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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' RESPONSE TO SPECIAL  
MASTERS' REPORT ON THE  
TRUSTEES' PETITION FOR REVIEW  
OF TRUSTEE SELECTION PROCESS  
AND TRUSTEE TERMS, FILED MAY  
10, 2022; EXHIBITS A – B;  
CERTIFICATE OF SERVICE**

Hearing:

Date: September 19, 2024

Time: 10:00 a.m.

Judge: The Hon. Jeannette H. Castagnetti

**TRUSTEES' RESPONSE TO SPECIAL MASTERS' REPORT ON  
THE TRUSTEES' PETITION FOR REVIEW OF TRUSTEE  
SELECTION PROCESS AND TRUSTEE TERMS, FILED MAY 10, 2022**

Come now ELLIOT KAWAIHO'OLANA MILLS (Chair of the Board of Trustees),  
CRYSTAL KAUILANI ROSE, JENNIFER GOODYEAR-KA'ŌPUA, MICHELLE M.

KAUHANE, and ROBERT K. W. H. NOBRIGA, 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, Cades Schutte, A Limited Liability Law Partnership, respectfully respond to the Special Masters' Report on the Trustees' Petition for Review of Trustee Selection Process and Trustee Terms, filed herein on June 10, 2024, as follows:

1. BENJAMIN M. MATSUBARA, Esq., ERIC H. SONNENBERG, Esq., and CAYCIE K. GUSMAN WONG, Esq. the duly appointed Special Masters (herein the "*Special Masters*") with respect to the Trustees' Petition for Review of Trustee Selection Process and Trustee Terms, filed on May 10, 2022 (the "*Petition*"), filed their Special Masters' Report on the Petition on June 10, 2024 (the "*Master's Report*").

2. On July 14, 2023, the Trustees submitted written comments to the Special Masters on the selection process, a true and correct copy of which is attached hereto as **Exhibit A**. In it, the Trustees shared their belief that the selection process for Trustees must closely align with the Will, current direction of Kamehameha Schools and best practices in the recruitment and replacement of Trustees, and that the Court does have ultimate decision authority as to who should be appointed as Trustee. The Trustees also acknowledged our history, but noted that it has been over twenty (20) years, and exclusion from this process continues to perpetuate paternalistic mindsets that, as Hawaiians, we cannot be trusted to participate in the selection process of those who govern the Trust. It is the Trustees' absolute duty to be involved in the process and to not be intimately involved impacts their ability to fulfill a critical part of the Trust kuleana.

3. The Trustees appreciate the Special Masters' diligence and thorough work in reviewing the Petition, thirty-seven (37) confidential public comments submitted to the Special Masters, and other relevant information. The Trustees value the Special Masters' input and

insights and are grateful for the more defined process and increased transparency with respect to the Court's Selection of Committee members. However, the Trustees are disappointed that a number of their recommendations to increase Trustee and stakeholder involvement in the selection process were not adopted nor was the request as specifically noted in this Petition for the extension of Trustee terms.

4. **Appointment of the Committee.** The Special Masters added new provisions to increase transparency for the selection of Committee members, including, but not limited to, making publicly available the names, resumes and cover letters of selected members; allowing the Court to appoint a special master and/or consultant to assist in recruiting, and obtaining and/or collecting the names, resumes, and cover letters of those interested in serving as a Committee member; and allowing the Committee to be appointed within a reasonable time rather than within ninety (90) days. While the Trustees are supportive of the increased transparency in the selection of Committee members, the Trustees believe that the Special Masters should have specifically included Trustee representation and Stakeholder representation on the Committee.

a. **Trustee Participation and Representation.** As the largest private landowner in the state of Hawai'i and one of the largest trusts with assets over \$14 billion, the responsibility of the Board of Trustees is similar to that Board of Directors for a corporation or non-profit organization with additional expectations and responsibilities due to the nature of the trust. Best governance practices for Board of Directors include high level engagement by Directors in the determination of qualifications and eligibility, the determination of board composition (skills and experience; and size and diversity), director tenure and terms, and director compensation, director recruitment and selection.

The Trustees are grateful to the Special Masters for including increased consultation with the Trustees and the CEO and an openness to receiving “a confidential report to the Committee that sets forth the Strategic Vision of KS, the risks and challenges KS is currently facing, the needs of KS, and their desired skills, experiences and/or characteristics of a successor trustee,” however, this is not enough. The Trustees believe that having representation is critical to their fiduciary responsibilities to the Trust and their intimate understanding of the organization would bring valuable insight to the Selection Committee.

