and Trustee Constance Hee Lau have determined that in view of her election to President and Chief Executive Officer of Hawaiian Electric Industries, Inc., effective May 2, 2006 and her additional responsibilities,¹ "it is in the best interest of Kamehameha Schools that she transition out of her position as a trustee of the Estate of Bernie Pauahi Bishop when a successor trustee is duly appointed by this Court."²

Petitioners request that this Court utilize the selection process established by the Court by: Order Granting Petition For The Establishment Of A Procedure For Selection Of Future Trustees entered on January 6, 2000 ("January 6, 2000 Order"); First Supplemental Order Granting Petition For The Establishment Of A Procedure For Selection Of Future Trustees entered on January 14, 2000; Stipulation To Change The Name Of The Trustee Selection Committee To The Trustee Screening Committee entered on March 21, 2000; and Stipulation For Payment

¹ Trustee Lau is also President and Chief Executive Officer of American Savings Bank.

² See, Petition, Paragraphs 3, 4.

Of Expenses Incurred By The Trustee Screening Committee entered on May 25, 2000.³ See, generally, Petition at Paragraphs 8-12.

The Petition For The Establishment Of A Procedure For Selection Of Trustees (filed on August 5, 1999) was occasioned by the declaration on December 20, 1997 by four of the five then Justices of the Hawai'i Supreme Court that they would no longer exercise the power granted to them under the Will of Bernice Pauahi Bishop ("the Will") to appoint Trustees to her Estate.⁴ This declaration rendered the mechanism for appointment of Trustees in the Will inoperable and required the establishment

³ The general, combined effect of the January 6, 2000 Order, First Supplemental Order and the two Stipulations is: that the judge of the Probate Court of the First Circuit Court will appoint a Screening Committee of not less than seven (7) people to screen candidates for positions as Trustees of the Trust Estate; the Screening Committee submits its selections of the finalists to the Court; and the Court appoints as Trustee(s) a person(s) on the list submitted by the Screening Committee, except in certain prescribed circumstances. See Master's Report at 29-30; January 6, 2000 Order at 6. In addition, the Stipulations provide for the reimbursement of certain expenses of the Screening Committee as specified in the Stipulations and Orders. See, also, Petition, Exhibit "C".

⁴ The four justices were: Chief Justice Ronald T. Y. Moon, Justices Steven H. Levinson, Paula A. Nakayama and Mario R. Ramil. Justice Robert G. Klein dissented and remained willing to exercise the power to appoint trustees. The power to appoint has been construed to rest with the justices as individuals, not as a Court. See, Estate of Bishop, 28 Hawaii 575, 581-582 (1917), 250 F. 145, 149-150 (9th Cir. 1918).

of an alternative mechanism or process.⁵ At the time of the declaration by the four justices, the Trust Estate and its incumbent Trustees were embroiled in unprecedented controversy and litigation which is well documented in Court records and summarized in the Master's Report On The Petition For The Establishment Of A Procedure For The Selection Of Trustees filed August 5, 1999, and entered on November 22, 1999 ("Master's Report (November 22, 1999)"). See, Master's Report (November 22, 1999) at 2-4.

The Petitioners and incumbent Trustees in the present proceeding were appointed pursuant to the procedures established by the January 6, 2000 Order, First Supplemental Order, and the two Stipulations and Orders mentioned earlier.

Trustee Lau was first appointed a Trustee by Order dated December 3, 2000⁶ and reappointed on October 13, 2005 for an additional term expiring on June 30, 2008. See, Order Granting Petition For Reappointment Of Trustee Filed June 30, 2003, entered on October 13, 2003.

The Petition seeks to have the Successor Trustee to Trustee Lau appointed to fill her unexpired term and be eligible

⁵ The December 20, 1997 declaration by the members of the Supreme Court was restated in a letter from the Justices dated April 19, 1999 and filed with this Court on April 21, 1999. Justice Klein dissented. A true copy of this letter is attached to the Petition as Exhibit "A".

⁶ She previously served as an Interim Trustee.

for re-appointment as provided with respect to the incumbent Trustees. See, Petition at Paragraph 20. Appointment of the Successor Trustee to fill Trustee Lau's unexpired term is consistent with the Master's Report (November 22, 1999) recommending staggered and limited terms for Trustees. Id. Consequently, the Successor Trustee appointed in this proceeding would be eligible for reappointment either as was provided for those incumbent Trustees whose terms were two years or less (a maximum of two (2) additional consecutive terms of five (5) years each), or one additional five (5) year term as this Court in its discretion shall determine. See Petition at paragraph 20; see, also, Master's Report (November 22, 1999) at 37-38.

