

# News Release

From: Ronald T. Y. Moon, Robert G. Klein, Steven H. Levinson,  
Paula A. Nakayama, and Mario R. Ramil, Justices of the  
Supreme Court of the State of Hawai'i, In Their  
Individual Capacities

August 24, 1994

We, the Justices of the Supreme Court of Hawai'i, in our individual capacities, announce the reopening of the application process to fill the existing vacancy on the Bishop Estate Board of Trustees. Having now had the opportunity to review and the benefit of the Commission on Judicial Conduct's Formal Advisory Opinion No. 14-93, we feel it adviseable to reopen the application process.

In January 1994, a panel of distinguished citizens was convened to screen applications for the position of Bishop Estate trustee. At that time, our only instruction to the panel members was to select finalists that the panel deemed to be "eminently qualified." The panel has performed its function and has submitted the names of the finalists to us for consideration. We extend our sincere appreciation to these distinguished citizens for the many hours of dedicated service rendered in accomplishing their difficult task.

Subsequent to receiving the list of finalists from the panel of distinguished citizens, we indicated in our March 17, 1994 news release that we would be taking "no further action regarding the [filling of the] position until the Commission on Judicial Conduct . . . rendered a decision in response to a complaint filed by Common Cause Hawai'i challenging the propriety of the discharge by the Justices, as individuals, of the responsibilities assigned to them under the will of the late Princess Bernice Pauahi Bishop."

We have studied and discussed at length the contents of the advisory opinion as well as the issues that may arise

depending on our future course of action. In its advisory opinion, the Commission opined that the justices, in their individual capacities, may continue to select Bishop Estate trustees; however, we "need to avoid or eliminate acts or activities . . . likely to create a perception . . . that the selection process . . . is [among other things] in anyway influenced by political factors or favors [or] . . . by religious or racial discrimination." To avoid the criticisms levied by some in our community regarding the propriety of our selecting Bishop Estate trustees, we could simply withdraw from the selection process. However, we are deeply concerned that to do so would not only violate the Princess's last wish and a 110-year tradition, but would also create a selection process which the Princess surely did not envision. If we were to withdraw, the law governing charitable trusts dictates that the selection of a successor trustee be made by the circuit court judge assigned to the probate calendar. We believe it apparent that the Princess did not intend that one individual, as opposed to multiple individuals, would select the trustees to serve her estate. \*

Therefore, based on the advisory opinion and the above considerations, we have unanimously agreed to act in accordance with the Princess's desire and to continue to select Bishop Estate trustees; in so doing, we shall adhere to the guidelines set forth in the advisory opinion.

It is important to emphasize that the screening panel of distinguished citizens acted without the benefit of the Commission's formal advisory opinion inasmuch as the opinion was issued after the panel had forwarded recommendations. More importantly, we believe that some eminently qualified individuals may have refrained from applying for the vacancy because of (1) the well-known provision of the Will of Princess Bernice Pauahi Bishop that only Protestants may be appointed as trustees and (2) the mistaken perception that only native Hawaiians or part-Hawaiians may be appointed as trustees. P

Consequently, in light of the advisory opinion and based on our individual consciences, we believe it only fair to reopen the application process in order to (1) provide any individual who may have felt precluded from applying the opportunity to submit his or her application and (2) to avoid any perception that our selection may be influenced by the concerns set forth in the advisory opinion. However, we will not again impose upon the panel of distinguished citizens to review what we anticipate will be many additional applications or nominations. Instead, upon our determination of a list of finalists, we shall publish their names, invite comment from the community, and conduct face-to-face interviews with each finalist. The finalists, whose names were forwarded by the screening panel will remain finalists. Also, all persons who have applied to the panel of distinguished citizens will be reconsidered and need not reapply.

New applications or nominations will be accepted from any individual and the selection will be made without regard to political considerations, religion, or race. Applicants should not indicate any of these factors in their applications. Applications or nominations (five copies) may be sent to:

Bishop Estate Trustee Applications  
P. O. Box 2560  
Honolulu, HI 96804

Applications will be accepted until September 24, 1994. Applications post-marked after September 24, 1994 will not be considered. Moreover, because we act not as justices of the Supreme Court, but as individuals, our court staff will not be allowed to answer any questions or take any telephone inquiries regarding any matter concerning the application or selection process. All inquiries, comments, or concerns should be submitted in writing and mailed to the above address.