- b. **Stakeholder Representation.** The Trustees respect the opinion of the Special Masters to not limit Committee members to KS Stakeholders and/or alumni only and acknowledge that the definition for what a “KS Stakeholder” is, will vary. However, it is critical that Native Hawaiians be given the opportunity to play a prominent role in selecting the Trustees of this uniquely Hawaiian trust, a trust that plays such an important role in the education of their children. As former Chief Justice Ronald Moon, and former Justices Paula Nakayama, Steven Levinson, and Mario Ramil explained in their December 20, 1997, press release where they declined to participate in the trustee selection process:

Because, as we have indicated, Ke Ali‘i Pauahi undertook, by will, to share her wealth with those for whom she bore traditional responsibilities, we believe that the ultimate “ownership” of the trustee selection process should lie in the indigenous Hawaiian community. ....We believe that a panel or committee of representatives of respected indigenous Hawaiian organizations should be delegated the authority to define and implement the trustee selection process. ....

In short, we believe that the Bishop Estate ultimately “belongs” to the Hawaiian people. In making this statement, we express no opinion regarding the identity of the Estate’s

“beneficiaries” in the legal sense. We have every trust and confidence that the Hawaiian people are fully capable of overseeing the estate in perpetuity.

See December 20, 1997 Press Release, a true and correct copy of which is attached hereto as Exhibit B, at page 3.

- c. While the Trustees appreciate that there may be different views as to who might be considered a “KS stakeholder,” the Committee should be comprised of a majority of Native Hawaiians who are familiar with KS and its mission. At a minimum, the Trustees believe that representation of at least one KS alumni on the Selection Committee should strongly be considered. To address the concerns of the Special Masters as to definitions, KS alumni is a defined group.

5. **Qualification of Committee Members.** The Trustees appreciate the outlining of defining characteristics and experience of Committee member. However, the Trustees question two specific provisions:

- a. **Disinterested Status.** The Trustees question the notion that Committee members shall have “disinterested status necessary to be qualified and serve as an independent and unconflicted Committee member.” By nature of this role, the Trustees believe that Committee members should be interested and vested in the outcome of Trustee Selection and as such recommend that the language Section III.A.8. be changed as follows:

- i. The Committee shall consist of knowledgeable and informed individuals, each of whom the Probate Court finds to possess a commitment to the purpose and intent of Pauahi’s Will and legacy, integrity, ethical conduct, and moral character. Committee members should be independent and unconflicted, and demonstrate a longstanding history of leadership,

competence, and probity.

b. **Committee Experience**: In Section III.A.10., it is contemplated that “*Each*” Committee member should ideally possess experience and insight in the operation, management and leadership of large organizations. The Trustees agree with the experience that the Special Masters are seeking for Committee members, but believe that the Committee as a whole should represent this breadth of experience and that not every Committee member must have operation, management and leadership of large organizations such as large private educational institutions, large financial institutions or large public charitable trusts or foundations. As such, the Trustees recommend the language in this section be changed as follows:

- i. The Committee shall include members, relative to the purpose and intent of the Will, who ideally possess experience and insight into the operation, management, and leadership of large organizations such as:
  - 1. A large private educational institution;
  - 2. Large financial institutions; or
  - 3. Large public charitable trusts or foundations.

6. **Trustee Selection Process**. The Trustees are grateful for the inclusion of some of their recommendations for submission of a confidential report and conferring with Trustees and the CEO, both as a group and individually, in their fiduciary capacity, by the Special Masters. Succession planning is a critical component for any Board of Directors and while specific experience and skills are necessary, alignment and the ability to collaborate effectively is equally important. As such, the Trustees still believe that they should be utilized for Trustee recruitment and should be allowed to interview the final six candidates and provide confidential feedback to

the Selection Committee regarding those candidates.

a. **Trustee Candidate Recruitment.** The Trustees have first hand experience in the role of Trustee and can provide valuable insight and perspective to those who may be considering applying. Their experience should be used to help recruit high potential candidates. While the Special Masters note that Trustees are not prohibited from encouraging individuals to apply and appreciate the Special Masters inclusion of that specific provision, the Trustees recommend:

- i. Modifying III.A.13 and III.C.1 to include in the confidential report potential candidates for recruitment.
- ii. Adding a new section to III.C between steps 2 and 3 which states: Setting up informational interviews and other opportunities as requested with sitting Trustees.

b. **Interview of Candidates.** With only five Trustees responsible for the enormity of this Trust, pilina is critical to governance success. Allowing the sitting Trustees to conduct informal interviews and discussion with candidates and provide confidential comments to the Selection Committee and the Court regarding their perspective can provide additional insight and awareness for the Court as it makes its final selection.