David L. Fairbanks was duly appointed as the Master pursuant to that Order Of Reference To Master filed March 15, 2006 to review and report to the Court concerning the matters raised in the Petition.

On March 15, 2006, the Petition and Order Setting Time And Place Of Hearing On Petition and the Order Of Reference To Master were served upon the Chief Justice and Associate Justices of the Hawai'i Supreme Court, the Attorney General of the State of Hawai'i as *parens patriae*, and the undersigned as Master. See, Certificate of Service filed on March 16, 2006.

In addition, on March 15, 2006, counsel for the Petitioners, Robert Bruce Graham, Jr., Esq., sent a letter to the Chief Justice and Associate Justices of the Supreme Court, State of Hawai`i, in their individual capacities, and enclosed file-marked copies of the Petition, the Order Of Reference To Master, and the Order Setting Time And Place Of Hearing On Petition. The letter advised the members of the Court that under the Will of Bernice Pauahi Bishop and the prior pleadings and Orders of the Court with respect to Equity No. 2048, the members appeared to be "interested persons" within the meaning of the Hawai`i Probate Court and, therefore, should be given formal notice of the filing of the Petition. In addition, the letter related that the Petition stated that a majority of the members of the Supreme Court had previously indicated that they would no longer exercise the powers of appointment under the Will. However, if they wished to respond or object to the Petition, such a response was due within thirty (30) days of service. See Exhibit "A" attached to this Report. No communications were received from the members of the Hawaii Supreme Court who signed the April 19, 1999 letter.

By letters dated March 16, 2006 and March 20, 2006, the two newest Associate Justices on the Hawai`i Supreme Court, Justices Simeon R. Acoba and James E. Duffy, Jr., respectively, joined the majority of the members of the Court and indicated

that they also would not exercise the power of appointment granted under the Will. Neither was a member of the Court at the time of the December 20, 1997 declaration nor at the time of the April 19, 1999 letter from the members of the Court to Judge Kevin S. C. Chang, then the Administrative and Probate Judge of the Circuit Court of the First Circuit.⁷

The Petition specifically requests that the Court:

1. Determine that it is "necessary and appropriate" to appoint a Screening Committee to assist the Court in identifying a qualified individual to succeed Trustee Lau and to select finalists in accordance with procedures set forth in the Master's Report;
2. Appoint a Screening Committee of not less than seven (7) knowledgeable and informed persons whom the Court finds to possess:
 - a. integrity;
 - b. probity;
 - c. competence;

⁷ The declinations of Associate Justices Acoba and Duffy made the position of the members of the Supreme Court on the matter of exercising the power to appoint Trustees of the Estate unanimous. However, even without their declinations, the majority of the members of the present Hawaii Supreme Court had previously declined to exercise the power to appoint and, therefore, appointment of a Successor Trustee pursuant to the Will in this proceeding is impossible. See, e.g., Petition at Paragraph 7.

- d. disinterested status necessary to be qualified and serve as an independent and unconflicted Committee member; and
- e. each of whom:
 - (i) is familiar with and sensitive to the history and role of the Trust Estate relative to the Hawaiian community and the community at large; and
 - (ii) is familiar with and sensitive to Bernice Pauahi's legacy and vision for the future of Hawaiian children; and
- (f) possesses experience and insight into the operation and management of:
 - (i) a large private educational institution;
 - (ii) large financial institutions; or
 - (iii) large public charitable trusts or Foundations; and

3. Upon selection of a Successor Trustee, accept the resignation of Trustee Lau and appoint the Successor Trustee to serve subject to the terms of the Trust, applicable law, and the

Order of this Court and to fill the unexpired term of Trustee Lau. See, Petition at 6-7.

On March 31, 2006, the Court filed a Notice Of Ex Parte Communication With The Court ("Notice") in this proceeding and mailed a file-stamped copy of the Notice to counsel for the Petitioners, the Attorney General, your Master, and Kamaki Kanahele, the person initiating the communication. The Notice stated that the Court had received a letter from Mr. Kanahele dated March 17, 2006 which was filed on March 31, 2006 and was available for review in the file concerning the Petition. In addition, the Notice advised that ex-parte communication with the Court "regarding pending proceedings is not permitted" and that any request for relief from or action by the Court must be made by written Petition or Response which must be filed and served on all interested persons to the proceeding. The Court indicated it would take no further action on the communication and admonished all concerned to "refrain from sending ex-parte communications to the Court."

