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Attorney for Amicus Curiae Na Pua A Ke Ali'i Pauahi, Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate of BERNICE P. BISHOP, Deceased.	EQUITY NO. 2048 PETITION OF NA PUA A KE ALI'I PAUAHI, INC. FOR LEAVE TO FILE AMICUS CURIAE MEMORANDUM; PETITIONER NA PUA A KE ALII PAUAHI, INC. 'S AMICUS CURIAE MEMORANDUM IN SUPPORT OF THE ATTORNEY GENERAL'S REPONSE TO MASTER'S CONSOLIDATED REPORT ON THE 109TH, 110TH, & 111TH ANNUAL ACCOUNTS; DECLARATION OF BEATRICE KANAHELE DAWSON, ESQ; AND CERTIFICATE OF SERVICE

HEARING:

TIME: 9:00 a.m.
DATE: October 2, 1998
JUDGE: THE HONORABLE COLLEEN HIRAI

PETITION OF NA PUA A KE ALI'I PAUAHI, INC. FOR LEAVE TO FILE AMICUS CURIAE MEMORANDUM

The Petitioner Na Pua A Ke Alii Pauahi, Inc. (Na Pua), by its attorney Beatrice Kanahele Dawson, Esq., pursuant to Rule 3 of the Hawaii Probate Rules, hereby petitions the above entitled Court for leave to file an amicus curiae memorandum.

The Petitioner Na Pua has an interest in the above captioned matter because its members are students, parents and alumni of the Kamehameha Schools who have been harmed by the acts, activities, violations, omissions and commissions of the Trustees of the Kamehameha Schools Bishop Estate, ("KSBE"), as articulated in the Master's Consolidated Report filed on August 7, 1998, the Fact Finders' Report filed in December 4, 1997, the Attorney General's Response to the Master's Consolidated Report filed September 9, 1998, and the Attorney General's Response to the Trustees' Response to the Master's Consolidated Report filed on September 29, 1998.

This petition is supported by the declaration of the aforesaid legal counsel, which has the proposed amicus curiae appended to it. Both of these documents are incorporated by reference into this petition. For the convenience of the court, a proposed order accompanies the instant Petition.

DATED: Honolulu, Hawaii, 9/30/98

Beatrice Kanahele Dawson
BEATRICE KANAHELE DAWSON, ESQ.
Attorney for Amicus Curiae
Na Pua A Ke Alii Pauahi, Inc.

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 DECLARATION OF BEATRICE (BEADIE) KANAHELE DAWSON

DECLARATION OF BEATRICE (BEADIE) KANAHELE DAWSON

Beatrice (Beadie) Kanahele Dawson, attorney at law, representing Na Pua a Ke Ali'i Pauahi, Incorporated (hereafter "Na Pua"), its members and associates, makes the following declaration:

Na Pua is a membership organization incorporated on June 3, 1997, in the State of Hawaii as a non-profit entity. Its voting members are the direct beneficiaries of the Trust i.e., the students, parents and alumni of the Kamehameha Schools Bishop Estate (hereafter "KSBE"), Na Pua's associate members are KSBE teachers, staff, administrators, employees, friends, and supporters.

2. Na Pua's members and scores of others similarly situated have been irreparably harmed by the violations, omissions and commissions of the KSBE Trustees. While the Attorney General, as parens patriae representing all beneficiaries for the State, has eloquently described the egregious violations of the Trustees and their shocking results, she cannot attest to the past, current and continuing harm

experienced by the direct beneficiaries of the charitable trust who are the students, parents and alumni of the schools. They are the real parties in interest in this miserable controversy.

3. While the Parens Patriae and the Master have articulated the Trustees blatant obfuscation of the express terms of the will of Princess Bernice Pauahi Bishop, neither of them can speak to this Court of the actual effect of the Trustees' pattern of conduct upon Na Pua members and associate members and upon countless others too fearful to speak out against the powerful individuals who appear to have shamelessly squandered the children's money for their personal comfort.

4. Actually, the Attorney General is the attorney of first and last resort for the public beneficiaries because there appears to be a historic reluctance of the public beneficiaries of a charitable trust to speak out. But where, as here, the direct beneficiaries have set aside fear and lethargy, this Court should listen. *See, e.g.*, Amicus Memorandum, Exhibit I.