7. **Extension of Trustee Terms.** The Special Masters acknowledged that “institutional knowledge is valuable and cannot be underscored,” but they declined to recommend any changes to the current Trustee Terms. The Special Masters noted that while they reviewed and considered the request, they stated that these “changes were not required at this time and would be more appropriate as the subject of one or more future and specific petition(s).” The Trustees respect

the perspective of the Special Masters, but wish to emphasize that this Petition was specifically for the Reivew of Trustee Selection Process *and Trustee Terms*. Therefore, a new petition should not be necessary. Moreover, it makes sense to fine-tune the trustee selection process, together with the trustee terms, so that future trustee candidates are aware of the required time commitment.

The complexity of the Trust and need for consistency in vision for governance cannot be underscored. Currently, due to historic probate orders, every two years a new Trustee is added, representing one-fifth or twenty percent of the Board. The on-boarding of a new Trustee requires time and engagement in order to align with existing vision and direction. As a perpetual organization, long-term objectives and projects take time and while new visions and perspectives are critical to the on-going dynamic nature of transformation and growth, a full change of direction of the organization can occur in a relatively short time which does not give opportunity for success toward goals which may take a longer time horizon.

To this end, the Trustees ask the Court to consider the extension of Trustee terms to ensure stability and an on-going ability for the Trust to continue toward its long-term goals. It is the Trustees' considered opinion that a 15-year term would be prudent, would cause less disruption in trustee succession, and would allow the Trustees to work more seamlessly towards the Trust's long-term goals of expanding educational opportunities for its beneficiaries. That said, the Trustees understand that it may take more time for the Special Masters, Trustees, and Attorney General more time to fully explore and develop the ideal trustee timeline. Therefore, the Trustees respectfully request that the Court continue the hearing to the extent more time is needed for the Special Masters and parties to address the Trustee term issue.

8. The Trustees are appreciative of the significant time and engagement that the Special Masters have taken to consider this Petition. Because of the significance of the Trust, as



noted by the Special Masters, “the procedure selected must, at minimum, address the following guidelines:

1. be consistent with Pauahi’s Will, intent and wishes;
2. be a process which encompasses the confidence of the native 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.”

However, it must be noted that it has been almost twenty-five years since the historic orders changed the selection process due to questions and concerns over the governance of the Trust at the time. Under the current CEO model, Kamehameha Schools has grown to provide vital culture and language revitalization and works to restore traditional knowledge that was suppressed as part of the United States’ assimilationist policies and to educate Hawaiians to assume political and societal leadership roles that the overthrow of the Hawaiian Kingdom profoundly limited. The Trustees have shown over this period, their ability to regulate, govern and set appropriate policies for a complex Trust such that it has been successful in its mission. While continued oversight by the Court and through the State as *parens patriae*, is required and the Will provisions require selection of Trustees by the Court, there must be expanded engagement of sitting Trustees and stakeholders in the selection process as well as consideration of the extension of Trustee terms as the Trustees have noted in this response.

[Signature page to follow.]

DATED: Honolulu, Hawaii, August 19, 2024.

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

HAWAII PROBATE RULE 5(B) CERTIFICATION:

/s/ Rhonda L. Griswold  
RHONDA L. GRISWOLD  
SUMMER G. SHELVERTON  
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’ RESPONSE TO RESPONSE TO SPECIAL MASTERS’ REPORT ON  
THE TRUSTEES’ PETITION FOR REVIEW OF TRUSTEE SELECTION PROCESS  
AND TRUSTEE TERMS, FILED MAY 10, 2022, In the Matter of the Estate of Bernice P.  
Bishop, Deceased, EQUITY NO. 2048**



## Kamehameha Schools

July 14, 2023

Via electronic (KStrustee@inkinen.com) and U.S. mail

Benjamin M. Matsubara, Esq.  
Eric H. Sonnenberg, Esq.  
Caycie Kahiau Gusman Wong, Esq.  
Special Masters  
c/o Inkinen Executive Search  
1003 Bishop Street, Suite 1477  
Honolulu, Hawai'i 96813

Re: Comment on Trustee Selection Process

Aloha e Special Masters Matsubara, Sonnenberg, and Wong,

As the current Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, we are grateful for this opportunity to submit comments regarding the trustee selection process, and mahalo the Special Masters for your consideration of the comments below.

