

ROBERT BRUCE GRAHAM, JR. 1305-0
ASHFORD & WRISTON
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone No. 539-0400

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

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate)	EQUITY NO. 2048
)	
Of)	PETITION FOR APPROVAL OF
)	INTERIM TRUSTEE
BERNICE P. BISHOP,)	COMPENSATION
)	
Deceased.)	
)	
)	
)	
)	

**PETITION FOR APPROVAL OF
INTERIM TRUSTEE COMPENSATION**

Come now ROBERT KALANI UICHI KIHUNE, DAVID PAUL COON, FRANCIS AHLOY KEALA, CONSTANCE HEE LAU and RONALD DALE LIBKUMAN, the duly appointed, qualified and acting Interim Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, acting in their fiduciary and not in their individual capacities, Petitioners herein (the "Trustees"), and respectfully petition the Court for an order authorizing payment of periodic compensation to Petitioners for their services in their capacities as Interim Trustees.

A. Probate Rule 126(C) Statements

1. Petitioners are the duly appointed, qualified and acting Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, who died at Honolulu, Hawaii, on October 16, 1884, and whose Will and two codicils thereto were duly admitted to Probate in the Supreme Court of the Hawaiian Islands on December 2, 1884.

2. By the terms of her Will, namely Article *Thirteenth* thereof, Bernice Pauahi Bishop gave, devised and bequeathed all the rest, residue and remainder of her estate, subject to certain life interests which have lapsed or been surrendered, unto certain trustees, to hold upon the following trusts, namely:

to erect and maintain in the Hawaiian Islands two schools, each for boarding and day scholars, one for boys and one for girls, to be known as, and called the Kamehameha Schools.

A true and accurate copy of said Will is on file herein.

3. The assets of the Trust Estate consist of real, personal and other properties having an estimated value in excess of Six Billion Dollars.

4. Petitioners' post office address is Kamehameha Schools Bernice Pauahi Bishop Estate, P.O. Box 3466, Honolulu, Hawai'i 96801; Petitioners' business address is Kawaiaha'o Plaza, Suite 200, 567 South King Street, Honolulu, Hawai'i 96813.

5. Petitioners DAVID PAUL COON and ROBERT KALANI UICHI KIHUNE are residents of the Island and County of Hawai'i, State of Hawai'i, and Petitioners FRANCIS AHLOY KEALA, RONALD DALE LIBKUMAN and CONSTANCE HEE LAU are residents of the City and County of Honolulu, State of Hawai'i.

6. The Trust Estate is a perpetual, charitable trust estate of which there is no vested remainder beneficiary; the Trust Estate exists solely for the benefit of the Kamehameha Schools; there are no unborn, unascertained or minor beneficiaries of the Trust Estate; and there are no

persons interested in the Trust Estate within the meaning of Section 560:7-201 of the Hawai'i Uniform Probate Code or Rule 25 of the Hawaii Probate Court Rules other than the Attorney General of the State of Hawai'i, acting as *parens patriae*, who will be given notice of this Petition.

7. The Court has jurisdiction of this Petition pursuant to Hawaii Revised Statutes Sections 560:7-201, 603-21.7(a)(3), and 607-20. This Petition is filed pursuant to Hawaii Probate Rules 3 and 126 (a) and (c).

B. Compensation For Performance Of Duties As Interim Trustees

1. By that certain Order Regarding Order To Show Cause Regarding Special Purpose Trustees' Report and Order To Show Cause Regarding New CEO Based Management System entered herein on May 7, 1999, Petitioners were duly appointed as successor Trustees of the Trust Estate, with full power and authority as to the affairs of the Kamehameha Schools Bernice Pauahi Bishop Estate ("KSBE") on an interim basis.

2. Petitioners have been serving as Interim Trustees of KSBE since May 7, 1999 and are entitled to be compensated for the performance of their duties as such Interim Trustees since that date.

3. By the terms of Act 310 of the 1998 Hawai'i State Legislature, amending Hawai'i Revised Statutes Section 607-20, the compensation of the trustees of charitable trusts now is limited by statute to "an amount that is reasonable under the circumstances."

4. Petitioners propose that their individual monthly compensation be fixed at fifteen thousand dollars (\$15,000) per month during their term as Interim Trustees.

5. Petitioners were appointed by this Court to serve KSBE in an interim capacity in extraordinary circumstances. None sought the position to which Petitioners have been appointed, none has received any compensation from KSBE since appointment and all have participated on

an almost daily basis in meeting deadlines established by the Court and the Internal Revenue Service. Efforts also have included numerous meetings with teachers, staff and managers as well as meetings with citizens, Hawaiian groups, alumni organizations, the Attorney General, the Master and others concerned with the governance, management and future of KSBE. Many of these meetings have occurred on weekends, holidays and in the evenings at times convenient to the other participants.

6. By reason of the interim resignation and removal of all former Trustees on May 7, 1999, and the terms of the Court order effecting that event, there was no opportunity for any transition. Petitioners came to an Estate in confusion: students and teachers, alumni and long-time supporters of KSBE and its educational mission were alienated; the demands of a variety of judicial proceedings were consuming inordinate amounts of staff time and resources; the United States Internal Revenue Service was threatening to revoke KSBE's tax exempt status and was seeking to impose substantial tax liabilities upon KSBE and its subsidiaries; Court-ordered reorganization of KSBE and Court-mandated responses to pending accounts were incomplete and unresolved. Amidst all of this, the ordinary business of KSBE also demanded attention.