5. Given Na Pua's failed efforts sixteen months ago to engage in private discussions with the Trustees to resolve the serious internal situation on the school campus, and given the Pandora's box of financial mismanagement that has since over flowed into the public domain, Na Pua now requests the Court's permission to enlighten the court with its Amicus Curiae.

6. The Master's Report and the Attorney General's Reponses have convinced Na Pua that it must support the request of the Attorney General for the immediate interim removal of the Trustees and the appointment of a Receiver until permanent removal and surcharge can be determined.

7. This case concerns everyone in this community. In a few short days, over a thousand Hawaii citizens joined in Na Pua's support of the Attorney General's request for immediate, interim removal of the Trustees. See Exhibit J.

8. But in particular, this case concerns the members of Na Pua and the estimated 40,000 children, many now grown to adulthood, who have been denied a Kamehameha education solely because the Trustees have chosen, deliberately or in inexcusable ignorance, to accumulate funds instead of furthering and expanding the Trust's benefits to more children.

9. This Court has a moral imperative to act on the urgency of the circumstances collectively presented before it in Na Pua's Amicus Curiae together with exhibits and affidavits.

10. The Amicus Memorandum of Na Pau a Ke Ali'i Pauahi, Inc. is appended hereto.

I declare under penalty of perjury that the foregoing statements are true and correct, to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, this 30 th day of September, 1998.

Beatrice Kanahele Dawson

BEATRICE (BEADIE) KANAHELE DAWSON

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Attorney for Amicus Curiae Na Pua A Ke Ali'i Pauahi, Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate of BERNICE P. BISHOP, Deceased.	EQUITY NO. 2048 PETITIONER NA PUA A KE ALI'I PAUAHI, INC.'S AMICUS CURIAE MEMORANDUM IN SUPPORT OF THE ATTORNEY GENERAL'S RESPONSE TO MASTER'S CONSOLIDATED REPORT ON THE 109th, 110th, & 111th ANNUAL ACCOUNTS OF THE TRUSTEES; EXHIBITS "A" THROUGH "I" : CERTIFICATE OF SERVICE

TIME: 9:00 a.m.
DATE: October 2, 1998
JUDGE: THE HONORABLE COLLEEN HIRAI

PETITIONER NA PUA A KE ALI'I PAUAHI, INC. 'S AMICUS CURIAE MEMORANDUM IN SUPPORT OF THE ATTORNEY GENERAL'S RESPONSE TO MASTER'S CONSOLIDATED REPORT ON THE 109TH, 110TH, & 111TH ANNUAL ACCOUNTS OF THE TRUSTEES.

I. INTEREST OF AMICUS CURIAE

While clear and compelling special interests on the part of members of Na Pua a Ke Ali'i Pauahi, Inc., ("Na Pua") exist to support intervention, Na Pua does not *at this juncture* seek party status. Diverting this court's attention from the difficult issues of interim relief will not materially advance those interests. However, the members of Na Pua by and through their organizational counsel, believe their interests and the interests of the true intended beneficiaries of Princess Bernice P. Bishops' charitable gift, require that the court be advised as to where those interests lie.

This memorandum is filed by students, parents, and alumni of the Kamehameha Schools ("Kamehameha"), representing others similarly situated, who have organized themselves as Na Pua a non-profit entity incorporated in the State of Hawaii and approved by the United States Internal Revenue Service as a 501 (c) (3) organization.

Na Pua has two categories of members. Na Pua's voting members are Kamehameha students, parents and alumni. Na Pua's associate members are non-voting members made up of faculty, administrators, staff, employees, & friends of the Kamehameha Schools Bishop Estate ("KSBE").

Members and associate members of Na Pua have banned together to address problems at the school, to require accountability from the Trustees and to support the will of Princess Bernice Pauahi Bishop. While all members of the community are generally considered to be beneficiaries of the charitable trust, Na Pua's members have a special relationship with K.S.B.E. which is not common to other beneficiaries.

The student members of Na Pua receive direct benefits from the Trust in the form of their education.