Your Master has reviewed Mr. Kanahele's letter and its enclosure. Essentially, Mr. Kanahele's letter recommends Dr. Terry Shintani for consideration as the Successor Trustee of Kamehameha Schools in this proceeding and Dr. Shintani's curriculum vitae is the enclosure to the letter.

Since Mr. Kanahale's letter was an inappropriate ex-parte communication with the Court, it cannot be considered as part of this proceeding. In addition, it does not comply with the Selection Process for Successor Trustees previously ordered by this Court pursuant to the January 6, 2000 Order and, therefore, cannot be considered in this proceeding, unless this Court orders that a different selection process be utilized, which might permit such consideration.⁸ However, Dr. Shintani's name may be submitted to the Screening Committee in accordance with the appropriate procedure for its consideration when the Screening Committee is appointed by this Court.

On April 5, 2006, the Attorney General of the State of Hawai'i as *parens patriae* filed the Attorney General's Response To Petition For Appointment Of Successor Trustee ("Response") filed on March 13, 2006. The Response noted receipt of the Petition and reserved the "opportunity to further respond" after receiving and reviewing the report of your Master. Your Master has no objection to the Attorney General responding to this Report.

In preparation for this Report, your Master has reviewed the Will, the Master's Report (November 22, 1999), the January 6, 2000 Order, First Supplemental Order and the

⁸ Your Master does not recommend that the Court utilize a different selection process in this proceeding as more fully discussed in Section II, infra.

Stipulations, as well as the Petition and all other pleadings and filings in this proceeding. In addition, your Master met with members of a group called the "O`ohana Council" ("Council") which is comprised of six (6) other groups:

- (1) Kamehameha Schools Alumni Association - O`ahu Region;
- (2) Kamehameha Schools Alumni Association Board of Presidents;
- (3) Na Pua a Ke Ali`i Pauahi (alumni and friends of Kamehameha Schools);
- (4) Na Kumu (Kamehameha Schools' teachers);
- (5) Kamehameha Schools Association of Teachers and Parents (ATP); and
- (6) Kamehameha Schools Faculty Association (KSFA).

A representative of the Council contacted your Master and requested a meeting to discuss their interest and concerns. Your Master met with members of the Council on April 6, 2006.⁹ At the conclusion of the meeting, your Master requested a written statement of the Council's concern and position in connection with the Petition. On April 13, 2006, your Master received an e-mail on behalf of the Council in response to that request. A copy is attached to this report as Exhibit "B".

⁹ The interest, concerns and proposal of the Council will be discussed in greater detail in Section II(C), infra.

II

DISCUSSION

A. General.

Based upon review of the Master's Report (November 22, 1999) by Benjamin M. Matsubara (November 22, 1999), the Petition For Establishment Of A Procedure For Selection Of Trustee filed August 5, 1999, the January 6, 2000 Order and subsequent Supplemental Order and Stipulations, the Petition and pleadings filed in this proceeding, and, after careful reflection and consideration, your Master concurs with the Petitioners that the Selection Process set forth in the Master's Report (November 22, 1999) and adopted and incorporated in the January 6, 2000 Order and Supplemental Order should be utilized in the selection of the Successor Trustee of Kamehameha Schools for Trustee Lau. Your Master further concurs that the Successor Trustee should be appointed to fill the unexpired portion of Trustee Lau's term expiring June 30, 2008.

The reasons for your Master's recommendations are set forth with more specificity in the sections that follow.

B. The Selection Process.

The January 6, 2000 Order established the selection procedure recommended by then Master, Benjamin M. Matsubara, Esq., in the Master's Report (November 22, 1999) and pursuant to which the Petitioners in this proceeding were appointed. See

January 6, 2000 Order at 4, 6. In the January 6, 2000 Order, the Court expressly stated that the "adoption and implementation" of the new "Selection Process" was "premised upon the present inoperability of the selection mechanism established by the Will." Id. at 6. The Court stated that:

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 appointed 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.

Id. The same circumstances concerning the power of appointment exist in this proceeding.¹⁰ All of the members of the Hawaii Supreme Court have indicated that they will not exercise the power of appointment granted to them, as individuals, under the

¹⁰ The other factors and circumstances facing the Trust Estate at the time of the Master's Report (November 22, 1999), such as: the resignation of Trustees and litigation to remove other Trustees; the general controversy concerning the management of the Trust Estate; and the loss of public confidence are either not present now or have abated substantially. As this Court is aware, significant changes in governance have been made, and there has been substantial progress in the implementation and maturation of the CEO-based management system. In addition, there has been substantial progress in restoring the public trust and confidence in the management and operation of the Trust Estate and the ability of the Trust Estate to carry out the purpose and intent of the Will and to pursue Pauahi's vision and legacy.