Foremost, we believe that the process for selecting trustees must closely align with the will, current direction of Kamehameha Schools and best practices in the recruitment and replacement of trustees.

Ke Ali'i Pauahi executed her Last Will and Testament in 1883 when the Hawaiian Kingdom still existed under King Kalākaua's reign. She saw a way forward for her people through an education in common English branches and an instruction in morals so they could navigate the western world and to maintain good standing in every industry and occupation.

Despite the overthrow of 1893 and historical harms inflicted on Hawaiians, over the last 135 years since our founding, our graduates have thrived. Today, Kamehameha Schools provides vital cultural and language revitalization programs to our haumāna to restore traditional knowledge that was suppressed as part of the United States' assimilationist policies and we seek intentionally to educate Hawaiians to assume political and societal leadership roles that the overthrow of the Hawaiian Kingdom profoundly limited.

Our Vision 2040 speaks directly to this:

*Within a generation of twenty-five years, we see a thriving lāhui where our learners achieve postsecondary educational success, enabling good life and career choices. We also envision that our learners will be grounded in Christian and Hawaiian values and will be leaders who contribute to their communities, both locally and globally.*

We start with our keiki at the center and with the goal to embolden our haumāna to become local and global servant leaders who are culturally engaged and play significant roles in creating strong 'ohana and communities throughout ka pae 'āina o Hawai'i and beyond.

As Trustees, our current role is to provide strategic guidance, integrated planning, management oversight and leadership modeling. Our transition to a CEO model over the last twenty years, has focused our leadership of Kamehameha Schools to set a long view and make adjustments as needed, to provide oversight of the CEO, and to be role models for our haumāna, our campuses and partners, and even more broadly our lāhui.

Our experiences as Trustees make us strong and essential partners in the selection process. Our roles as Trustees is no different from that of other perpetual charitable trusts and foundations which requires competent, capable and dedicated leadership at its highest levels. There is no board, for profit or non-profit, in the country, in which the current board is not involved in the selection of a new board member. We understand that Lunailo Trust which once had a similar appointment process as ours, has had a process that allowed sitting trustees to participate in their trustee search committee. Succession planning for these organizations at the board level is of critical importance in order to ensure the right balance of expertise and insights for these leadership roles.

To be excluded from this process does not logically make sense and continues to perpetuate paternalistic mindsets that as Hawaiians we cannot be trusted to participate in the selection process of those who govern the trust. While we will not deny our history, over the last twenty years, we believe we have more than proven our capability to oversee and manage the trust. Further, in requesting to be part of the process, we are not asking that the ultimate decision of who should be appointed be changed from that of the court, we are merely asking to be more involved.

We ask the Special Masters to engage with us early in this review process. To do so would allow us to discuss the alignment of our vision and mission and how we believe it relates to the selection process in order to ensure on-going and future success of Kamehameha Schools. As fiduciaries, we are uniquely invested in this process and our commitment is the reason for this petition.

To this end and in line with good governance principles, we submit the following suggestions for consideration by the Special Masters:

### **Stakeholder Engagement**

The selection process should provide for the involvement of stakeholders, including alumni and other members of the Native Hawaiian community. Those we serve are being left out of and need to be part this important process. This may include selecting members of the selection committee and commenting on candidates.

### **Trustee Engagement**

The selection process should provide for the active and direct involvement of sitting Trustees. The sitting Trustees have the most understanding, best context, and closest perspective of the organization's needs and direction, and unlike others that may be involved in the process, these Trustees have personal accountability as fiduciaries for the future success and failures of the organization. Sitting Trustees should be utilized at all aspects of the selection process, including, but not limited to:

- **Succession Plan Submission:** The selection process should provide for the submission by the sitting Trustees, a Board of Trustees' Succession Plan at the start of each new selection process. This will allow the sitting Trustees to share the current direction, challenges, risks, and opportunities facing the organization and the skills and perspectives needed from a successor Trustee that would complement the existing skills and perspectives of the Board. It would also

hold the process accountable to a thoughtful plan aligned to the direction set by the sitting Trustees.