All parent members of Na Pua receive direct benefits from the Trust in the form of trust subsidies for education not covered by tuition fees. See Master's Consolidated Report. Schedule of Educational Program Revenue and Expense, Financial Statements at 73. In addition, many Na Pua parent members receive financial assistance and scholarship aid for their children.

The alumni members of Na Pua receive certain direct benefits from the Trust which are provided by the staff of the Kamehameha Parent and Alumni Advancement Center. The Alumni members also receive use privileges for the use of the Bernice Pauahi Bishop Memorial Chapel for weddings, baptisms and funerals of alumni and all members of their immediate families.

In addition, the education benefits received by K.S.B.E. alumni continue in the form of graduation certification which is necessarily and usually utilized by the KSBE alumni in their pursuit of higher education, jobs, careers, and professions. Moreover, the assurance that such certification from an accredited school has required alumni to take a direct interest in the accreditation process of the school. Of current concern to all Na Pua members is that the Western Association of Schools and Colleges (WASC) has limited the school's accreditation to a 3-year period instead of the full 6-year period due to serious governance deficiencies articulated in the WASC Report dated March 1998. Exhibit "A"- Affidavit No. 1 of Antoinette Lee.

II. STATEMENT OF ISSUE

A. Whether the court has the power to order the immediate interim removal of the current Bishop Estate Trustees when the interests of the Trust and its beneficiaries so require.

B. Whether the Court has the duty to order interim removal when required to protect Trust assets and the interest of its beneficiaries.

C. Whether the record warrants immediate interim relief.

D. Whether the conduct of the five trustees of the K.S.B.E. has inflicted harm on the direct beneficiaries of the Trust.

E. Whether the court's failure to issue an order for the immediate interim removal of all Trustees as requested by the Attorney General will cause irreparable harm to the direct beneficiaries of the Trust.

F Whether the Arthur Anderson Report must be release.

III. STATEMENT OF THE CASE

Na Pua adopts the statement of the case presented in the Attorney General's Response to the Master's Consolidated Report filed on September 9, 1998.

IV. LEGAL AND EQUITABLE ARGUMENTS FOR IMMEDIATE INTERIM REMOVAL

A. The Court has the Power to Order Interim Removal when the Interests of the Trust and its Beneficiaries so Require.

It is a hallmark of American jurisprudence that a court proceeding in equity must have the power to do equity. For this reason, it is beyond serious question that this court has the discretionary power to permanently remove one or more trustees for breaches of fiduciary duty or to protect the assets of a the trust and the interests of its beneficiaries. *Estate of George H. Holt*, 33 Haw. 352, 356-57 (1935); *Schildberg v. Schildberg*, 461 N.W.2d 186, 191 (1990); *Robinson v. Kirbie*, 793 P.2d 315, 318 (1990). *See*, Restatement (Second) of Trusts, Section 387; W. Fratcher, Scott on Trust (4^{th} ed. 1987)(hereinafter cited as "Scott"), §387 at pp. 341-42.

An inherent corollary to the power to permanently remove a trustee is the power to temporarily remove a trustee in favor of a trustee *ad litem*. *Getty v. Getty*, 252 Cal.Rptr. 342, 347 (1988)(Trustee ad litem appointed to conduct litigation). While clearest in the case of litigation creating conflicts between a trustee's personal interests and his or her trust interest, interim removal and the appointment of a trustee *ad litem* is not limited solely to situations involving conflict producing litigation. "During the pendency of proceedings for . . removal [of a trustee] a receiver is sometimes appointed until it is determined whether the trustee should be removed or not. Bogert, The Law of Trusts and Trustees (2^{nd} ed., rev. 1991)(hereinafter cited as "Bogert"), §199.4.

B. <u>The Court has the Duty to Order Interim Removal when Required to Protect Trust Assets and the Interests of its Beneficiaries.</u>

The Trustees will strenuously argue that interim removal is akin to punishment before trial, the antithesis of our justice system. Such an argument confuses interim removal with permanent removal.