7. Petitioners submit that no recent board of KSBE has faced - and no future should face - such challenging circumstances. Petitioners have endeavored to meet the challenges confronting them by an unprecedented round of meetings with students, teachers, administrators, alumni, IRS agents, representatives of the Office of the Attorney General, masters appointed by this Court, professional advisors, and others. Petitioners have received and studied numerous reports and recommendations, investigated, debated and synthesized the bases and premises of the reports and advice received, negotiated with the IRS and endeavored to end disputes between KSBE and the Office of the Attorney General, all for the purpose of stabilizing and regularizing the affairs of

KSBE in its best interest, consistent with the Will of Bernice Pauahi Bishop and applicable orders of this Court.

8. Petitioners accepted the Court's appointment in a spirit of service, with no expectation of a permanent position, with little comprehension of the enormity of the task before them, and in the expectation that their work might be concluded within a matter of several weeks. Petitioners are not career trustees and recognized that each likely was selected by the Court to serve on an interim basis for many reasons, including a need to reassure the KSBE ohana and the community generally.

9. Accordingly, Petitioners respectfully submit that the reasonableness of the compensation to be paid them cannot be wholly measured by reference to external sources such as other entities (whether for profit or not for profit, educational or otherwise), other trusts, and other trustees. The present circumstances of KSBE and the Interim Trustees are, to a great extent, unique. A public corporation might pay salaries of several hundred thousand dollars per year and offer a variety of bonuses and incentives to an executive team assuming responsibility in such circumstances. Churches and other charitable entities confronted with the same challenges but without the means to pay might be dependent upon the part-time services of volunteers.

10. Thus, Petitioners propose their monthly compensation without having made a study of the marketplace. Instead, upon careful reflection and after discussion with various interested persons, including alumni, the IRS, the master, and the Office of the Attorney General, Petitioners have settled upon \$15,000 per month as reasonable compensation for their particular skills and services in the extraordinary circumstances of their appointment and service. Petitioners do not mean to imply that the persons with whom they have discussed their compensation necessarily agree with or endorse the amount Petitioners seek. Some have urged substantially more, some believe all KSBE trustees should serve for nominal compensation only.

11. Petitioners note that while none is a career trustee, all five Petitioners have served as directors or trustees of other large Hawaii charitable or nonprofit organizations; all five have been involved in the strategic planning process for entities such as schools, businesses, charitable organizations and government operations; four have been involved in the planning, review and final approval of operating and capital improvements budgets for profit and nonprofit institutions; four have been administrators of large private or governmental agencies with annual budgets of several millions of dollars or more; three have served on the boards of four of Hawaii's major private schools; two have been paid consultants in their respective fields at fees of \$200 and \$250 per hour. KSBE is paying hired consultants fees ranging from \$125 to \$450 per hour. Petitioners estimate that their requested compensation amounts to less than \$100 per hour each.

WHEREFORE, PETITIONERS PRAY AS FOLLOWS:

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

2. That upon hearing hereof, this Court make and enter its judgment, order and decree as follows:

a. that Petitioners each shall receive periodic compensation payments for the performance of their duties as Interim Trustees from and after May 7, 1999, in the amount of Fifteen Thousand Dollars (\$15,000.00) per month, with such compensation to be prorated in the first and last months of their respective terms;

b. that the foregoing amount does not exceed an amount that is “reasonable under the circumstances” within the meaning and contemplation of Act 310 of the 1998 Hawai‘i State Legislature, amending Hawai‘i Revised Statutes Section 607-20; and

c. that the compensation payments to Petitioners shall be made out of the Trust Estate monthly in arrears;

3. That the Court's judgment upon this Petition be limited to the premises hereof and not be deemed or construed in any way to limit, define, precondition or otherwise control the work of the Compensation Committee appointed by this Court by its Order Granting Petition For Approval Of A Plan For Determining Trustee Compensation Pursuant To Stipulation No. 15 And For Creation Of A Compensation Committee In Accordance With The Plan entered herein on May 10, 1999, the Committee's recommendation to the Court or the actions of the Court or any of the parties with respect to the work of the Compensation Committee, or that Committee's recommendation to the Court; and

4. That Petitioners have such other and further relief as to this Honorable Court shall seem just and equitable in the premises.

Each of the undersigned persons understands that this Petition is deemed to include an oath, affirmation or statement to the effect that its representations are true as far as each of the undersigned persons knows or is informed, and that penalties for perjury may follow deliberate falsification.

DATED: Honolulu, Hawai'i, this _____ day of August, 1999.

ROBERT KALANI UICHI KIHUNE

DAVID PAUL COON

FRANCIS AHLOY KEALA

CONSTANCE HEE LAU

RONALD DALE LIBKUMAN
Trustees Under the Will and of the Estate of
Bernice Pauahi Bishop, Deceased

Hawaii Probate Rule 5(b) Certification:

Robert Bruce Graham, Jr.
Attorney for Petitioners,
Trustees Under The Will and of
the Estate of Bernice Pauahi Bishop, Deceased

**Equity No. 2048, Estate of Bernice P. Bishop, Deceased
Petition For Approval Of Interim Trustee Compensation**