- Recruitment of Candidates: We have first hand experience of what it means to sit in the role of Trustee. These experiences should be leveraged in helping to recruit high potential candidates through discussions and informational interviewing. Sitting Trustees should also be asked for names of potential candidates for consideration.
- Selection Committee: Sitting Trustees should serve as or as part of the selection committee, in line with best practices utilized by boards.
- Interview Process: Sitting Trustees should be allowed to conduct informal interviews and discussions with candidates throughout the interview process and provide confidential comments to the selection committee and to the court regarding our perspectives. Our participation could help ensure alignment of skills, experiences and the ability to develop pilina so that an even stronger board could be built.

While this may seem to some that sitting Trustees are trying to “interfere” with the process, we firmly believe to the contrary - that it is our absolute duty to be involved in this process and that we cannot fulfill our Trust kuleana if we are not actively involved in one of the most important parts of this organization. Good governance requires active participation by sitting Trustees in this process.

Lastly, as you consider the selection process, we ask that you consider other parts of the historic probate court orders that ostensibly make this process very challenging, including the frequency of appointment of Trustees (a new Trustee every two years on a board of five); the terms of the Trustees (the complexity of the organization requires several years of orientation); and the importance of having Trustees who remain, are invested in, and can see through the long-term objectives and projects of this perpetual organization (e.g., that invests in financial markets for the long-term, that educates students for long periods from pre-K-12, and that is involved in generational land and community projects).

We kindly request a meeting with the Special Masters to discuss these points and further perspectives we have on the petition we filed to address this critically important matter.

Mahalo nui loa for this opportunity to provide you with our comments.

Me ka ‘oia‘i‘o,

The Trustees of Kamehameha Schools  
Elliot K. Mills  
Crystal Kauilani Rose  
Jennifer Noelani Goodyear-Ka‘ōpua  
Michelle M. Kauhane  
Robert K. W. H. Nobriga

# PRESS RELEASE

December 20, 1997

Four justices of the Supreme Court of Hawai'i, in their individual capacities, issued the following statement today:

Statement by RONALD T. Y. MOON, STEVEN H. LEVINSON,  
PAULA A. NAKAYAMA, AND MARIO R. RAMIL

For more than a century, justices of the Supreme Court of Hawai'i have selected trustees to manage the trust left by Princess Bernice Pauahi Bishop. For the past eighty years, the law has said the justices act as individuals, not as officials, when appointing the trustees. Justices past and present have performed these tasks out of respect for the Princess' wishes and a sense of duty to Hawaii's rich history. In our August statement on the subject of trustee selection, we looked at what had occurred in the past. We now look to the future.

We believe that continuing to exercise the powers of appointment granted by the Princess will further promote a climate of distrust and cynicism and, more particularly, will undermine the trust that people must have in the Judiciary. Likewise, we believe that we must devote our energies, personal and otherwise, to the work of the Court. We have therefore concluded that we should no longer exercise the powers of appointment delegated to us by Ke Ali'i Pauahi. Accordingly, should a vacancy occur on the Board of Trustees of the Bishop Estate, we will not exercise the powers of appointment granted by the will of Princess Bernice Pauahi Bishop to fill the vacancy.

Because the powers of appointment are exercised as individuals, we cannot bind future justices to our decision. Future justices may choose to revisit the issue.

We understand the magnitude of this decision and the need to be deliberative. Despite intense public interest and the vocal and incessant calls for change, we have refused to be intimidated or pressured into taking or not taking any particular action. The issue of trustee selection is too important to the native Hawaiian community and too steeped in the traditional duties of the former Ali'i for us to act impulsively or reactively. Indeed, we have reached our decision after much thought and discussion, among ourselves and with others, about our public duties to the institution of the Supreme Court and our sense of obligation to Hawaii's past.