Interim removal, anchored firmly in the sound equitable discretion of the court, is not to punish the Trustees but to protect the Trust and the interests of its beneficiaries. "The purpose of removing a trustee is not to inflict a penalty for past action, but to preserve the trust assets(citation omitted)." *Getty, supra* at 345. Because of this, the court in *Getty* rejected proof of actual past wrongdoing on the part of a trustee as necessary to support interim removal. "The question in each case is whether the circumstances are such that the continuance of the trustee in office would be detrimental to the trust." *Id.* citing Scott, §107 at p. 104. And where a continuation of the Trustees is found to create a substantial and real likelihood of detriment to the proper administration of trust assets and programs, the court has a clear duty to order the interim removal of the current Bishop Estate Trustees.

Na Pua acknowledges that it would not serve its *amicus* status if it did not caution the court that it should not lightly exercise its extraordinary equitable powers. *Schildberg, supra* at 191. This is particularly the case where interim relief would result in a change in the status quo and would grant, albeit temporarily, the ultimate relief sought by a party before it. But such caution cannot be used as a device to shrink from the duty to order such relief when warranted.

Over sixty years ago, the Hawaii Supreme Court turned back a challenge to the Circuit Court's removal of a trustee in the absence of a petition filed by an interested person. *Holt, supra.* While no such disability exists here, the holding of the Court in *Holt* rings remarkably true in the present proceeding.

> Let us assume, for instance, that a trustee whose account of his stewardship is submitted to a court of equity for approval is found by a master to have so misused the assets of the Trust as to subject him to a surcharge and has so completely abused the confidence reposed in him that the estate is no longer safe in his keeping. It can scarcely be doubted . . . that if under such circumstances it should be found upon a hearing of the exceptions to the master's report that the charges against the trustee are true the court would have the inherent power not only to impose the surcharge but also to remove the trustee. To hold otherwise would be to place an unwarranted and dangerous limitation upon the great powers which courts of equity have over trust estates. *If jurisdiction to deal with this subject depended on affirmative action by an interested party a faithless trustee might do irreparable harm before such party became aware of his derelictions* (emphasis added).

Holt, 33 Haw. at 355-56.

[1] The court has been informed of certain well-qualified Receiver candidates who have been suggested by the Attorney General. Na Pua is also prepared to offer for the court's consideration the names of top level corporate executives for the Receiver post, including two executives from the Ford Foundation who also have led nationally known educational institutions. Thus there appear to be an excellent selection of experienced corporate, trust or foundation executives who are willing and able to take on a court-appointed receivership for K.S.B.E. In addition to qualification and experience, it behooves the court to be assured that the individual selected for this important transition post has demonstrated the character and integrity necessary to bring to the receivership task undivided loyalty to the beneficiaries. In view of the unraveling Trustee problems in K.S.B.E, the latter qualifications are essential.

C. The Record Warrants Immediate Interim Relief

The need for interim relief is compelling. The path the court must take to protect the Trust and its Beneficiaries during the pendency of the proceeding seeking permanent removal of some or all of the trustees is clear.

Perhaps the clearest basis for interim removal stems from the multiplicity of lawsuits and investigations current on-going which place each Trustee's personal interests at odds with their Trust interests.

> "[O]ne interested in an estate has the right to have its representative wholly free from conflicting personal interests .. ." When the executor of an estate places itself in a position where its interests conflict with those of the estate, the executor's ability to represent fairly the interests of the estate is irreparably tainted. "When [such] a situation appears . . . it is the *positive duty of the court to remove the executor* . . .(internal citations omitted, emphasis added)"

Ramsdell v. Union Trust Co, 519 A.2d 1185, 1190 (1987). "Where . . . it is apparent to the court that . . .trustee is not acting, or is not apt to act, in the best interest of his cestui que trust, or that such fiduciary is representing conflicting interests, it is incumbent upon the judge to appoint a separate and independent guardian or trustee *ad litem* for that particular litigation." *In re Kenna's Estate*, 348 Pa. 214, 34 A.2d 617, 619 (1943). *See, Shriners Hospital for Crippled Children v. Gardiner*, 733P.2d 1100 1114 (1987)(trustee must refrain from placing himself in position where his personal interest does or *may* conflict with interest of beneficiaries); *Selig v. Morrison*, 321 S.W. 2d 769, 772 (1959)(trustee must remain blind to selfish interest or the personal interests of third parties). But the existing record warrants interim removal beyond the mere confines of conflict producing litigation and investigations.

