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STATE OF HAWAII
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Honolulu, Hawaii 96813
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CLERK

Attorneys for the Beneficiaries

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate	)	EQUITY 2048
	)	
of	)	
	)	ATTORNEY GENERAL'S REPLY TO
BERNICE P. BISHOP,	)	RESPONSE OF THE INTERIM TRUSTEES
	)	OF KAMEHAMEHA SCHOOLS TO REPORT
Deceased.	)	OF MASTER ROBERT RICHARDS
	)	REGARDING RETENTION OF NON-STAFF
	)	COUNSEL; DECLARATION OF HUGH R.
	)	JONES; EXHIBITS A THROUGH D;
	)	CERTIFICATE OF SERVICE
	)	
	)	
	)	<u>HEARING:</u>
	)	
	)	DATE: December 8, 2000
	)	TIME: 10:00 a.m.
	)	JUDGE: Kevin S.C. Chang
	)	
	)	

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ATTORNEY GENERAL'S REPLY TO REPLY TO RESPONSE OF
THE INTERIM TRUSTEES OF KAMEHAMEHA SCHOOLS
TO REPORT OF MASTER ROBERT RICHARDS
REGARDING RETENTION OF NON-STAFF COUNSEL

I. SEALED FILINGS

The Attorney General, as parens patrie, is a necessary party
to this proceeding, yet stands on unequal footing to the other

interested parties to the proceeding because the Attorney General has not been provided with copies of the sealed and/or redacted filings by Cades Schutte Fleming & Wright, Oswald Koford Stender, and other interested persons. See Exs. A through D, Jones Decl. Such unequal treatment deprives the Attorney General of the ability fairly to represent the interests of the Trust Beneficiaries and to perform the Attorney General's duty to oversee the activities of the Trustees and to report any abuse or deviation on the part of the Trustees to the court for possible correction. Midkiff v. Kobayashi, 54 Haw. 299, 335-36 (1973).

The sealed filings effectively put the beneficiaries' representative outside the doors of the courtroom on a petition that concerns whether millions in attorneys fees paid by the beneficiaries should be restored to the beneficiaries. It is precisely this kind of needless secrecy from the beneficiaries that leads to unrestrained squandering of Trust assets.

II. PROBATE RULE 42(c)

Many of the significant conclusions set forth in the Report of Morgan Lewis & Bockius flow from the legal conclusion that an attorney for a fiduciary has no duty to report to the court the malfeasance of the attorney's client.

The Attorney General does not agree that Langbein¹ and Luebsdorf opinions attached to the Report of Morgan Lewis & Bockius are correct statements of Hawaii law on this issue.

The Attorney General has reviewed the amended response filed by Carroll S. Taylor on November 30, 2000 and believes that Mr. Taylor's filing is a correct statement of an attorney's obligations as an officer of the court under Probate Rule 42(c). The Court need not look to Washington D.C.² for an expert on Rule 42 or legal ethics--it has one only blocks from the courthouse in Taylor. Taylor not only served on the Probate Rules Committee, he is the chairperson of the board overseeing the Office of the Disciplinary Counsel, State of Hawaii.

III. NO RIGHT TO FUTURE WORK FROM KAMEHAMEHA SCHOOLS

Morgan Lewis & Bockius was requested to render an opinion on

¹One may reasonably question Langbein's ability to provide an objective opinion on the legal duty of the former trustees' legal counsel to report breaches of fiduciary duty to the court, because Langbein is one among many who provided legal counsel to the former trustees. Miller & Chevalier also assisted Morgan Lewis & Bockius in the investigation, and although Master Richards noted that the work of Miller & Chevalier for the former trustees resulted in a benefit to the Trust Estate, one may equally question their ability to provide a truly objective opinion.

²It does not appear that Morgan Lewis & Bockius, LLP was admitted *pro hac vice* by any Hawaii Court. The Report itself and the Interim Trustees' Response at 4, reveal that the firm was retained to provide a legal opinion, not just conduct an investigation. The report indicates that the firm performed a detailed analysis of Hawaii law, and Hawaii court rules. The firm conducted multiple witness interviews in Hawaii. This activity may constitute the practice of law in Hawaii.

whether there is a basis for the Trustees to conclude that they should discontinue using the services of one or more of the legal service and other professional service providers in the future. Rep. at 3. The Report states that the Trustees must exercise their discretion prudently in the retention of legal advisors, (Rep. at 127), but the Report apparently contains no discussion of the fact that no legal service provider has any "right" to continued work from the Trust. The Trustees may sever their relationship with any legal services providers without any basis whatsoever (or decide to clean house and start with a clean slate).

The Trustees do not need a finding of breach of professional or ethical duties, or malpractice as a basis to discontinue the services of the legal service providers mentioned in the Report, any more than the Trustees needed such a basis to immediately suspend the provision of those services during the pendency of the "independent" investigation.

IV. THE INTERIM TRUSTEES' EXERCISE OF DISCRETION IS NOT PROPERLY BEFORE THE COURT

The Interim Trustees Response requests the court "to conclude the Interim Trustees have reached a sound and reasonable decision not to pursue any claims against Cades Schutte or Verner Liipfert." Resp. at 12.