We have agonized over this matter. We recognize and respect the profound and sincere feelings of those in the native Hawaiian community who believe that the literal wishes of the Ali'i should and must be carried out, even into these present times when government in general and the Judiciary in particular have significantly changed. When the will of Ke Ali'i Pauahi was probated, the government was a kingdom and Supreme Court justices had probate jurisdiction. It was acceptable at that time, even laudable, for judges to display charitable conduct by appointing trustees to or sitting on boards of charitable institutions. Official discrimination on

ethnic or religious grounds was widely practiced. The government is now a representative democracy, and governmental discrimination on ethnic and religious grounds is, as it should be, prohibited. Supreme Court justices no longer have original probate jurisdiction, and judges are governed by a code of conduct that recognizes the value of charitable activity but, nevertheless, prohibits judges from engaging in charitable activities that are likely to cause conflicts between private and official acts. We have deep respect for the wishes of the Princess. We understand that Ke Ali'i Pauahi tried, by will, to pass on the tradition of caring for the people by sharing her accumulated wealth with those for whom she bore traditional responsibilities.

We have concluded, however, that our primary duties -- as present-day justices -- are to the law, the institution of the Supreme Court, the Judiciary, and all of the people of Hawai'i. Although we have great respect for the wishes of Ke Ali'i Pauahi, the values she hoped to pass on, and the Hawaiian community that is served by her legacy, we cannot allow our respect and our sense of historic duty to inadvertently create an appearance of a link between the Princess' estate and the Supreme Court.

We are aware that many in the Hawaiian community will believe that our decision is a further erosion of the will of Ke Ali'i Pauahi. We do not, however, believe that our decision will alter the major focus of the Princess' will. Her instruction to educate children remains as clear today as it was when she wrote the document, in spite of societal changes that no longer permit segregation of the students by sex, or the hiring of Protestants only as teachers, or the appointment of Protestants only as trustees, or that encourage college preparation instead of vocational training. While we are very concerned about the deep-seated feelings of many native Hawaiians, our first duty as justices must be to the Supreme Court of Hawai'i and to all the people it serves.

We are acutely aware that our decision no longer to exercise the delegated power to fill vacancies on the Board of Trustees of the Bishop Estate will result, at least in the short run, in a procedural vacuum regarding the appointment process. For the last two months, the five justices have been engaged in an ongoing dialogue with respected leaders and representatives of numerous native Hawaiian civic organizations, reflecting a significant segment of the indigenous Hawaiian community. The primary purpose of our discussions has been to determine whether there is consensus within the Hawaiian community regarding an ideal process of selecting trustees that most closely achieves the goals of Ke Ali'i Pauahi in light of contemporary realities -- whether we, as individuals, remain a part of that process or not. We have been deeply moved by their expressed sentiments and willingness to share their views and positions.

The overwhelming preference of the indigenous Hawaiian community, as expressed throughout our discussions, is unquestionably that the justices remain a part of the trustee selection process in accordance with the wishes of the Princess. For the reasons discussed above, however, we are regretfully unable to do so. What we can do, based on other preferences overwhelmingly expressed throughout our discussions, is to make certain suggestions regarding the ongoing implementation of the process. We emphasize that any suggestions we may make as individuals can bind neither the probate court nor the legislature, and these suggestions do not reflect an analysis of current law that may or may not allow such suggestions to be implemented. Nevertheless, we offer them as reflective of our views.

Because, as we have indicated, Ke Ali'i Pauahi undertook, by will, to share her wealth with those for whom she bore traditional responsibilities, we believe that the ultimate "ownership" of the trustee selection process should lie in the indigenous Hawaiian community. Our discussions have demonstrated that it would be foolish for us to try to define the composition of that community with precision; suffice it to say that it should be viewed as inclusively as reasonably possible. We believe that a panel or committee of representatives of respected indigenous Hawaiian organizations should be delegated the authority to define and implement the trustee selection process. That authority would include, but not necessarily be limited to, the enumeration of the terms and conditions of service as a trustee, establishment of selection criteria, solicitation of applications, processing and evaluation of applications based, among other things, upon input received from the community at large, identification of those applicants deemed highly qualified to serve as trustees, and narrowing of the highly qualified applicant pool to a "short list" of finalists. Conceivably, the short list could consist of one individual. That list would then be submitted to the probate court, which would appoint or certify the appointment of an individual, included on the list, to the position of trustee.

In short, we believe that the Bishop Estate ultimately "belongs" to the Hawaiian people. In making this statement, we express no opinion regarding the identity of the Estate's "beneficiaries" in the legal sense. We have every trust and confidence that the Hawaiian people are fully capable of overseeing the estate in perpetuity.

Although it has been overshadowed by the recent furor surrounding the Bishop Estate, we note that the will of King William Charles Lunalilo established a trust, whose trustees the justices of the Supreme Court have the delegated power to appoint. For the reasons discussed above, we will no longer exercise that power either. We have advised the probate court and the Trustees of each estate of our decisions.