The mismanagement of the Kamehameha Schools and the shocking asset investment practices of the Trustees warrant interim removal from school and trust asset management.[2] Both the Fact Finder Report and the recent accreditation document the harm that has already been inflicted upon the Kamehameha Schools due to the Trustees discharge of their duties to the Schools. The Master's Report chronicles the wide-ranging and wholly unnecessary financial injuries suffered by the Trust due to the Trustees approach to asset management.

The Trustees have justified their fees on the ground that the proper administration of the Trust requires their full and undivided individual and collective attention. The Trustees should be held to their own argument. Common sense makes it clear that the multiplicity of investigations and litigation focusing on allegations of misconduct and neglect by the Trustees have and will by necessarily divert their attention to the protection of their own interests. Thus, their inability to commit their undivided loyalty and attention to the Trust and the Schools warrants their interim removal during the pendency of the proceeding seeking their permanent removal.

Finally, denial of interim relief in the face of the increasing specter of massive surcharges would be unconscionable where there is a reasonable possibility that such surcharges would exceed the Trustees' combined ability to pay. Na Pua believes that this possibility has been reached and exceeded. The purpose of interim removal is to protect Trust assets from further unnecessary and improper dissipation and conversion during the pendency of proceedings seeking permanent removal for unnecessary and improper dissipation and conversation of Trust assets. The purpose of protecting Trust assets is to preserve them for the benefit of the

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[2] Four of the five Trustees have advance what can only be described as the "Chicken Little" argument against their interim removal. As these Trustees would have it, their removal would render the Trust "rudderless" and subject to raids and mis-management by third parties uninterested in and unfamiliar with the larger interests and goals of the Trust. The Fact Finder Report, the Master's Report and candor compels the conclusion that the Trust and its Beneficiaries may well have been far better served if the Trust had been earlier cast adrift on the sea of prudent management.

Beneficiaries. It would be painfully ironic if it is the future Beneficiaries who will be required to pay the price of the Trustees' continued interim incumbency.

Na Pua believes that each of the areas of harm discussed above individually warrant interim removal. However, even should the court find that none individually justify interim removal, the confluence of all five should be found sufficient to tilt the balance of equities and harms in favor of removal.

D. <u>The Conduct of the Five Trustees of the K.S.B.E. has Inflicted Harm on the Direct Beneficiaries of the Trust</u>.

The Trustee's activities on the Kamehameha School campus for the last three years have clearly demonstrated that the "serious internal situation" on campus has exacted a painful toll on the students on the Kamehameha Schools. While the Trustees' damaging activities and arrogant behavior clearly had a much earlier history, it was not until the acute effects of their mismanagement at both the schools and financial areas began to manifest itself in the children's daily lives, that the members of Na Pua realized the gravity of the situation.

Conversations with the students at all levels invariably gave sad glimmerings of the brewing storm. Try as they might to ignore the situation, students have displayed an increased loss of pride, increased embarrassment and increased loss of self-esteem. Annoyance and frustration have given way to frustration and anger. Exhibit B: Affidavit of Shelby Decosta-Galdeira.

On campus teachers have long felt the crushing stress of hitlerian management and total disregard for their professional expertise. See Exhibit C: Na Kumu Letter and attachments, Affidavit of Na Kumu Designated Representatives. Exhibit D: KSFA Letter and Affidavit of President Larry McElheny. Exhibit G: Affidavit of Dean Choy.

Because of the extraordinary efforts of the teachers to shield the students from the growing controversy, parents were slower to realize the creeping malaise which was affecting their children. However in the face of growing revelations of shocking activities of the Trustees, parents have dedicated themselves to aid in the resolution of the Trustee controversy with a never before displayed vigor. Exhibit F: Statement of ATP Board and Affidavit of President Gary Nihipali.

Perhaps because of their early training at the school and their maturity, the alumni of the school have been able to make the agonizing reversal from their traditional support of the Trustees' to serious inquiries into Trustee activities. What they learned and experienced was devastating. Trustee-alum communications have totally evaporated and many KSBE services normally available to the alumni have been seriously curtailed by authoritarian KSBE staff. Exhibit E: Affidavit of Antoinette Lee.