The Interim Trustees have not petitioned for instructions

pursuant to Probate Rule 3(c) and the issue whether the Interim Trustees abused their discretion is not properly before the Court'. What the Interim Trustees seek is an impermissible advisory opinion from the Court.

Even if the Interim Trustees' response can somehow be construed as a request for instructions, instructions would not properly issue on these facts.

In In Re Estate of Campbell, the Court reasoned that instructions will be given only in cases of real ambiguity or doubt, but not where it involves a trustee's exercise of discretion:

It is elementary that either the trustee or any other party having a financial interest in the trust may obtain from an appropriate court a construction of the trust instrument, and consequently advice as to the exact extent of the powers and duties of the trustee, where there is doubt on the subject

The advice will not be given where the trust powers are clearly fixed by the trust instrument or a statute; but only in cases of real ambiguity or difficulty, as to legal problems. The court will not exercise the trustee's discretion for him. The court will not discuss problems which may never arise, or difficulties which are to confront the trustee at a remote date.

This power does not extend to an increase or decrease in the powers of the trustee, but merely to a clarification of his powers.

¹The court recently enforced the separate petition requirement in response to the Attorney General's request that the Court instruct the interested parties on whether the Protestant only requirement of the Will retains vitality. The court ruled that the request was "procedurally flawed." Order (Nov. 22, 2000).

In the Matter of the Estate of James Campbell, 30 Haw. 573, 581 (1950) (emphasis added), quoting 3 George W. Bogert, Trusts and Trustees § 559, pp. 472-477.

Quoting the Restatement (Second) of Trusts § 259, cmt d., the court also stated:

d. Where a matter rests within the discretion of the trustee, the court ordinarily will not instruct him how to exercise his discretion.

Estate of Campbell, 30 Haw. at 582.

It would appear that the decision whether to pursue claims against past legal services providers is a matter committed to the discretion of the trustees, which discretion should not be abused, and it is not the proper subject of a petition for instructions.

Furthermore, the Attorney General suggests that if the Trustees are seeking guidance from the court, they should have asked before they leaped, not leaped before they asked. See, e.g., Bogert & Bogert, The Law of Trusts and Trustees § 559 (bill for instructions should not be confused with an application by a trustee for approval of an act already performed, citing in footnote to chapter on trustee's right to seek approval of past transactions in an accounting proceeding).

The court should confine itself to taking whatever action it deems appropriate on matter at hand--Master Richards' Report. It should not approve, in this proceeding, a discretionary act that

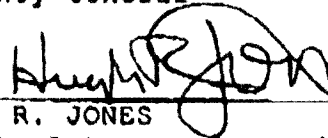
is subject to review at a later date.

IV. CONCLUSION

The Attorney General endorses the legal opinion expressed in the amended response filed by Carroll S. Taylor on November 30, 2000. As an officer of the court, an attorney for a fiduciary has the legal duty to report the fiduciary's nonfeasance to the Court. The Court should not provide any instructions to the trustees, or make any findings, on the exercise of their discretion at this time.

DATED: Honolulu, Hawaii December 1, 2000.

EARL I. ANZAI
Attorney General

By: 
HUGH R. JONES
Deputy Attorney General

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate	)	EQUITY NO. 2048
	)	
of	)	DECLARATION OF HUGH R. JONES
	)	
BERNICE P. BISHOP,	)	
	)	
	)	
Deceased.	)	
	)	

DECLARATION OF HUGH R. JONES

I, HUGH R. JONES declare as follows:

1. I am a Deputy Attorney General and am one of the attorneys representing the interests of the beneficiaries of the Trust Estate as parens patriae. I have personal knowledge of the matters set forth herein.

2. Exhibits A through D are true and correct copies of letters sent by the Attorney General to the Kamehameha Schools and the letters of reply from the Trust.

3. On or about November 22, 2000, Melvyn M. Miyagi, counsel for the Interim Trustees in this matter, contacted me by phone. Miyagi informed me that the Interim Trustees would not be providing the Attorney General with copies of the sealed filings relating to this proceeding, as requested by the Attorney

ATTORNEY GENERAL - TAX ID:5861477 5861477

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General. I requested Miyagi to confirm this in a short letter,
but never received written confirmation.

DATED: Honolulu, Hawaii, December 1, 2000.



