

Of Counsel:  
CRONIN, FRIED, SEKIYA,  
KEKINA & FAIRBANKS

DAVID L. FAIRBANKS 735-0  
600 Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1433

Master

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2006 MAY -5 PM 2:56

F. PAGAY  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII`I

|                             |   |                              |
|-----------------------------|---|------------------------------|
| In the Matter of the Estate | ) | EQUITY NO. 2048              |
|                             | ) |                              |
| of                          | ) | MASTER DAVID L. FAIRBANKS'   |
|                             | ) | FIRST SUPPLEMENTAL REPORT ON |
| BERNICE P. BISHOP,          | ) | THE PETITION FOR APPOINTMENT |
|                             | ) | OF SUCCESSOR TRUSTEE FILED   |
| Deceased.                   | ) | MARCH 13, 2006; EXHIBITS     |
|                             | ) | "C" - "D"; CERTIFICATE OF    |
|                             | ) | SERVICE                      |
|                             | ) |                              |
|                             | ) | <u>Hearing:</u>              |
|                             | ) | Date: May 12, 2006           |
|                             | ) | Time: 10:00 a.m.             |
|                             | ) | Judge: Colleen K. Hirai      |
|                             | ) |                              |
|                             | ) |                              |

MASTER DAVID L. FAIRBANKS' FIRST SUPPLEMENTAL  
REPORT ON THE PETITION FOR APPOINTMENT  
OF SUCCESSOR TRUSTEE FILED MARCH 13, 2006

I

INTRODUCTION

Your Master submits this First Supplemental Report in  
the above-referenced matter. This Supplemental Report is  
necessitated by the Master's receipt of a revised letter via

e-mail from the `Ohana Council ("Council") on May 3, 2006.<sup>1</sup> A copy is attached to this First Supplemental Report as Exhibit "C".

The revised letter makes a number of changes to the April 13, 2006 letter. However, the central theme and the proposal in the Council's original letter remain the same: that the exclusive source for the membership of the Screening Committee in this proceeding (and in future Trustee selection proceedings) be the list of names submitted by the Council. See, Exhibit "C" at 2. For the reasons set forth in this Master's Report filed on May 2, 2006, and amplified below, your Master cannot agree with the Council's proposal.

## II

### DISCUSSION

As stated in the Council's May 3, 2006 letter, the revisions are primarily stylistic and "form." See, e.g., Id. at 1. It is your Master's perception that they tend to somewhat soften, reorganize and provide a somewhat different emphasis to some aspects of the April 13, 2006 letter. For example, the May 3, 2006 letter modifies the characterization of the Council and its member groups " . . . as chief supporter and watchdog over" the Kamehameha Schools for nearly ten years as contained

---

<sup>1</sup> The original letter dated April 13, 2006 is attached to your Master's Report as Exhibit "B".

in the original letter, to the characterization that the Council and its member groups have served "as supporters of" the Kamehameha Schools for the same period of time. Compare Exhibit B at 3 with Exhibit "C" at 2.<sup>2</sup>

There is one revision to the Council's letter which appears to be somewhat significant: a change in the number and identities of the "member groups" represented by the Council or comprising "constituent groups" of the alliance. The April 13, 2006 letter listed six (6) members or "constituent groups." Exhibit "B" at 2. The revised letter lists five (5). Exhibit "C" at 1. The revised letter eliminates two (2) constituent groups and adds one (1) such group. Eliminated are: Na Kumu (Kamehameha Schools' Teachers) and Kamehameha Schools Faculty Association (KSFA). Added to the "alliance" is the I Mua Group. Compare Exhibit "C" at 1 with Exhibit "B" at 2.

The apparent fluid nature of the "constituent groups" underscores your Master's concerns about the breadth of the Council's representation of the Hawaiian community and the community at large. It is clear that the Council does not (and does not claim to) represent the entire Hawaiian community or the community at large, the participation of which is an important aspect of the Selection Process adopted by the Probate

---

<sup>2</sup> For a more complete list of the revisions, see Exhibit "D" attached to this Supplemental Report.

Court. This apparent fluid nature of the alliance also impresses your Master about the potential danger and the inadvisability of permitting a single group or an alliance of groups to be the sole source for the selection of Trustees of the Kamehameha Schools, when that was not the mechanism provided for in the Will of Bernice Pauahi Bishop ("the Will").

As this Court is well aware, the Selection Process adopted by the Probate Court by the January 6, 2000 Order is an alternative Selection Process necessitated by the inoperability of the mechanism contained in the Will. That alternative Selection Process has been determined by the Probate Court to be "consistent with the Will and in accordance with the statutory and inherent power of the Court." See January 6, 2000 Order at 4.

As your Master indicated in his Report, the alternative Selection Process adopted by this Court best satisfies the three criteria listed by then Master Benjamin M. Matsubara in his Master's Report (November 22, 1999): (1) be "consistent with Pauahi's intent and wishes;" (2) "encompass the confidence of the Hawaiian community and the community at large;" and (3) be "devoid of elements and features that would

invite legal challenges that could result in changes to Pauahi's vision and legacy."<sup>3</sup> See Master's Report (May 3, 2006) at 14-17.