For years teachers at the Kamehameha Schools have shunned even the slightest entertainment of unionization. However, with growing oppression of their activities resulting from heavy-handed teaching contracts and employee policies, together with the refusal of Trustees and administration to grant them either audience or relief, the teachers have agonizingly moved into the world of unions for protection. Exhibit G: Affidavit of Dean Choy.

E. <u>The Court's Failure to Issue an Order for the Immediate Interim Removal of all Trustees as Requested by the Attorney General will Cause Irreparable Harm to the Direct Beneficiaries of the Trust.</u>

Perhaps the most devastating damage to students, parents, administrators, faculty and alumni of the Kamehameha Schools has been the realization that the ill effects caused by the acts and activities of the current Trustees will most certainly deepen and worsen as long as these Trustees retain their self-serving power and grip on management. Exhibits B: Affidavit of Shelby Decosta-Galdeira. Exhibit C & C-1: Na Kumu Letter and attachments and Affidavit of Na Kumu Designated Representatives. Exhibit E: Affidavit No. 2 of Antoinette Lee. Exhibit F:

Statement ATP Board and Affidavit of President Gary Nihipali. Exhibit G: Affidavit of Dean Choy.

In a demonstration of grave concern for the children, the groups that make up the Kamehameha Ohana have come together in an unprecedented six hour meeting to develop a unified stand to reflect the urgency of the controversy and the critical need for immediate relief and an expeditious resolution. Exhibit H: Joint Statement and Affidavit No. 3 of Antoinette Lee. Exhibit I: Petition and Affidavit of Makapagal and Farias.

F. <u>The Arthur Anderson Report Must be Released</u>

At the request and under the direction of the Master with leave of this court, Arthur Anderson LLC performed a management and fiscal audit (hereinafter referred to as "the Report") of the Trust and its administration for the periods covered by the 109th-111th Annual Accounts filed by the Trustees. The Report was intended to provide and is in fact providing a basis for this court's acceptance or rejection of the Trustees Annual Accounts. In large measure, the Report appears to advance a highly critical assessment of the Trustees' stewardship of the Trust. Only an executive summary of the Report was appended to the Master's Report released to the public.

In furtherance of their opposition to equitable relief for malfeasance and misfeasance in office, the Trustees understandably urge the court to shield them from public scrutiny of the unflattering portrait painted by the Report. Petition for Protective Order Pursuant to Restated Guidelines (September 15, 1998)(hereinafter referred to as "the Petition"). The Attorney General, in her capacity as *parens patriae*, opposes the Petition. Na Pua joins in the Attorney General's Opposition.

As the movant, the Trustees bear the burden to establish a basis for sealing the

Report. The Trustees' petition falls embarrassingly short of the mark and can be summarily denied on that basis alone. But this court need not rely solely on the Trustees' failure to make even a passing shot at satisfying their burden. Properly understood and applied, the interests of *all* those interested in this proceeding, *including the interests of the Trustees themselves*, argue in favor of disclosure.

First, the interests of the Beneficiaries require disclosure. It is only through public disclosure of information such as that contained in the Report that the Beneficiaries can take reasoned, intelligent and focused action to protect their own interests. It bears repeating that it is the withholding of information that creates the situation where "a faithless trustee might do irreparable harm before such party became aware of his derelictions. *Holt, supra* at 355-56.

Second, the Trustees' own interests require disclosure. Perhaps overcome by the perceived merits of their own arguments in favor of secrecy, the Trustees fail to appreciate that public disclosure of the Anderson Report is critical to ensure public acceptance of their claimed adherence to their individual and collective fiduciary duties.[3] As noted above, the Report has become an important, perhaps critical, basis upon which the court will exercise is discretion. In their recently filed reply to the Attorney General Response to the Master's Report, the Trustees loudly proclaim that no factual and legal base exist to justify the extraordinary relief sought by the Attorney General. If this court concludes that the Trustees are correct, it will necessarily rely at least in part on facts contained in the very Report the Trustees demand be withheld from the

[3] Petitioners attack the Attorney General for failing her "duty to the Estate to promote and preserve the Estate's interests, not those of the media." Petition at p. 5. The Trustees would further have this court believe that the sole purpose of public disclosure of the full Arthur Anderson Report is "to provide more grist for the media." Petition at 6. These assertions reveal much of the historical seeds of the present controversy. Petitioners' cite no case which links the Attorney General's *parens patriae* authority with a "duty to protect" a charitable trust. They cite none because none exist. The Attorney General's "duty" is to protect the Trust for the beneficiaries, not to protect the Trust managers.

public. Let us be blunt. It will be difficult for the Beneficiaries and the public to accept that the proof is in the pudding when the pudding is not on the table.

