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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 THE
)	ESTABLISHMENT OF A
BERNICE P. BISHOP,)	PROCEDURE FOR SELECTION OF
)	FUTURE TRUSTEES; EXHIBIT "A"
Deceased.)	
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)	
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)	

**PETITION FOR THE ESTABLISHMENT
OF A PROCEDURE FOR SELECTION OF FUTURE TRUSTEES**

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, and respectfully petition this Court to establish a procedure for the selection of persons to serve as future trustees of the Estate of Bernice Pauahi Bishop, Deceased.

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, Hawaii 96801; Petitioners' business address is Kawaiaha'o Plaza, Suite 200, 567 South King Street, Honolulu, Hawaii 96813.

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

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 Hawaii, 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(a)(1) and 603-21.7(a)(3). This Petition is filed pursuant to Hawaii Probate Rules 3 and 126 (a) and (c).

B. DISCUSSION

1. Article *Fourteenth* of the Will of Bernice Pauahi Bishop, provides in part as follows:

I further direct that the number of my said trustees shall be kept at five; and that vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court, the selection to be made from persons of the Protestant religion.

2. In Estate of Bishop, 23 Haw. 575 (1917), the Hawaii Supreme Court held that the power of appointment is vested by the Will in the Justices in their individual capacities and not in their collective or official capacity as a Court.

3. Four of the five incumbent Justices of the Hawaii Supreme Court have declared that they will no longer make appointments to KSBE's board of trustees. Attached hereto as Exhibit "A" is a true and accurate copy of the Letter From The Justices Of The Supreme Court Of Hawai'i, filed herein on April 21, 1999.

4. Because the Justices' power of appointment is personal to them and is not an official act of the Court, they cannot be compelled to exercise the power if they decline to do so.

5. Additionally, because the power of appointment is personal to the five Justices and is not an act of the Supreme Court as a court, it cannot be referred by the Supreme Court to another court or panel of justices.

6. By reason of the personal decision of four of the five Justices to decline to exercise the power of appointment, the direction of the Will that vacancies on the board of trustees “*shall be filled by the choice of a majority of the Justices of the Supreme Court*” is ineffective.

7. By that certain Order Granting Petition For Removal of Trustee Marion Mae Lokelani Lindsey Filed On December 29, 1997 entered herein on May 6, 1999, the Court (Weil, J.) granted the Petition for Removal of Trustee Lindsey filed by Trustees Oswald Kofoad Stender and Gerard Aulama Jervis. On June 10, 1999, the Court (Weil, J.) entered its Findings Of Fact And Conclusions Of Law; Order Reaffirming May 6, 1999 Order Granting Petition For Removal Of Trustee Marion Mae Lokelani Lindsey Filed On December 29, 1997. Final Judgment was entered on June 17, 1999. Ms. Lindsey has appealed the orders decreeing her permanent removal but has not obtained a stay of them.

8. 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, this Court (Chang, J.) removed Trustees Wong, Peters, Lindsey and Jervis from the board of trustees on an interim basis, and accepted the interim resignation of Trustee Stender. By that same Order, this Court appointed Petitioners to act as Interim Trustees, to serve as such pending further order of the Court.

9. Although there are no existing vacancies on the board of trustees, Petitioners serve at the pleasure of the Court. Petitioners’ appointments were intended to be interim in

nature and vacancies on the board of trustees will arise in the future. It is in the best interest of the Trust Estate that a procedure for making future selections of trustees be established while there is a full board of trustees in office.

10. It is axiomatic that a trust will not be allowed to fail for want of a trustee and that the Court has inherent power to fill a vacancy on the board of a trust. It is vitally important that there be a definite procedure whereby future vacancies arising on KSBE's board of trustees may be filled in a manner as nearly consistent with the Will of Bernice Pauahi Bishop as possible.

11. The procedure employed should also be designed to ensure that the persons selected to serve as trustees (i) are qualified to serve as fiduciaries of an educational trust; (ii) understand the role and duties of trustees generally and are familiar with the specific terms and conditions of the Will; (iii) are able to serve without conflict of interest; and (iv) are sensitive to the unique role of the Kamehameha Schools Bernice Pauahi Bishop Estate in the Hawaiian and statewide communities.

12. Petitioners have identified the elements of a future selection process that Petitioners deem essential to the needs of the Trust Estate and to the perception of integrity and fairness. These are set forth below. Petitioners offer their observations and comments based upon their own insights and upon discussions with members of the Kamehameha ohana and others in the community. Petitioners offer these observations and comments not by way of petition for their approval as written but as a submission to this Court for its consideration and review in connection with the establishment of a procedure for the selection of future trustees.

13. Petitioners urge the Court to establish a means by which persons other than Petitioners also may submit their observations and suggestions to the Court.

14. Petitioners respectfully submit that, pursuant to Rule 28(a) of the Hawaii Probate Rules, the Court should appoint a master to review this petition, and to receive, review and comment upon observations and suggestions offered the Court, including but not limited to the observations and suggestions of Petitioners set forth hereinbelow.

C. PETITIONERS' OBSERVATIONS AND COMMENTS

1. Appointment of a Selection Committee

- a. A Trustee Selection Committee ("Committee") should be appointed by the Court.

