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FIRST CIRCUIT
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06-FEB-2025
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Dkt. 5549 ORD

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

In the Matter of the Estate

of

BERNICE P. BISHOP,

Deceased.

EQUITY NO. 2048

ORDER APPROVING AMENDED AND
RESTATED PROCEDURE FOR
TRUSTEE SELECTION

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On May 10, 2022, Robert K. W. H. Nobriga, Lance Keawe Wilhelm, Elliot K. Mills, Crystal Kauilani Rose, and Dr. Jennifer Goodyear-Ka'opua, Trustees of the Estate of Bernice Pauahi Bishop, filed a Petition for Review of Trustee Selection Process and Trustee Terms. Hearings were held on September 19, 2024 and November 14, 2024. Present at the September hearing were Pohai Nu'uhiwa Campbell, Esq. and Nalani Fujimori Kaina, Esq. for Petitioner Trustees; and Deputy Attorney General Kristie Cruz Chang on behalf of the Attorney General, as parens

patriae.¹ Present at the November hearing were Rhonda L. Griswold, Esq. and Nalani Fujimori Kaina, Esq. for Petitioner Trustees and Deputy Attorney General Kristie Cruz Chang on behalf of the Attorney General, as parens patriae. Special Masters Benjamin M. Matsubara, Esq., Eric H. Sonnenberg, Esq., and Caycie K. Gusman Wong, Esq. were present for both hearings.

Having reviewed and considered the written submissions and arguments of counsel, the Special Masters' Report filed on June 10, 2024, the exhibits attached to the submissions, the Court issues this order with respect to the review of the trustee selection process and trustee terms.

BACKGROUND

Twenty-five years ago, on January 6, 2000, the Probate Court issued an order establishing a procedure for the selection of trustees of the Estate of Bernice Pauahi Bishop.² The circumstances leading up to the Trustee Selection Process Order were extraordinary and unprecedented. Serious breaches of fiduciary duties by certain trustees were brought to light in 1997, eventually leading to the permanent removal or resignation of all of the trustees.³ Also in 1997, a majority of Justices of the Hawai'i Supreme Court declined to appoint successor trustees – a power expressly delegated

¹ As parens patriae of charitable trusts, the Attorney General of the State of Hawai'i represents all beneficiaries of the Trust "to oversee the activities of the trustees to the end that the trust is performed and maintained in accordance with the provisions of the trust document, and to bring any abuse or deviation on the part of the trustees to the attention of the court for correction." Midkiff v. Kobayashi, 54 Haw. 299, 335, 507 P.2d 724, 745 (1973).

² See Order Granting Petition for the Establishment of a Procedure for Selection of Future Trustees, filed on January 6, 2000 ("Trustee Selection Process Order").

³ The former trustees who were permanently removed or who resigned in 1999 were Marion Mae Lokelani Lindsey, Richard Sung Hong Wong, Henry Haalilio Peters, Gerard Aulama Jervis, and Oswald Kofoad Stender.

to the Justices by Princess Bernice Pauahi Bishop (“Pauahi”) in her Will⁴ and a power that Justices had performed for over a century.⁵ Leadership and administration of the Trust Estate were in peril. The Probate Court appointed special purpose and interim trustees during this period to stabilize matters as the Trust Estate’s tax-exempt status was in jeopardy pending investigations by the Internal Revenue Service.⁶

Following two years of intense and contested litigation surrounding the actions of the former trustees, and Kamehameha Schools’ adoption of a CEO-based management system, the Probate Court issued the Trustee Selection Process Order, adopting and approving the selection process recommended by the court appointed Master, Benjamin M. Matsubara, Esq., in his Report filed November 22, 1999. Finding that the mechanism for trustee selection contained in Pauahi’s Will had been rendered inoperable by a majority of Justices declining to appoint successor trustees, the Court established a selection process consistent with Pauahi’s Will and in accordance with the statutory and inherent power of the Probate Court.

⁴ Pauahi died on October 16, 1884, and her Will and two codicils were duly admitted to Probate in the Supreme Court of the Hawaiian Islands on December 2, 1884.

⁵ Article Fourteenth of Pauahi’s Will provides that the trustees of her Trust Estate shall be appointed 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,

In construing this Article of Pauahi’s Will, the Hawai’i Supreme Court has held that the power of appointment is vested in the justices as individuals, and not as a court. Estate of Bishop, 23 Haw. 575, 581-582 (1917).

⁶ Matters relating to the IRS investigations were resolved through a Closing Agreement with the IRS dated February 23, 2000. See Order Approving Petition for Approval of Settlement of IRS Audit Issues, filed on December 1, 1999.