HUGH R. JONES

ATTORNEY GENERAL - TAX ID: 5861477

5861477

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BENJAMIN J. CAYetano
GOVERNOR**FILE**EARL I. ANZAI
ATTORNEY GENERALTHOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERALSTATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
426 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1800

October 16, 2000

Via Fax 537-9098Colleen I. Wong, Esq.
Chief Legal Officer
Kamehameha Schools
567 South King Street
Honolulu, Hawaii 96813

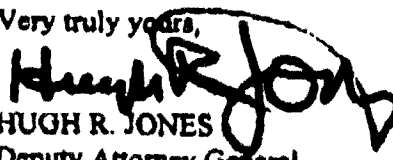
Dear Ms. Wong:

Re: Oswald Stender's Response to Master Richards' Report

I contacted Crystal Rose last Friday to inquire whether the Attorney General would be receiving the exhibits that the Court granted Stender permission to file under seal. Ms. Rose told me that was a matter for the Kamehameha Schools to decide. I then contacted Melvyn Miyagi to request copies of the exhibits that Stender has filed or will be filing under seal. Mr. Miyagi said that he had no objection to the Attorney General receiving these exhibits, but that I needed to take the matter up with you, since he would be taking a vacation in a foreign country.

Please inform Ms. Rose that she may provide copies of the sealed exhibits to Attorney General Anzai, in his capacity as *parens patriae*.

Very truly yours,


HUGH R. JONES
Deputy Attorney GeneralEXHIBIT NO. A

**FILE****KAMEHAMEHA SCHOOLS**

October 18, 2000

Hugh R. Jones
Deputy Attorney General
State of Hawaii
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Re: Oswald Stender's Response to Master Richards' Report

Dear Hugh:

I am in receipt of your letter dated October 16, 2000 regarding the above-referenced matter. I did not have an opportunity to speak with Mel Miyagi regarding former trustee Stender's response to the Richards' Report and was not aware of your conversations with him regarding this matter.

We had previously advised our service providers as well as the former trustees that in filing their response to the Richards' Report, they take into consideration Kamehameha Schools' desire not to waive any privileges with respect to documents that they include in their response to the Richards' Report. We also advised the same parties that we deem it inappropriate to preview their responses prior to filing it with the Court. Without knowing what documents or records are intended to be included in any of their filings, I am, respectfully, unable to instruct any of these parties to provide copies of documents or records that they file under seal with the Court until we have the opportunity to make a determination as to these privilege issues.

Very truly yours,

Colleen I. Wong, Chief Legal Officer
Office of the Chief Legal Officer

CIW:cc

cc: Melvyn Miyagi, Esq.

1010001/12/00

EXHIBIT NO. B

5861477

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ATTORNEY GENERAL - TAX ID: 5861477

FILE

BENJAMIN J. CAVETANO
GOVERNOREARL I. ANZAI
ATTORNEY GENERALTHOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERALSTATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
428 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 588-1600Via Fax 537-9098

November 6, 2000

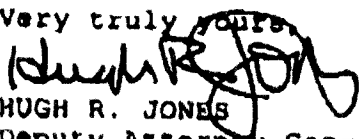
Colleen I. Wong, Esq.
Chief Legal Officer
Kamehameha Schools
567 South King Street
Honolulu, Hawaii 96813

Dear Colleen:

Re: Responses to Master Robert Richards' Report

I renew my request to receive complete copies of all sealed and/or redacted filings in response to the report of Master Robert P. Richards, so that the Attorney General can perform its role as *parens patriae* of the Kamehameha Schools at the hearing on November 17, 2000. This includes any filing by the Interim Trustees. These responses were filed under seal purported to protect the attorney-client privilege now "owned" by the Interim Trustees. We would ask that they waive, on a limited basis, any claim of privilege so that the Attorney General can meaningfully participate at the hearing on Master Richards' report.

Very truly yours,


HUGH R. JONES
Deputy Attorney General

HRJ:hrj

c: Crystal K. Rose, Esq.
David Shulmeister, Esq.
Robert P. Richards, Esq.EXHIBIT NO. C



KAMEHAMEHA SCHOOLS

FILE

November 6, 2000

Hugh R. Jones, Esq.
State of Hawaii
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Re: Responses to Master Robert Richard's Report

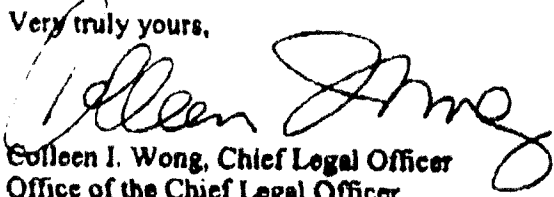
Dear Hugh:

I am in receipt of your letter dated November 6, 2000 regarding the above-referenced matter. This will acknowledge your renewal of your request to receive complete copies of all sealed and redacted filings in response to Master Richards' Report.

I have not yet received copies of the responses but have requested copies of all responses filed from our retained counsel Melvyn Miyagi. After we receive copies of the responses, we will be in a better position to respond to your request. Any waiver of the attorney-client privilege, whether on a limited basis or otherwise, would need to be put before the Interim Board of Trustees.

We will advise you of the outcome of this matter shortly.

Very truly yours,


Colleen I. Wong, Chief Legal Officer
Office of the Chief Legal Officer

CIW:cc

cc: Melvyn M. Miyagi, Esq.

EXHIBIT NO. D

567 South King Street, Honolulu, Hawaii 96813-3096 Telephone (808) 523-0200

Founded and Endowed by the Legacy of Princess Bernice Pauahi Bishop