Will. Consequently, the selection mechanism under the Will remains inoperable and an alternative selection process must be utilized in this proceeding to select a Successor Trustee to Trustee Lau. Your Master discerns no compelling reasons to abandon or significantly modify the Selection Process recommended in the Master's Report (November 22, 1999) and adopted by this Court in the January 6, 2000 Order.¹¹

In his Master's Report (November 22, 1999), Benjamin M. Matsubara stated that at the very least, any alternative selection procedure must be: (1) "consistent with Pauahi's intent and wishes"; (2) one which "encompasses the confidence of the Hawaiian community and community at large"; and (3) "devoid of elements and features that would invite legal challenges that could result in changes to Pauahi's vision and legacy."

Master's Report (November 22, 1999) at 19. There is no alternative selection process which all individuals and groups will agree is perfect or even acceptable, and there will always be disagreement. However, your Master concurs that the

¹¹ As pointed out in the Master's Report (November 22, 1999), the Court has the authority to "fashion a procedure that will best maintain and further Pauahi's intent." In "fashioning" such a procedure, the Probate Court may take into account the myriad factors and circumstances facing the Trust Estate. See Master's Report (December 17, 1999) at 18; see, also, Id. at fn. 18. Your Master concludes that the Probate Court clearly has authority to change, alter or modify the Selection Process that will best maintain and further Pauahi's intent in view of the circumstances facing the Court at any given time, while the selection mechanism established in the Will is inoperable.

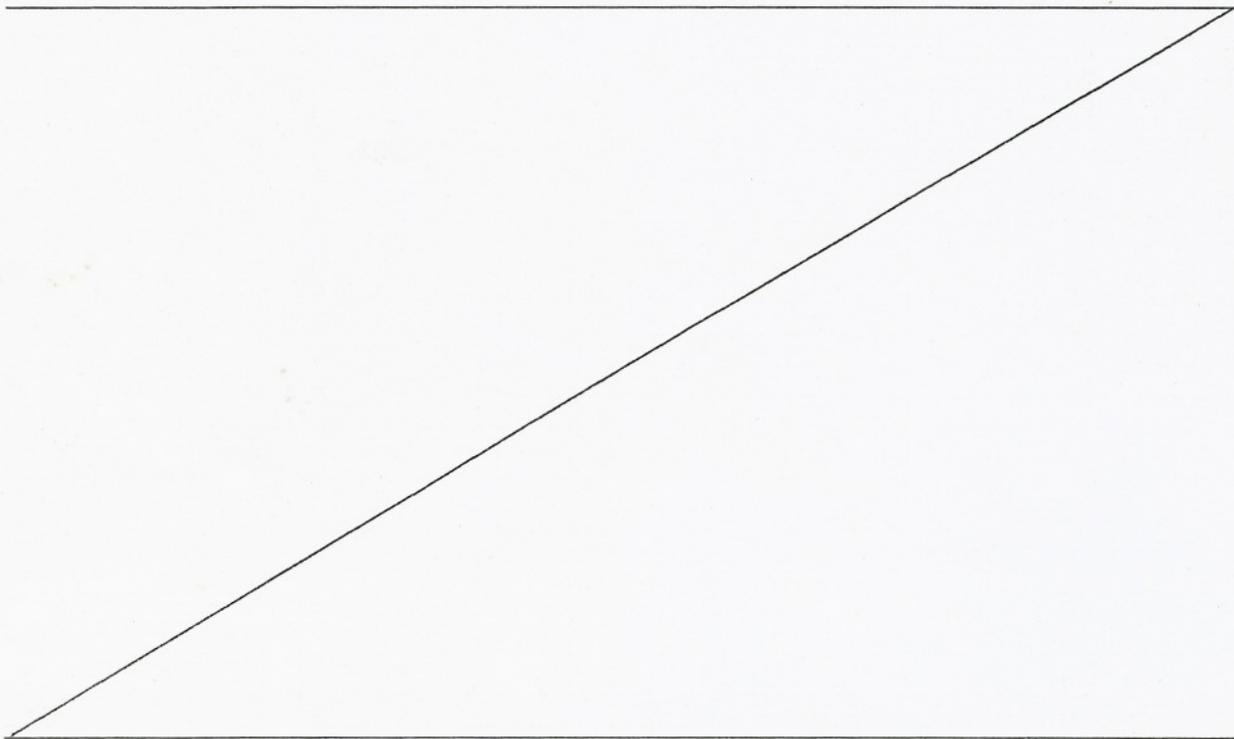
Selection Process recommended by Master Matsubara in the Master's Report (November 22, 1999) and adopted in the January 6, 2000 Order does best satisfy the three criteria listed above.