Third, the interests of the proper administration of justice require disclosure of the Report. The public's confidence in the integrity of judicial decision-making flows from the openness of our courts, their decisions and the records upon which those decisions are made. Closing a proceeding or sealing a portion of the record is the narrow exception, not, as the Trustees would apparently have it, the general rule. Except where clearly warranted and justified by law and fact, secret judicial decision-making has no place in American jurisprudence. This court should not make such a place in this proceeding by sealing the Report.

The Trustees have failed to satisfy their burden to justify the issuance of a protective order with respect to the Report. And even if the Trustees had made a *prima facie* case for withholding the Report, the interests of the Beneficiaries, the Trustees and justice itself all argue in favor of public disclosure. The court should deny the Trustees petition.

V. CONCLUSION

For too long, the interests of the children of Hawaii, the very people Princess Bernice P. Bishop intended to benefit from her charitable gift, have been the stuff of speeches and little else. It is time their interests were given meaning, protection and primacy. The Trustees have a right to prove their critics wrong, but <u>not at the expense of the Trust and its current and future beneficiaries</u>. The Trustees have a right to focus their energies and attention on the preservation of their incumbency, but <u>not by neglecting their duty of full and undivided loyalty to the beneficiaries.</u>

This court has the power to remove each Trustee on an interim basis during the pendency of litigation on the Trustees right to retain their office. This court has the duty to exercise that power when necessary to protect the Trust and its beneficiaries from further injury during that proceeding. As established above and through the accompanying exhibits, the record compels the conclusion that the exercise of that power and the discharge of that duty is in the best interests of the Trust and its beneficiaries.

In addition, the Trustees' wholly unsupported plea for secrecy falls embarrassingly short of satisfying their burden to justify sealing the Report from public scrutiny. Rather, the interests of the beneficiaries, the general public, the Trustees themselves and the administration of justice require the public release of the Report, a document prepared in aid of this court's own judicial decision-making process.

The court should grant the Attorney General's request for interim relief in its entirety and should deny the Trustees' Motion for a Protective Order prohibiting the public release of the Report.

The undersigned person understands that this petition is deemed to include on oath, affirmation or statement to the effect that her representations are true as far as she knows or is informed, and that penalties for perjury may follow deliberate falsification.

DATED: Honolulu, Hawaii, 9/30/98

Beatrice Kanahele Dawson
BEATRICE (BEADIE) KANAHELE DAWSON, ESQ.
Attorney for Na Pua a Ke Ali'i Pauahi, Inc.

Hawaii Probate Court
Rule 5 (b) Certification
BEATRICE KANAHELE DAWSON
Attorney for Petitioner

Beatrice Kanahele Dawson

EXHIBITS

EXHIBIT A.........................AFFIDAVIT NO.   OF ANTOINETTE LEE

EXHIBIT B.........................AFFIDAVIT OF SHELBY DECOSTA-GALDEIRA

EXHIBIT C.........................NA KUMU LETTER & ATTACHMENTS

EXHIBIT C-1.......................AFFID. OF NA KUMU DESIGNATED REPRESENTATIVE

EXHIBIT D.........................KSFA LETTER W/ AFFID. PRESIDENT LARRY MCELHENY

EXHIBIT E..........................AFFID. NO. 2 OF ANTOINETTE LEE

EXHIBIT F...........................STATEMENT ATP BOARD. / AFFID. OF PRES. GARY NIHIPALI

EXHIBIT G................. ......AFFIDAVIT OF DEAN CHOY

EXHIBIT H............................JOINT STATEMENT PLUS AFFID. NO. 3 OF ANTOINETTE LEE

EXHIBT I..............................RESOL. OF PRES. OF BOARD OF PRESIDENTS KSAA, MANSFIELD

EXHIBIT J.   ....PETITION & AFFID. OF MAKAPAGAL & FARIAS