Trustee Selection Process

Other than a few modifications involving the timing of rotations on and off the Board of Trustees,⁷ the selection process established twenty-five years ago has remained unchanged. As a general matter, the selection process begins with the Trustees filing a Notice of Anticipated Vacancy within six-months of a trustee's term expiring. The Court appoints a Master pursuant to Rule 28 of the Probate Rules and the Court constitutes a Screening Committee comprised of a minimum of seven people to assist the Court in seeking qualified individuals to fill the vacant trustee position. The Screening Committee, with the assistance of a hired consultant, solicits applicants to fill the vacancy on the Board of Trustees. The Screening Committee reviews the applications and conducts further research or obtains additional information to select applicants for in-person interviews. The Screening Committee, by a simple majority, identifies three finalists who meet the qualifications of a trustee and recommends those finalists to the Probate Court. The Screening Committee also publicizes and invites public comments on the finalists. The Probate Court then reviews the applications, resumes, personal statements, interview notes, and public comments for each finalist, and conducts its own investigation, research, and interviews as deemed appropriate. Based on its own independent conclusions, the Probate Court selects a finalist to fill the anticipated trustee vacancy.⁸

⁷ See e.g., Stipulation to Approve Trustees Rotation Off and On the Board of Trustees, and Order filed on March 25, 2013 (modifying the rotation from 1-year to 2-years); Stipulation to Modify Current Trustees Rotation Off and On the Board of Trustees, filed on April 12, 2017 (modification necessary in light of the court's denial of a trustee's petition for reappointment).

⁸ Master's Report on the Petition for Establishment of a Procedure for the Selection of Trustees, filed November 22, 1999 at pp. 27 – 38.

Specifically as to the Screening Committee, the court-appointed Master identifies, researches, and vets individuals suitable for the Screening Committee when trustee vacancies arise.⁹ As part of the process for trustee selection established by the January 6, 2000 Trustee Selection Process Order, the Screening Committee must consist of members who:

Are knowledgeable and informed persons, each of whom the Court finds to possess the integrity, probity, competence and disinterested status necessary to be qualified and serve as an independent and unconflicted Committee member;

Are familiar with and sensitive to (1) the history and role of the Trust Estate relative to the Hawaiian community and the community at large, and (2) Pauahi's legacy and her vision for the future of Hawaiian children;

Relative to the purpose and intent of Pauahi's Will, possess experience and insight into the operation and management of:

- A large private educational institution;
- Large financial institutions; or
- Large public charitable trusts or foundations.¹⁰

The trustee selection process has been undertaken on eleven occasions since January 6, 2000. Each time a Notice of Anticipated Vacancy was filed, the Probate Court entered orders appointing the Trustee Screening Committee identifying individual members by name, with resumes or other biographical information attached as exhibits to the orders of appointment.¹¹ Initial and final reports of the Trustee

⁹ See Master's Report filed on August 22, 2019 detailing the Probate Court's process for selection of Screening Committee members.

¹⁰ Master's Report filed November 22, 1999 at pp. 27 – 28.

¹¹ From 2000 to 2009, resumes or other biographical information of Committee members were attached to various orders appointing the Screening Committee. Beginning in 2010,
(continued on next page)

Screening Committees were filed identifying the list of final applicants and detailing the work and process undertaken by the Screening Committee to provide the list of final applicants to the Court.

The Trustees and the Attorney General agree that the trustee selection process has been conducted in a manner consistent with and in compliance with the Trustee Selection Process Order since it was first implemented in 2000. The Trustees filed the Petition to review the trustee selection process and trustee terms stating that the process would benefit from a review to determine whether any changes should be made to ensure that Kamehameha Schools receives the benefit of the best trustee candidates.

DISCUSSION

The Court has jurisdiction of this matter pursuant to §§ 554D-202, 554D-203, 554D-103, 603-21.6, 603-21.7(1)(C), 560:1-201, and 560:1-302 of the Hawai'i Revised Statutes ("HRS"). Venue is proper pursuant to §§ 554D-204 and 603-36(3), HRS.

The Court has carefully reviewed the Special Masters' Report and finds the Report to be well researched, thorough, and correct. The Masters recognized the importance and magnitude of Pauahi's legacy, the terms of her Will, the purpose of the Trust Estate, and the significance of the Trust Estate to native Hawaiians. The Masters performed their duties with utmost care, and their Report provides for a selection

orders of appointment continued to identify all of the selected Committee members, but included resumes or other biographical information of newly appointed members only. Then, in 2020, the Probate Court returned to the practice of including the resumes/bios of all Committee members as part of the orders of appointment.

process that has been and continues to be consistent with Pauahi's Will and intent, and in accordance with the Probate Court's statutory and inherent powers.