Finally, we recognize that some will criticize our decision. That is to be expected, but it cannot be our primary concern. Ultimately, our first and foremost responsibility is to ensure that the integrity of the Judiciary, as an independent and coequal branch of the state government, is maintained. At all times, and never more so than now, that has been our guiding principle.

**THIS STATEMENT IS AND WILL BE THE ONLY PUBLIC COMMENT MADE BY THE JUSTICES ON THE SUBJECT. ANY REQUESTS FOR INTERVIEWS, ON OR OFF CAMERA, WILL BE DECLINED.**



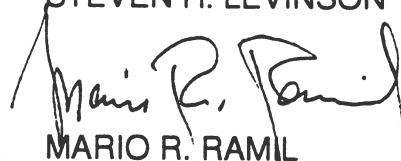
RONALD T. Y. MOON



STEVEN H. LEVINSON



PAULA A. NAKAYAMA



MARIO R. RAMIL



## STATEMENT OF ROBERT G. KLEIN

I must respectfully yet strongly disagree with the decision of my colleagues to abandon their role in the Bishop Estate trustee selection process. While looking to the future, they have forgotten the past, and in their eloquence, have left the estate and its Hawaiian beneficiaries without a trustee selection process. Besides being unwise, their decision is untimely. In the midst of the fury surrounding Bishop Estate, now more than ever, we should symbolize the eye of the storm.

Ke Ali'i Pauahi understood that the perpetual estate created by her will would be buffeted by changes in society that might give rise to legal challenges from time to time. It must have been equally clear to her that there would always be a Supreme Court at the head of the legal system served by Justices to whom she could entrust the appointment power in perpetuity. As a result, in the fourteenth provision of her will, the Princess directed ". . . that vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court . . ." This naked appointment power has been regularly exercised for 113 years by men and women dedicated to upholding, as closely as possible, the intent of Princess Pauahi. This power of appointment does not include overseeing the operations of Kamehameha Schools/Bishop Estate and does not impose a duty to regulate or sanction trustees.

As long as there exists a reasonable possibility of fulfilling her intent, we must strive to do so. Otherwise, the legal void created by our withdrawal could have drastic future ramifications for the entire fabric of the will. Permitting the selection of Bishop Estate trustees to become an official function of the probate court, rather than the individual action of the justices of the Supreme Court, constitutes a major, unprecedented and uncharted leap of blind faith.

Addressing valid concerns about the erosion of Princess Pauahi's will, my colleagues say that their decision will not alter the will's "major focus" of educating children. In other words, the decision to voluntarily alter the will is insignificant as long as Princess Pauahi's major educational goals are left intact.

This reasoning minimizes the effect of my colleagues' decision to withdraw. In fact, any voluntary change to Princess Pauahi's will may very well serve as precedent for further deterioration of the will. No change is insignificant, particularly change which impacts the method in which trustees are appointed. Because trustees set the policies that guide the educational programs of the schools, their method of selection was of paramount importance to the Princess. This is exactly why she entrusted the appointment power in perpetuity to the Justices of the Supreme Court.

Over the last several months, we have had productive meetings with the leadership of many Hawaiian community groups. We sought their counsel in order to improve the trustee selection process, making it clear that the issue of our continued participation was an open one. With a certain understanding of the history and meaning of Princess Pauahi's will, these groups (the exception being the Native Hawaiian Bar Association which voted kanalua or undecided) were unanimous in urging us to continue to exercise the appointment function, lest the will of Princess Pauahi be deteriorated.

The key issue underlying their support was our agreement to work with Hawaiian groups towards improving the trustee selection process whether or not we justices participate in it. Each of us as individuals is deeply committed to establishing an open selection process based upon known criteria subscribed to and owned by the Hawaiian community. In my case, I would agree to select a trustee only after these, and perhaps other, Hawaiian community groups had managed the selection process, reserving to the individual justices of the Supreme Court the ultimate power of appointment from a list of approved names. In the case of my colleagues, our discussions with the Hawaiian groups will result in a suggested process to the probate court, which it is free to reject.

