

June 14, 2024

Honorable Anne E. Lopez
Attorney General of Hawai'i
425 Queen Street
Honolulu, HI 96813

Aloha e Honorable Attorney General Lopez,

The undersigned have reviewed the *"Special Masters' Report on the Trustees' Petition for Review of Trustee Selection Process and Trustee Terms"* that was filed on June 10, 2024, and wish to provide you with our insights to this report for your consideration. Mahalo nui loa.

In response to an invitation for public comment regarding the Trustee Selection Process and Trustee Terms, we submitted the attached letter dated July 7, 2023, to the Special Masters. This letter offered several key recommendations for improving the trustee selection process, along with compelling underlying rationale. We also had the opportunity to meet with the Special Masters to discuss these recommendations and rationale.

In reviewing the Special Masters' Report, we note with appreciation the time others took to provide their insights as well. We also appreciate the challenges that come with integrating diverging views on this important issue and mahalo the Special Masters for considering everyone's input. That said, we have three major concerns with their report.

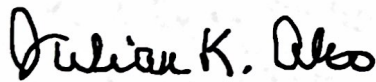
1. Transparency The Special Masters have recommended a selection process that provides a higher level of transparency, which we acknowledge as a significant improvement over recent practice. However, we caution against a level of discretion that may put at risk the transparency desired. For example, in appointing a Committee to assist the Court in filling a vacant trustee position, the process states that the Court "should" publish the names and backgrounds of those appointed to the Committee; we believe the process should state that the Court "shall" publish their names and background. Another example is that individuals interested in serving on the Committee "shall," not "should," provide the basis for his or her qualifications.

2. Stakeholders. The Special Masters have recommended that Committee members not "be solely limited to KS Stakeholders (various definitions) and/or KS Alumni." In doing so, the Special Masters offer no compelling reasons that counter those we presented with great clarity to them: alignment with standard practice in trust and school governance; wisdom, judgment and values for responsible stewardship within the ranks of stakeholders; and an evolving selection process with no requirement for direct judicial management. We see this omission as a major flaw in the Special Masters' report and urge you to explore in more detail the rationale we offered in our letter to them.

3. Selection Authority. The Special Masters have recommended continuance of the Probate Court as the Selection Authority, arguing that "the normal and customary statutory procedure should apply" when a "mechanism in the Will has been rendered inoperable." The Special Masters further state that "*In the absence of an alternative means for fulfilling this function, the legal authority for appointing (and removing) the trustees of the Trust is now vested in the Probate Court*". We strongly disagree with this recommendation because (1) the law states normal and customary statutory procedure SHOULD apply, not SHALL apply and (2) there is an alternative means for fulfilling this function – the process used by two other Ali'i Trusts – Lunalilo Home and Liliuokalani Trust – along with countless other trusts, schools and foundations throughout Hawai'i. Attached is a letter dated December 20, 1997, from the Justices of Hawai'i's Supreme Court informing the Board of Trustees of Lunalilo Home that the former would no longer appoint successor trustees and that the latter would need to determine how it will make these appointments in the future. Lunalilo Home has adopted a process that mirrors that of Liliuokalani Trust whereby the selection of successor trustees are made through a process managed within their own governance structure. Together, these two Ali'i Trusts offered a model for the selection process we have proposed: *a Committee with Selection Authority that is appointed by and comprised of Kamehameha stakeholders.* This Committee of stakeholders would actively seek applicants; identify and evaluate candidates; and select the successor trustee. The Probate Court would then fulfill its responsibility to legally appoint the successor trustee who has been selected by the Committee.

While we acknowledge the work of the Special Masters with respect, we do not see an accompanying acknowledgment on their part of the injustice inherent in continuing the practice of having decisions that impact Kamehameha being made for us, not by us. Our question to the Special Masters is this: Why should Kamehameha Schools Bishop Estate be treated differently than all other trusts, schools and foundations in Hawai'i? We do not believe this is legally correct, ethically right or morally grounded.

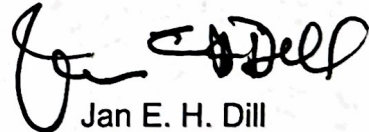
Me ka ha'aha'a,



Julian K. Ako



Michael J. Chun



Jan E. H. Dill