As the Court stated in the January 6, 2000 Order:

Considering that the selection mechanism established in 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.

January 6, 2000 Order at 4.

Appointment of a Screening Committee from the community to review, consider and evaluate candidates for Trustees of the Trust Estate provides for broader participation in the selection process by both the Hawaiian community and the



community at large.¹² The qualifications for membership on the Screening Committee are intended to promote and ensure a competent, independent process underscored by integrity and the elimination of conflicts of interest. The process seeks to and significantly reduces, if not eliminates, the potential for politicization and for asserting inappropriate influence in the selection process. Your Master believes that utilization of the Screening Committee as outlined and recommended in the Master's Report (November, 1999) and adopted by this Court in the January 6, 2000 Order substantially moves toward encompassing "the confidence of the Hawaiian community and the community at large," and significantly eliminates features that "would invite

¹² In addition to serving on the Screening Committee, further participation in the Selection Process by the Hawaiian community and community at large (as well as the Attorney General as *parens patriae* and the incumbent Trustees) is invited at the point the list of finalists for Trustee is submitted to this Court. The names of the finalists are filed with the Court and published in a newspaper of statewide circulation. The Hawaiian community and the general public then may submit to the Screening Committee "comment and support" concerning the finalists within thirty (30) days of the initial publication of the names of the finalists. The Attorney General and the Trustees may also submit evidence and testimony to the Screening Committee with respect to the finalists.

Following receipt of comments from the public or the expiration of thirty days from the publication of the names of the finalists, the Screening Committee will file a final report with this Court, including all written comments received, and the Court will then schedule a hearing. See Master's Report (November 22, 1999) at 33-34.

legal challenges that could result in changes to Pauahi's vision and legacy."

Similarly, calling for this Court to appoint a Trustee from the list of finalists submitted by the Screening Committee, except under limited circumstances,¹³ is also designed to promote and ensure an independent process devoid of conflicts of interest and unseemly influence. Your Master believes that this aspect of the Selection Process also promotes and tends to "encompass the confidence" of the community (both the Hawaiian community and the community at large) and removes features that might "invite" legal challenges that might result in changes to Pauahi's legacy and vision. Your Master also firmly believes that the functions of the Screening Committee and the mandate that this Court appoint as a Trustee someone on the list of finalists submitted by the Screening Committee contained in the Selection Process adopted by the January 6, 2000 Order are critical aspects of any alternative selection process. They should be included in this proceeding.

¹³ The Master's Report (November 22, 1999) provides that the Court shall reject the Committee's selection of finalists if: (1) the selection was procured by fraud, corruption or undue means; (2) the selection was based upon partiality or corruption in the Committee or any of its members; (3) any of the Committee members were guilty of misconduct; or (4) the Committee exceeded its powers. The Court also retains its inherent authority to modify or disapprove the Committee's selection for other cause. See Master's Report (November 22, 1999) at 29-30.

C. Composition of the Screening Committee.

As mentioned in the Introduction, your Master met with members of the `Ohana Council to discuss the Petition, the Selection Process adopted by this Court in the January 6, 2000 Order, and other related subjects that were of interest and concern to the Council. In the meeting, the members of the Council displayed keen interest in, commitment to, and obvious passion and affection for the Trust Estate in general and for Kamehameha Schools in particular. They also displayed an awareness of and sensitivity to the various issues facing the Trust Estate and this Court with respect to oversight of the Trust Estate and, in particular, the selection and appointment of Trustees to the Trust Estate. While enthusiastic and passionate in their commitment, the members of the Council present at the meeting generally displayed an informed, reasonable, realistic view of the various issues facing the Trust Estate and a positive, although somewhat optimistic view of the possibilities for the role of the Council with regard to the selection of Trustees.

As stated in the Council's letter to your Master, the Council's origin stems from the recent period of turmoil for the Trust Estate. The organization was founded with the express purpose of combining various interested groups "to join efforts and voices to influence positive change." See Exhibit "B" at 2.

These efforts include: promoting dialogue between interested groups and Kamehameha Schools administration; and sharing the various groups' perspectives on different policy and governance issues with the CEO and Trustees of the Trust Estate, with the primary purpose of honoring "Pauahi's legacy" and perpetuating "Kamehameha Schools as an educational institution for Hawaiian keiki." Id. Indeed, the Council states that:

For nearly 10 years, the `Ohana Council and member groups have served as chief supporter and watchdog over the Kamehameha Schools, and today we have the support and respect of the trustees, C.E.O., and Hawaiian community.