From the outset of their assignment, the Masters recognized the necessity to seek public comment and recommendations regarding the trustee selection process and trustee terms. The Masters issued a press release and a Public Notice seeking comments regarding the current selection process, with the Public Notice being published in eight newspapers of general circulation in Hawai'i.¹² The Notice was also distributed via email distribution to Hawaiian Civic Clubs, Kamehameha Schools Alumni Association, Native Hawaiian Chamber of Commerce, and Native Hawaiian Legal Corporation. Lastly, the Notice was published online on the websites of Kamehameha Schools (website and Instagram), Inkinen,¹³ and Council for Native Hawaiian Advancement. Through the dissemination of the Public Notice, the Special Masters received thirty-seven written comments on matters involving the trustee selection process and trustee terms.

The Court is grateful for the participation of individuals and organizations who submitted their comments to the Special Masters as the Court recognizes the importance of public input to assist the Probate Court in its review of the trustee selection process and whether modifications to the process should be made.

¹² The Masters Report indicates the Public Notice was published in the following newspapers on May 12 – 17, 19, and 24, 2023: Hawai'i Tribune Herald, Honolulu Star Advertiser, Maui News, MidWeek, The Office of Hawaiian Affairs' Ka Wai Ola, Pacific Business News, The Garden Island, and West Hawai'i Today.

¹³ Inkinen is the local consulting firm that has assisted Masters in collecting trustee applications.

The Trust Estate exists solely to support Kamehameha Schools and the educational purposes as set forth in Pauahi's Will. Kamehameha Schools is a perpetual, charitable education trust with the purpose of educating native Hawaiians. The assets of the Estate consist of real, personal and other properties and have an estimated value of approximately \$11.2 billion as of June 30, 2023.¹⁴

Insofar as all or a majority of Justices of the Supreme Court continue to decline to appoint successor trustees as set forth in the Fourteenth Article of Pauahi's Will, the mechanism for trustee selection remains inoperable and therefore, the ongoing trustee selection process as adopted on January 6, 2000 remains necessary.

The selection process recommended by the Masters remains largely the same as the original process adopted by the Probate Court in 2000. One recommended change involves increasing the timing of when the Trustees must give advance notice to the Court of a trustee vacancy from six (6) months to one (1) year. The majority of recommendations relate to the Screening Committee. Lastly, as to trustee terms, the Masters did not recommend extending terms to fifteen years.

Overall, the Court agrees with the Masters' recommendations that the trustee selection process will benefit from restating and amending the process to allow for greater understanding of trustee selection. The Masters' Report identifies four significant findings and recommendations, each discussed further herein: (1) increased transparency surrounding the selection of the Trustee Screening Committee; (2) enhanced collaboration of input and information with the Screening Committee; (3) trustee terms; and (4) membership on the Screening Committee.

¹⁴ See Master's Report for the 138th Annual Account of the Trustees, filed on December 9, 2024 at 11.

1. Increased Transparency Concerning Selection of the Trustee Screening Committee

The Court finds that the current selection process should be further refined to allow for greater understanding of the selection of Screening Committee members and the members' qualifications to serve on the Committee.

Specifically, memorializing the process that a Master(s) and/or experienced consultant assists the Court in obtaining and/or collecting the names, resumes, and cover letters of those qualified and selected to serve on the Screening Committee would allow for a better understanding or more transparency of the process utilized to select Screening Committee members. Further, attaching the cover letters of each Committee member appointed to each order of appointment, in addition to their resumes, would provide for increased information and understanding about the qualities and qualifications of those selected to serve.¹⁵

With respect to enhancing greater understanding of the trustee selection process above and beyond the Masters' recommendations, the Court finds it would be beneficial for the Trustees to make available on the Kamehameha Schools website filings relating to trustee selection and reappointment, including court orders. The Court's orders relating to trustee selection have been available to the public upon filing; however, the Court recognizes that the docket in this matter is extensive, and it can be a cumbersome process for a member of the public to find petitions and orders relating to the selection and reappointment of trustees. Given the Trust's charitable purpose,

¹⁵ Prior Probate Court orders appointing Screening Committee members identified the Committee members and included resumes or other biographical information about each member, demonstrating the qualifications of those selected to serve.

the history and significance of the Trust Estate in Hawai'i, and the need for broader understanding of trustee selection, the Court finds that greater awareness and increased transparency can be achieved through availability of Court filings relating to trustee selection and reappointment on the Kamehameha Schools website.

2. Enhanced Collaboration of Input and Information with the Screening Committee

The Court finds that the current trustee selection process would further benefit from an order setting forth in greater detail the Screening Committee's authority and responsibility to receive input and evaluate information from a variety of sources in fulfilling the Committee's role to identify, evaluate, screen, and recommend qualified trustee candidates to the Probate Court.