The purpose of the Committee should be to:

- Announce an existing or expected vacancy to the public;
- Receive applications and nominations for the vacant position;
- Solicit qualified candidates who may not have applied or been nominated;
- Review the applications according to an established set of criteria;
- Provide for written public comment; and
- Submit a list of recommended candidates to the Court.

b. The Committee should be comprised of persons representative of the Kamehameha ohana, including alumni, teachers and families of students, and of the Hawaiian community and the community at large. Members of the Committee should possess experience and insight into the operation and management of large private educational institutions, large financial institutions, or large charitable trusts or foundations. As a whole, the Committee should have a broad experience upon which to make its nominations to the Court.

c. The members of the Committee should appoint a chairperson from among them. The members should serve without compensation. Payment of the Committee's reasonable expenses should be made out of the Trust Estate upon approval by the Court.

2. Selection Process

a. When a vacancy occurs or is expected to occur, the then-incumbent trustees should submit a petition to the Court requesting that a Committee be empanelled by the Court. If it is

shown that there is or will be a vacancy, the Court should constitute the Committee, selecting its members based upon the considerations set forth above.

b. The Committee should have the authority to retain a consultant knowledgeable and experienced in the hiring of executive personnel. The consultant should assist the Committee in organizing, screening, and reviewing applications and nominations for the vacant trusteeship position. The consultant should verify information provided by the applicant, including the applicant's educational background, background in business, honors and awards, and volunteer work in the community.

c. The Committee should commence with a review of applications received. In the event of a conflict of interest between a Committee member and an applicant who has met the minimum qualifications, the member should declare that a conflict exists and fully describe the nature and extent of the conflict. The remaining members of the Committee should determine whether the member in question should withdraw from consideration of the candidate in question.

d. Based on information in the applications and gathered by the consultant, the number of persons under consideration should be reduced to six persons. The Committee then should proceed with interviews of the six persons to determine three finalists. The names of the three finalists then should be submitted to the Court in a writing filed as a public record. If there is more than one vacant position, the number of finalists should be the sum of three plus one for each additional vacancy. From this list of finalists, the Court should select the trustee(s). Ultimately, it is incumbent upon the Court to ascertain the fitness of the persons selected by it and, in the event that none of the finalists nominated by the Committee is approved by the Court, the Court should advise the Committee in writing of its reasons and request that the Committee submit an equivalent

number of additional nominations. The Court should make its appointment(s) only from the nominations made by the Committee.

3. Selection Criteria

a. The optimal candidate would (i) have a history of success in business, finance or related areas; (ii) have received a formal education; (iii) possess outstanding personal traits including Hawaiian values such as *pono* (to be moral and proper), *'imi 'ike* (to seek knowledge), *laulima* (to work cooperatively), *lokomaika'i* (to share), *na'au pono* (to possess a deep sense of justice), *malama* (to care for each other), and *ha'a ha'a* (to be humble).

b. Categorically, the following criteria should be established:

(1) Experience

The candidate should possess expertise in one or more of the following areas:

- Business Administration: to include knowledge, skills, and prior successful experience in managing a large corporation;
- Finance and Investment: to include management of land and monetary assets of a multi-million dollar corporation;
- Strategic Planning and Policy Setting: to include responsibility for administering the affairs and/or setting policies for the direction and management of a large corporation or educational institution;
- General areas of interest, including education, law, finance or an especially relevant background in governance.

(2) Political Office

The candidate should not currently hold any elected political office nor have held any political office within the five years immediately preceding his or her nomination.

(3) Religious Affiliation

The Will of Bernice Pauahi Bishop provides that the selections for trustees shall be made from persons of the Protestant religion.

(4) Personal Qualities and Characteristics

The desirable qualities and characteristics of a trustee should include:

- A demonstrated reputation of integrity, the capacity to fulfill the responsibilities of a fiduciary under trust law, and a commitment to the best interests of children;
- Consistent and active leadership in the community-at-large;
- A willingness and sincerity to uphold the purposes of KSBE as stated in the Will of Bernice Pauahi Bishop.

(5) Preferences

If two candidates are perceived as equally qualified, preference should be given to the candidate who is:

- An alumnus of the Kamehameha Schools, or
- Of Hawaiian ancestry.

4. **Term Limits and Retention Process**

a. Each trustee should be appointed to a term of five years, after which the trustee may submit an application to the Court to serve another term of five years. The Court should refer any application for reappointment to a Committee constituted by the Court in accordance with these procedures. The Committee should either recommend reappointment of the trustee or proceed with the selection process and submit the names of three finalists to the Court, in which event the trustee applying for reappointment could be one of the three finalists submitted to the Court.

b. The trustees should be limited to a maximum of two five-year terms, whether or not consecutive. There should be no mandatory retirement age nor any other arbitrary limit upon the term of the trustees, except that where more than one trustee is selected at the same time, their respective terms should be staggered to ensure that no more than two trustee terms expire within the same year.

D. CONCLUSION

Upon the foregoing, Petitioners respectfully 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 this Honorable Court appoint a master to review this Petition, to receive, review and comment upon observations and suggestions offered the Court, including but not limited to the observations and suggestions of Petitioners set forth herein; and report to the Court;
3. That upon hearing hereof, this Court make and enter its Order and Decree establishing a selection process for the appointment of future trustees of the Kamehameha Schools Bernice Pauahi Bishop Estate; and
4. That this Court grant 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, Hawaii, 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 The Establishment Of A Procedure For Selection Of Future Trustees**