Id. at 2 (emphasis added).

Obviously, the activities of and the relationship between the Council and its member groups and Kamehameha Schools, the School Administration, and the senior management and Trustees of the Trust Estate, in general, is a private matter left to the parties involved. What is of relevance and interest to this Court, the Trust Estate, and the Attorney General as *parens patriae* is the Council's desire to have a role in the selection of Trustees of the Trust Estate commencing with this proceeding. In its letter to your Master, the Council candidly states that:

We simply want a significant voice in their
[trustees] selection, which would include an
evaluation of their particular "fit" and
their record of dedication and service to
the Hawaiian community and the Kamehameha
Schools.

Id. (emphasis added).

The Council does not challenge or object to the overall Selection Process for the appointment of Trustees adopted by this Court in the January 6, 2000 Order and proposed to be utilized in this Petition.¹⁴ Id. However, it does propose a change or modification to the process with respect to the composition of the Screening Committee.

The Council believes that although improved the Selection Process is a beginning, not a "finished product" and should be improved.¹⁵ The change in the Selection Process advocated by the Council commencing with this Petition is that the members of the Screening Committee appointed by the Court would come exclusively from a "list of at least twenty qualified individuals" submitted by the Council. Id. In short, the list (and future lists) of candidates submitted to the Court by the Council would be "the source for the Court's evaluation and appointment to this and future Selection Committee(s)." Id.

¹⁴ The Council's letter characterizes the Selection Process as "a great improvement over the very flawed system that it replaced."
Id.

¹⁵ " . . . we see this improvement [the Selection Process] as something less than a finished product." Id.

(emphasis added). Your Master cannot recommend such a change to the Selection Process.

As laudable as the purposes and intent of the Council and its member groups are, the selection of Trustees of the Trust Estate should not be the province of any one group or organization. The Council does not purport to represent the entire Hawaiian community. In all probability, that would be impossible. Nor does it purport to represent the entire community at large. That, too, would be impossible. The selection of a Successor Trustee in this proceeding and the selection of future Trustees of the Trust Estate is too important a matter to reside with a single organization comprised of member groups that do not, and cannot, represent the entire Hawaiian community and the community at large. To do so would invite many of the very criticisms which the Council voices.

Your Master notes that former Master Matsubara indicated in his Master's Report (November 22, 1999) that one of the interests affecting the Trust Estate "is the participation of the Hawaiian community in the selection process," given the fact that a majority of the members of the Hawaii Supreme Court declined to exercise the power of appointment under the Will. See Master's Report (November 22, 1999) at 26. Your Master concurs with Master Matsubara that "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." Id. Your Master firmly believes that the Hawaiian community should participate in the alternative Selection Process, but as individuals and not as members of specific groups, representing specific interests or advocating specific purposes or objectives.

As former Master Matsubara incisively pointed out, Screening Committee members should be appointed to assist the Probate Court based upon their character, integrity and commitment to the intent and purpose of Pauahi's legacy, the Hawaiian community, and the community at large. Id. at 30.

Membership in one or more Hawaiian organization[s] shall not exclude any person from being selected as a Committee member. 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.

Id. (emphasis added).

Similarly, non-membership in an organization should not necessarily result in the exclusion of a qualified

individual from serving on the Screening Committee. Again, as former Master Matsubara succinctly pointed out,

. . . . 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.

Id. (emphasis added.) Your Master agrees.

While your Master cannot endorse the change in the Selection Process proposed by the Council, names of potential committee members submitted by the Council may well be of assistance to the Court provided that, if selected for the Screening Committee, they serve on that Committee as individuals and not members of the Council or any of its member groups.

Your Master notes that the Selection Process calls for the Court to appoint the Screening Committee within ninety (90) days of the notice of a proposed vacancy. In this proceeding, the required "notice" appears to be the Petition itself which was filed on March 13, 2006. Ninety (90) days from that date is June 13, 2006. In the event this Court needs additional time in order to select and appoint the members of the Screening Committee, your Master believes the Court should take such additional time as the Court deems reasonable and necessary in order to select the most qualified members to serve on the Committee.

III

CONCLUSION

Your Master concurs with the prayer in the Petition concerning the determination that it is "necessary and appropriate" to appoint a Screening Committee, the utilization of the existing Selection Process in this proceeding, the appointment of a Successor Trustee to fill the unexpired term of Trustee Lau, and the acceptance of Trustee Lau's resignation.

