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COMMISSION ON JUDICIAL CONDUCT  
SUPREME COURT, STATE OF HAWAII

FORMAL ADVISORY OPINION #14-93  
APRIL 7, 1994

QUESTION PRESENTED

The Commission has recently received a letter complaining that the Hawaii Supreme Court Justices, acting as individuals in appointing trustees of the Estate of Bernice Pauahi Bishop, violate the Revised Code of Judicial Conduct. The letter is not directed toward any specific past appointment and will therefore not be treated by this Commission as a complaint in the usual sense of complaints of specific conduct received by the Commission. The Commission generally receives complaints of specific judicial conduct by a person directly aggrieved by the alleged misconduct. Rather, the letter is couched in terms of a request for an Advisory Opinion from the Commission by a person not authorized to obtain such an opinion from this Commission. Nevertheless, because of the importance of the concerns raised in this letter, the Commission is sua sponte addressing concerns which have been brought to our attention about possible violations of the Revised Code of Judicial Conduct when the Supreme Court Justices individually engage in the extra-judicial activity of appointing trustees of the Bishop Estate.

DISCUSSION

It is firmly established that the appointment of trustees of the Estate of Bernice Pauahi Bishop by the Justices of the Hawaii Supreme Court, acting as individuals, is not prohibited by the Hawaii Constitution, nor any laws of this State. Kekoa v. Supreme Court of Hawaii, 55 Haw. 104, 516 P.2d 1239 (1973); cert. den. 417 U.S. 930, 94 S.Ct. 2641, 41 L.Ed.2d 233 (1974).

Additionally, it is the Commission's conclusion that the Justices of the Hawaii Supreme Court, acting individually and extra-judicially, may participate in the process of selecting Bishop Estate trustees. To do so, does not ipso facto violate the spirit or letter of the Revised Code of Judicial Conduct. However, in view of the controversy, concerns, and potential public perception such activity can generate, this Commission feels compelled to discuss the concerns that have arisen, and thereby strongly encourages, if not requires, that continuation of such activity be in strict adherence and compliance with the spirit and letter of the dictates of the Revised Code of Judicial Conduct.

It is further emphasized that this Commission's conclusion is based on currently available information and evidence of past events and circumstances known to this Commission. Therefore, it is a matter that may well result in future requests to this Commission for review and reconsideration of these issues, as the Justices continue to participate in this activity. In view of these circumstances, the Commission sets forth below the areas of concern which warrant discussion at this time.

#### ANALYSIS

Perhaps the most important issue relates to Canons 1, 2, and 5 which provide in pertinent part:

An independent and honorable judiciary is indispensable to justice in our society. A judge shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to be construed and applied to further that objective. (Canon 1A)

A Judge Shall Avoid Impropriety and The Appearance of Impropriety In All Of The Judge's Activities. (Canon 2)

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. (Canon 2A)

A judge...shall refrain from inappropriate political activity. (Canon 5)

The Commission recognizes that there is a question about whether or not public perception in Hawaii is that the trustee appointment process may be significantly and improperly influenced by political factors. This Commission concludes that the allegation that such a perception exists, to the extent it significantly and detrimentally affects the integrity of the judicial system is not supportable, certainly not to the extent that such a finding would require immediate disqualification or prohibition against the Justices from further participation in the appointment of Bishop Estate trustees. On the other hand, it is equally important to recognize and understand that public perception on this subject matter is extremely difficult to measure and determine. Consequently, to give the benefit of doubt to the present Justices in this initial inquiry is more appropriate than it might be upon any future consideration of this matter. This Commission urges that should the Justices choose to continue to perform these activities, they do so in strict accord with the Revised Code. The recent use of a committee of qualified citizens to screen and recommend candidates is an example of steps which are helpful toward that end.

The Commission feels it would be appropriate to point out that deliberation on this matter started with every member of the Commission having differing views on the questions we have considered. Extensive debate over different and dissenting viewpoints, gathering of information, and consideration were devoted to the merits of the questions presented, as well as to the method and extent to which information would be sought by the Commission. In its consideration, the Commission has been mindful of the importance, the power, and the impact Bishop Estate's existence has on the State of Hawaii. There is no doubt that Hawaii needs a good selection process for the trustees of the Bishop Estate and that the wishes expressed in the Will of Princess Bernice Pauahi Bishop are important. The Commission recognizes that one viewpoint stresses that this tradition has been a part of Hawaiian history for over a hundred years. The Commission understands that the uniqueness of Hawaii's socio-economic and geographical features renders the question presented here in Hawaii

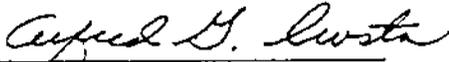
significantly distinguishable from those settings in other jurisdictions, which do not have the unique cultural conditions present in our State. However, such factors cannot and do not serve as the basis for our conclusion. Of much greater importance to this Commission is the fact that public confidence in, respect for, and perception of the integrity of our judicial system, greatly outweighs the importance of the Bishop Estate trustee selection.

It is with this in mind, that the Commission has considered all of the issues that have been raised. It is with this in mind that the Commission emphasizes to the Justices who choose to participate, the need to avoid or eliminate acts or activities which are likely to create a perception (See Canon 2) that the selection process:

- 1) is in anyway influenced by political factors or favors,  
(See Canons 1, 2, 5)
- 2) will influence or otherwise affect the judicial process to  
the extent Bishop Estate is involved in litigation, (See Canon 4)
- 3) utilizes judicial resources to the detriment of the judiciary,  
(See Canon 4)
- 4) is influenced in anyway by religious or racial discrimination,  
(See Canons 2C, 4A) and
- 5) is lending the prestige of the court to the benefit of the Bishop  
Estate or its trustees. (See Canon 2B)

The Commission cannot overemphasize that if the above-mentioned concerns are not met, it can be anticipated that the questions considered in this Advisory may well be before the Commission again.

FOR THE COMMISSION ON JUDICIAL  
CONDUCT

  
ALFRED G. COSTA, VICE CHAIR