Your Master does not believe that giving the authority for the selection of Trustees of the Trust Estate to a single group or alliance of constituent groups is consistent with the Will.<sup>4</sup> Nor does your Master believe that it satisfies, or even begins to satisfy the three (3) criteria for an alternative Selection Process listed by Master Matsubara. Since the Council does not, and cannot, represent the entire Hawaiian community and the community at large, the Council's proposal cannot "encompass the confidence of the Hawaiian community and the community at large." For the same reasons, the proposal is not "devoid of elements and features that would invite legal challenges that could result in changes to Pauahi's vision and legacy." Indeed, the reverse may be true.

However, as stated in your Master's Report (May 2, 2006, the names of potential members of the Screening Committee may well be of assistance to this Court in the Selection Process in this proceeding provided that, if selected, such members

---

<sup>3</sup> See Master's Report (November 22, 1999) at 19.

<sup>4</sup> Requiring that all of the members of the Screening Committee come from a list provided by a single group or alliance is tantamount to selecting the Trustees, since this Court must appoint as Trustee someone on the list of finalists submitted by the Screening Committee, except under limited, unusual circumstances.

serve as individuals and not members of the Council or any of its constituent groups. Master's Report (May 2, 2006) at 23.

III

CONCLUSION

There is nothing in the revised letter from the Council that persuades your Master to change the recommendations contained in the Master's Report (May 2, 2006).

However, your Master will forward to this Court and the parties to this proceeding the names timely submitted to your Master by the Council.

DATED: Honolulu, Hawai'i, May 5, 2006.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David L. Fairbanks", written over a horizontal line.

DAVID L. FAIRBANKS  
Master

EXHIBIT "C"

May 3, 2006

David L. Fairbanks  
600 Davies Pacific Center  
841 Bishop Street  
Honolulu, HI 96813

Aloha mai e David

Please permit us to revise our initial communication addressed to you on April 13, 2006, to better shape our presentation in a form more suitable for inclusion in your report to the Probate Court.

We are grateful that you took the time to meet with us on April 6, 2006. As requested, here is an introduction to our organization and our mission. The beginnings of the 'Ohana Council were rooted in the profound disappointment with the governance structure of the Kamehameha Schools in 1997 and the institutional angst surrounding the Bishop Estate during that period; this angst certainly also infected the Hawaiian community at-large, including students, alumni, faculty, staff, and other stakeholders. Accountability regarding estate governance was essentially non-existent, with no available avenue for stakeholder input into the governance process. The circumstances, present at that time, provided the foundation for an ad hoc alliance of related groups to join efforts and voices to influence positive change.

This alliance has since evolved into the 'Ohana Council. Our constituent groups include the following:

- Kamehameha Schools Alumni Association - Oahu Region .
- Kamehameha Schools Alumni Association Board of Presidents .
- Na Pua a Ke Ali'i Pauahi (alumni & friends of Kamehameha Schools) .
- The I Mua Group
- Kamehameha Schools Association of Teachers and Parents (ATP)

This Council represents a broad spectrum of the immediate Kamehameha family, together with broad reach into the larger community. Although each constituent group has specific focus, purpose, and functions as singular entities, together our alliance addresses those issues of common purpose. These purposes include:

- To honor Pauahi's legacy and to perpetuate the Kamehameha Schools as an educational institution for Hawaiian keiki.
- To provide a two-way conduit for information-exchange between the school administration and the Kamehameha stakeholder groups, such to facilitate and promote accurate and meaningful dialogue.
- To provide differing views on current Kamehameha issues that might otherwise not be given voice, and by so doing, inviting more careful consideration of actions and alternatives that might not otherwise be considered.
- To share with the C.E.O. and trustees our unique perspective on issues of policy and governance, as this perspective represents our collective Kamehameha history and experience. This unique collective memory, collective history, and collective experience is the significant asset of the

EXHIBIT "C"

'Ohana Council, as it provides the bridge connecting the past and present, from which perspectives we may be guided toward design of the Kamehameha future.

For nearly 10 years, the 'Ohana Council and member groups have served as supporters of the Kamehameha Schools, and have collaborated in positive fashion regarding governance and other issues of shared concern. Today we enjoy the support and respect of the trustees, C.E.O., and Hawaiian community.

Given our history, permit us to turn to the matter-at-hand--trustee selection. First of all, we recognize that the justices of the Supreme Court are free to reclaim their prerogative to appoint Kamehameha Schools' trustees. For various reasons, we see this action as very unlikely - certainly in the short-term, and most probably also in the long-term. Given this vacuum, the Probate Court devised a trustee selection methodology in January 2000, to select and seat the existing Board of Trustees. Certainly, this existing process is a great improvement over the very flawed system that it replaced; however, we see this improvement as something less than a finished product.