DATED: Honolulu, Hawai'i, May 2, 2006.

Respectfully submitted,



DAVID L. FAIRBANKS

Master

EXHIBIT "A"

Ashford & Wriston

A LIMITED LIABILITY LAW PARTNERSHIP LLP

ROBERT BRUCE GRAHAM JR.
A Law Corporation
Direct: (808) 539-0440
bgraham@awlaw.com

March 15, 2006

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

The Honorable Simeon R. Acoba
Associate Justice
Supreme Court of Hawaii
Ali'iolani Hale
417 South King Street
Honolulu, HI 96813

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

The Honorable James E. Duffy, Jr.
Associate Justice
Supreme Court of Hawaii
Ali'iolani Hale
417 South King Street
Honolulu, HI 96813

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

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

Dear Chief Justice Moon and Justices:

Enclosed please find file-marked copies of the Petition For Appointment Of Successor Trustee filed by the Trustees of the Estate of Bernice Pauahi Bishop; the Order of Reference to David L. Fairbanks, as master; and the Order setting time and place of hearing.

In view of the Will of Bernice Pauahi Bishop and prior pleadings and orders in Equity No. 2048, it appears that the Justices are "interested persons" within the meaning of the Hawaii Probate Code and should be given formal notice of this matter.

The petition states that a majority of you previously have indicated that you will no longer exercise the power of appointment arising under the Will of Bernice Pauahi Bishop. While you are under no obligation to appear or respond with respect to the Petition, if you wish to make any response or objection, it is due within thirty (30) days of service. Hearing is presently scheduled for Friday, May 12, 2006, at 10:00 a.m. in probate, before the Honorable Colleen K. Hirai.

RBG/#368603

EXHIBIT "A"

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

Street Address:
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, HI 96813

Tel: (808) 539-0400
Fax: (808) 533-4945
Email: atty@awlaw.com
www.ashfordwriston.com

The Honorable Ronald T. Y. Moon
The Honorable Steven H. Levinson
The Honorable Paula A. Nakayama
The Honorable Simeon R. Acoba
The Honorable James E. Duffy, Jr.
March 15, 2006
Page 2

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 that I might answer.

Very truly yours,

ASHFORD & WRISTON
A LIMITED LIABILITY LAW PARTNERSHIP LLP


By Robert Bruce Graham, Jr.

Enclosures

cc: James Douglas Keauhou Ing
Robert Kalani Uichi Kihune
Constance Hee Lau
Diane Joyce Plotts
Charles Nainoa Thompson
Mark J. Bennett, Esq./Hugh R. Jones, Esq.
✓ David L. Fairbanks, Esq.

EXHIBIT "B"

David L. Fairbanks

From: Kamani B. Kuala'au [kamani@gmail.com]
Sent: Thursday, April 13, 2006 1:28 PM
To: David L. Fairbanks
Subject: Kamehameha Schools Trustee Selection

Aloha David,

It was a pleasure meeting you last week. Please find attached a letter which includes the overview of the 'Ohana Council, as requested. We have also included a specific proposal, which has gained initial support, in concept, from the Attorney General.

Let me know if you have any questions.

Kamani

work 538-4226
cell 222-4644

EXHIBIT "B"

4/13/2006

April 13, 2006

Aloha mai e David,

We are grateful that you took the time to meet with us last week. As requested, here is an introduction to our organization and our mission. The beginnings of the 'Ohana Council were rooted in the profound disappointment with the governance structure of the Kamehameha Schools in 1997 and the institutional angst surrounding the Bishop Estate during that period; this angst certainly also infected the Hawaiian community at-large, including students, alumni, faculty, staff, and other stakeholders. Accountability regarding estate governance was essentially non-existent, with no available avenue for stakeholder input into the governance process. The circumstances, present at that time, provided the foundation for an *ad hoc* alliance of related groups to join efforts and voices to influence positive change.