In addition, by withdrawing from the process, my fellow justices have removed themselves from an important dialogue with the Hawaiian community just at the moment that the talks have turned productive. As a direct result of our efforts to repair the process by including Hawaiian groups, we now see that these groups have joined together to begin frank talks with the trustees themselves. This turn of events is further evidence of the positive gains that can be made when we work in unison with the Hawaiian leadership. Now is not the time to entrust the selection process to an unknown fate.

I agree that the members of this court must adhere to our guiding ethical principles and, more importantly, that all of our citizens must hold the view that not only does the entire court system render justice, but that justice is not belied by the appearance of impropriety.

Because we were and are concerned about our ethical constraints in the Bishop Estate trustee selection process, we sought the advice of the Commission on Judicial Conduct in connection with an inquiry in 1994 by Common Cause of Hawaii. After conducting its review, the Commission issued Formal Advisory Opinion No. 14-93, in which it concluded that our involvement in the appointment process was not improper, subject to the admonition that we comply with the letter and spirit of the Revised Code of Judicial Conduct.

It is true that we should not voluntarily put ourselves in a position where we must often recuse ourselves in cases before the court. Other Hawaii Supreme Court justices have balanced ethical considerations and the power of trustee appointment under the will in an unabated line since the nineteenth century. When and as appropriate, justices have recused themselves when deciding Bishop Estate matters, e.g., Kekoa v. Supreme Court of Hawaii, 55 Haw. 104, 516 P.2d 1239, cert. denied, 417 U.S. 930 (1973); Richards v. Midkiff, 48 Haw. 32, 396 P.2d 49 (1964); and Takabuki v. Ching, 67 Haw. 515, 695 P.2d 319 (1985).

Historically, cases involving Bishop Estate provide an infrequent reason for recusal particularly where our present workload is roughly nine hundred cases per annum. I do not believe that the infrequent, appropriate use of recusal can reasonably raise the appearance of impropriety. Because we gauge our ethical obligations on a case by case basis, it is unsatisfactory to simply decide that insurmountable ethical conflicts will arise as a result of exercising the power of appointment under the will of Princess Pauahi. In fact, declining the power of future appointments at this time will not eliminate or even reduce our recusals in Bishop Estate matters, because we have already selected most of the present trustees.

My colleagues believe they are taking the high road to protect the Hawaii State Judiciary. I believe public perception of the judiciary has been adversely affected because our trustee selections have not earned the respect of the community they were chosen to serve and not because the vast majority of people perceive us to have an ethical dilemma. It stands to reason that restoring the public's faith in the judiciary must come the hard way -- by creating and adhering to an open selection process based upon known criteria subscribed to and managed by the Hawaiian community. When we have reconciled with the Hawaiian people, we will have gone a long way towards gaining the reputation we seek.

In my view, we should announce a selection process that incorporates openness and stresses qualifications determined in a manner satisfactory to the Hawaiian community. This process should reflect any changes made by the legislature and the probate court, if and when they take action. Given the momentous step of declining to exercise the appointment power, timing is important. After all, no predictable vacancy occurs until 2001 and by then the selection process and the Estate itself could be restructured in such a way that present ethical concerns would be eliminated. There is, to my knowledge, no good reason to announce declination at this time.

I would like to personally thank the leaders of the Hawaiian groups who met with us for the forthrightness and Aloha they have shared with us during our meetings. I am sure they understand how sincerely we have tried to reach the right result.



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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

**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 JEFS E-mail or by U.S. Mail, immediately upon receipt of the file-marked copies of the foregoing documents from the Court:

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DATED: Honolulu, Hawaii, August 19, 2024.

/s/ Rhonda L. Griswold  
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SUMMER G. SHELVERTON  
PŌHAI NU'UHIWA CAMPBELL  
Attorneys for the Trustees Under the Will and of the  
Estate of Bernice Pauahi Bishop, Deceased.

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

# NOTICE OF ELECTRONIC FILING

**Electronically Filed  
FIRST CIRCUIT  
1EQ000002048  
19-AUG-2024  
06:58 PM  
Dkt. 5495 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:** MONDAY, AUGUST 19, 2024 06:58:40 PM

**Filing Parties:** Rhonda Griswold  
Summer Shelverton  
Pohai Campbell

**Case Type:** Trust

**Lead Document(s):**

**Supporting Document(s):** 5494-Response

**Document Name:** 5494-Trustees' Response to Special Master's Report on the Trustees' Petition for Review of Trustee Selection Process and Trustee Terms, Filed May 10, 2022; Exhibits A-B; 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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