To assist the Committee in finding the best trustee candidates, the procedure recommended by the Masters provides that prior to seeking applicants for a trustee vacancy, the Screening Committee seek input and information from former Screening Committee members, current and prior Special Masters, current and former trustees, Kamehameha Schools Alumni, the CEO of Kamehameha Schools, and native Hawaiian organizations or individuals and community members who are deeply familiar with the history, legacy, and purpose of Kamehameha Schools as set forth by the terms of Pauahi's Will. While the terms of the original Trustee Selection Process Order generally authorized past Screening Committees to review reports and conduct interviews as part of the trustee screening process, the selection process would further benefit from an order expressly delineating the Committee's responsibility and authority to meet with and obtain information from a variety of persons with specific, relevant, and particular knowledge and background concerning the Trust Estate, the history and

purpose of the Trust, Pauahi's wishes and vision for the education and well-being of native Hawaiians, the history and foundation of Kamehameha Schools, among other matters relevant for trustee selection.

3. Trustee Terms

The Court finds that a trustee term of five years, subject to reappointment for an additional five years, is a reasonable term limit for trustees.¹⁶ The Trustees' request for *new* trustee terms to be extended to fifteen years is denied.

4. Members of the Screening Committee – Kamehameha Schools Stakeholders, Alumni, Sitting Trustees and CEO

The Special Masters' Report also addresses the composition of the Screening Committee. More specifically, whether the Committee should consist of Kamehameha Schools Stakeholders and/or Alumni only, and also whether sitting trustees and the CEO of Kamehameha Schools should serve as members of the Committee.

It is essential to the integrity of the trustee selection process that the Screening Committee consist of individuals who possess a genuine understanding of Pauahi's Will, her legacy, and the foundation and mission of Kamehameha Schools. For that very purpose, past members of the Screening Committee have included Kamehameha Schools Alumni, parents of students, and former teachers or employees of Kamehameha Schools among others, all of whom possessed the qualities and characteristics required for the task of finding the top trustee candidates.

¹⁶ The Court notes that the timeframe for a trustee to file a petition for reappointment has not changed and will remain as originally established: the petition for reappointment should be filed no later than six (6) months prior to expiration of an eligible trustee's term.

As the Masters pointed out, and the Court agrees, the process is intended to be inclusive, not exclusive, and consistent with the terms of Pauahi's Will and her intent. The criteria of those selected to serve cannot be based on any one person's membership in a group, but on individual characteristics and qualities. Therefore, limiting the Screening Committee to membership in a specific group would exclude otherwise qualified individuals from serving, and would not be consistent with the terms of Pauahi's Will.¹⁷

The Court also finds it would not be appropriate for sitting trustees and/or the CEO of Kamehameha Schools to serve on the Screening Committee although they undoubtedly have key insights into the needs and vision for Kamehameha Schools. Pauahi's Will does not provide for sitting trustees to select successor trustees and her Will does not provide for individuals employed by Kamehameha Schools to select successor trustees when a vacancy arises. Therefore, sitting trustees and/or the CEO serving on the Screening Committee, which is part of the trustee selection process, is not consistent with Pauahi's Will or her intent.

Accordingly, inasmuch as the successor trustee selection provision set forth in Pauahi's Will continues to remain inoperable, the Court finds and concludes that the trustee selection process as restated and amended in the Masters' Report is consistent with the terms of Pauahi's Will and her intent, is in accordance with the

¹⁷ Specifically as to references to Kamehameha Schools Stakeholders noted in the Trustees' and Attorney General's submissions and the Masters Report, the definition of Kamehameha Schools Stakeholders varies. Defining who is a Kamehameha Schools Stakeholder runs the risk of being overly restrictive, on the one hand, or overbroad, on the other, depending on the definition and circumstances. Defining the term in a limited way could disqualify other qualified persons from serving on the Committee and would be inconsistent with the terms of Pauahi's Will. Defining the term more broadly in this or other contexts could be misconstrued or misunderstood.

Probate Court's statutory and inherent authority, and should be adopted for the reasons stated herein.

CONCLUSION

Based on the foregoing, the Court hereby ORDERS the following:

A. The Special Masters' proposed amended and restated procedure for selection of trustees, which sets forth the selection process for future trustees on pages 19 through 28 of the Report, is approved and adopted;

B. The Trustees shall make available all filings relating to future trustee selection and reappointment, including this Order and the Masters' Report, on the Kamehameha Schools website to allow for better and broader understanding of the trustee selection and reappointment process;

C. Insofar as the Court issued orders relating to the most recent Notice of Anticipated Vacancy filed on December 26, 2024 that reference the original Trustee Selection Process Order, the Court will issue amended order(s) as necessary since this restated and adopted procedure shall take effect immediately to the greatest extent practical for the current trustee selection process.

D. The Special Masters' fees, costs, and expenses related to the instant Petition are approved.

DATED: Honolulu, Hawai'i, February 6, 2025.

/s/ Jeannette H. Castagnetti

Judge of the above-entitled Court



Order Approving Amended and Restated Procedure for Trustee Selection, In the Matter of the Estate of Bernice P. Bishop, Deceased, EQUITY No. 2048.

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