This alliance has since evolved into the 'Ohana Council. Our constituent groups are as follows:

- Kamehameha Schools Alumni Association – O'ahu Region
- Kamehameha Schools Alumni Association Board of Presidents
- Na Pua a Ke Ali'i Pauahi (alumni & friends of Kamehameha Schools)
- Na Kumu (Kamehameha Schools' teachers)
- Kamehameha Schools Association of Teachers and Parents (ATP), and
- Kamehameha Schools Faculty Association (KSFA)

This Council represents a broad spectrum of the immediate Kamehameha family, together with broad reach into the larger community. Although each constituent group has specific focus, purpose, and functions as singular entities, together our alliance addresses those issues of common purpose. These purposes include:

- To honor Pauahi's legacy and to perpetuate the Kamehameha Schools as an educational institution for Hawaiian keiki.
- To provide a two-way conduit for information-exchange between the school administration and the Kamehameha stakeholder groups, such to facilitate and promote accurate and meaningful dialogue.
- To provide differing views on current Kamehameha issues that might otherwise not be given voice, and by so doing, inviting more careful consideration of actions and alternatives that might not otherwise be considered.
- To share with the C.E.O. and trustees our unique perspective on issues of policy and governance, as this perspective represents our collective Kamehameha history and experience. (This unique collective memory, collective history, and collective experience is the significant asset of the 'Ohana Council, as it provides the bridge connecting the past and present, from which perspectives we may be guided toward design of the Kamehameha future).

David Fairbanks
April 13, 2006

For nearly 10 years, the 'Ohana Council and member groups have served as chief supporter and watchdog over the Kamehameha Schools, and today we have the support and respect of the trustees, C.E.O., and Hawaiian community.

Given our history, permit us to turn to the matter-at-hand—trustee selection. First of all, we recognize that the justices of the Supreme Court are free to reclaim their prerogative to appoint Kamehameha Schools' trustees. For various reasons, we see this action as very unlikely (certainly in the short-term, and most probably also in the long-term). Given this vacuum, the Probate Court devised a trustee selection methodology in January 2000, to select and seat the existing Board of Trustees. Certainly, this existing process is a great improvement over the very flawed system that it replaced; however, we see this improvement as something less than a finished product. Further, we note that step one of the current trustee selection process provides that the Probate Court appoint a Screening Committee of seven persons, who are knowledgeable about Kamehameha Schools and Pauahi's legacy and vision and who are experienced in the management and operation of a large institution, educational or otherwise.

We submit that the membership of the 'Ohana Council comprises the pool of individuals that satisfies these requirements. What other group is more knowledgeable about Kamehameha Schools and Pauahi's vision than those who have lived and participated in the Kamehameha experience? The 'Ohana Council represents a continuum of experience and dedication to Pauahi's vision that the Probate Court will not find elsewhere in the wider community. Within the criteria suggested by the Master's Report on the Petition for the Establishment of a Procedure for Selection of Trustees filed August 5, 1999, and dated November 22, 1999, as regards the composition of the Selection Committee described in Section IV (A), the 'Ohana Council proposes to submit a list of at least twenty qualified individuals as the source for the Court's evaluation and appointment to this and future Selection Committee(s).

We hasten to add our recognition that trustee selection is a very profound responsibility, and it may very well be that the most qualified and suitable candidates will be found outside our immediate Hawaiian community. We do not look to necessarily or exclusively seek Hawaiian trustees. We simply want a significant voice in their selection, which would include an evaluation of their particular "fit" and their record of dedication and service to the Hawaiian community and the Kamehameha Schools.

Therefore, with recommendation from the Kamehameha Schools' Board of Trustees to contact you along with support from the Attorney General of the State of Hawaii for our premise, we respectfully request that in your report to the Court you introduce the 'Ohana Council and suggest consideration and implementation of our proposal above.

Please feel free to contact us with any questions, comments, or suggestions. Mahalo again, David, for your kokua.

I mua Kamehameha,

The 'Ohana Council

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document
was duly served by mail on the following on May 2, 2006:

ROBERT BRUCE GRAHAM, JR., ESQ.
Ashford & Wriston
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, Hawai`i 96813
Attorney for Petitioners
James Douglas Keauhou Ing,
Robert Kalani Uichi Kihune,
Constance Hee Lau,
Diane Joyce Plotts and
Charles Nainoa Thompson
Trustees Under The Will And Of The
Estate of Bernice Pauahi Bishop, Deceased

MARK J. BENNETT, ESQ.
Attorney General
HUGH R. JONES, ESQ.
Deputy Attorney General
Department of the Attorney General
State of Hawai`i
425 Queen Street
Honolulu, Hawai`i 96813
Parens Patriae

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

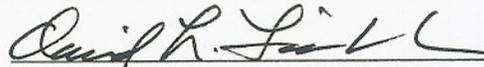
The Honorable Steven H. Levinson
Associate Justice
Supreme Court of Hawaii
Ali'iolani Hale
417 South King Street
Honolulu, Hawai'i 96813

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

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

The Honorable James E. Duffy, Jr.
Associate Justice
Supreme Court of Hawai'i
Ali'iolani Hale
417 South King Street
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, May 2, 2006.



DAVID L. FAIRBANKS
Master