We note that Step-One of the current trustee selection process provides that the Probate Court appoint a Screening Committee of seven persons, *who are knowledgeable about Kamehameha Schools and Pauahi's legacy and vision and who are experienced in the management and operation of a large institution, educational or otherwise.*

We submit that the membership of the 'Ohana Council comprises the pool of individuals that satisfies these requirements. What other group is more knowledgeable about Kamehameha Schools and Pauahi's vision than those who have lived and participated in the Kamehameha experience? The 'Ohana Council represents a continuum of experience and dedication to Pauahi's vision that the Probate Court will not find elsewhere in the wider community. Within the criteria suggested by the Master's Report on the Petition for the Establishment of a Procedure for Selection of Trustees filed August 5, 1999, and dated November 22, 1999, as regards the composition of the Selection Committee described in Section IV (A), the 'Ohana Council proposes to submit a list of at least twenty qualified individuals as the source for the Court's evaluation and appointment to this and future Selection Committee(s). This list will be forwarded to you shortly under separate cover.

We hasten to add our recognition that trustee selection is a very profound responsibility, and it may very well be that the most qualified and suitable candidates will be found outside our immediate Hawaiian community. We do not look to necessarily or exclusively seek Hawaiian trustees. We simply want a significant voice in their selection, which would include an evaluation of their particular "fit" and their record of dedication and service to the Hawaiian community and the Kamehameha Schools.

Therefore, with recommendation from the Kamehameha Schools' Board of Trustees to contact you, along with support from the Attorney General of the State of Hawaii for our premise, we respectfully request that in your report to the Court you introduce the 'Ohana Council and suggest consideration and implementation of our proposal above.

Please feel free to contact us with any questions, comments, or suggestions. Mahalo again, David, for your kokua.

I mua Kamehameha,

The 'Ohana Council

EXHIBIT "D"

EXHIBIT "D"

List Of Revisions to `Ohana Council's Letter  
To The Master Dated April 13, 2006 Made In The  
`Ohana Council's Letter To The Master Dated May 3, 2006\*

1. New introductory paragraph stating that the purpose of the revisions is " . . . to better shape our presentation in a form more suitable for inclusion in your report to the Probate Court."
2. Revision to the first sentence of the introductory paragraph (now the second paragraph) to reflect the date of the meeting between members of the Council and your Master.
3. Removal of italics from "ad hoc" in the introductory Paragraph (now the second paragraph).
4. Deletion of Na Kumu (Kamehameha Schools' teachers) and Kamehameha Schools Faculty Association (KSFA) from the list of constituent groups.
5. Addition of The I Mua Group to the list of constituent groups.
6. Removal of parentheses around the second sentence in the fourth bullet point under the list of purposes of the Council.
7. Deletion of the words "chief supporter and watchdog over" from the first paragraph on page 2 of the April 13, 2006 letter; and substitution of the words "supporters of."
8. Deletion of the last sentence in the second paragraph on Page 2.
9. Addition of a new, separate third paragraph on page 2. The new paragraph is the last sentence of the second paragraph on page 2 revised as follows:

- a. Deletion of the word "Further;"
  - b. Capitalization of the words "step one" and hyphenation; and
  - c. Italicization of the last portion of the sentence commencing with the word "who."
- 10. Addition of a last sentence to the third paragraph on page 2 (now the fourth paragraph on page 2): "This list will be forwarded to you shortly under separate cover."
  - 11. Insertion of a comma after the word "you" in the fifth paragraph on page 2 (now the sixth paragraph on page 2).

\*This list is not necessarily complete.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

|                             |   |                        |
|-----------------------------|---|------------------------|
| In the Matter of the Estate | ) | EQUITY NO. 2048        |
|                             | ) |                        |
| of                          | ) | CERTIFICATE OF SERVICE |
|                             | ) |                        |
| BERNICE P. BISHOP,          | ) |                        |
|                             | ) |                        |
| Deceased.                   | ) |                        |
| _____                       | ) |                        |

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document  
was duly served by mail on the following on May 5, 2006:

ROBERT BRUCE GRAHAM, JR., ESQ.  
Ashford & Wriston  
Alii Place, Suite 1400  
1099 Alakea Street  
Honolulu, Hawai`i 96813  
Attorney for Petitioners  
James Douglas Keauhou Ing,  
Robert Kalani Uichi Kihune,  
Constance Hee Lau,  
Diane Joyce Plotts and  
Charles Nainoa Thompson  
Trustees Under The Will And Of The  
Estate of Bernice Pauahi Bishop, Deceased

MARK J. BENNETT, ESQ.  
Attorney General  
HUGH R. JONES, ESQ.  
Deputy Attorney General  
Department of the Attorney General  
State of Hawai`i  
425 Queen Street  
Honolulu, Hawai`i 96813  
*Parens Patriae*

The Honorable Ronald T. Y. Moon  
Chief Justice  
Supreme Court of Hawaii  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable Steven H. Levinson  
Associate Justice  
Supreme Court of Hawaii  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable Paula A. Nakayama  
Associate Justice  
Supreme Court of Hawaii  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable Simeon R. Acoba  
Associate Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

The Honorable James E. Duffy, Jr.  
Associate Justice  
Supreme Court of Hawai'i  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, May 5, 2006.

  
DAVID L. FAIRBANKS  
Master