

# LEGAL ALERT

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## Damon Key's Newest Director is Driven to Serve

Attorney Ross Uehara-Tilton is as dedicated as they come. Licensed to practice law and as a Certified Public Accountant (CPA) in two states (Hawaii and Washington), and the owner of several local small businesses, Ross brings impressive capabilities and insights to his full-time practice at Damon Key Leong Kupchak Hastert. Since joining the firm, our clients have benefitted from his extensive credentials and valuable first-hand business experience as he tackles issues with a unique level of understanding. These are some of the many reasons why we proudly welcome Ross as our newest Director.

Ross practices in the firm's Business & Commercial Law, Tax Planning & Controversy, Trust & Probate Litigation, Estate Planning, Appeals, and Litigation practice groups. He received his law degree from the University of Hawaii at Manoa William S. Richardson School of Law. He also earned an LL.M. (Master of Laws) in taxation from Boston University, an internationally recognized postgraduate law degree, with a certificate in estate planning. True to his ambitious spirit, Ross earned a B.A. in Political Science, *magna cum laude*, from the University of Hawaii at Manoa, concurrently with his B.B.A. in Accounting, *magna cum laude*, from the University of Hawaii West Oahu.

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“Since joining the firm, Ross has excelled at positioning clients for success and providing solutions to complex issues,” said Damon Key President Christine Kubota. “His strong legal experience and tax law credentials combined with his passion for serving clients have made him a standout at Damon Key.”

Ross is an attorney with first-hand experience running successful businesses. He and his husband own and manage three small businesses in Hawaii: The Curb Kaimuki, a multi-roaster specialty coffee shop located in Kaimuki; Kaimuki Storeroom, a retail bottle shop selling exclusively natural and low-intervention wine; and Kaimuki Selections, a wholesale natural wine and spirits importer and distributor serving the entire State of Hawaii, which recently expanded to importing natural wine into the U.S., primarily from Japan.

“It has been very satisfying to bring together my law experience, accounting expertise and business background to serve clients,” said Ross. “We’re working together to make not only legal decisions but also important business decisions at the highest level.”

Ross is uniquely qualified to help clients balance the risk-taking often required to grow and sustain a business with the sound legal decisions needed to keep an entity safe. He is driven to deliver high-quality outcomes to the individuals and businesses he serves and is fully invested in their ultimate success. Few attorneys in Hawaii can match his practical, solution-oriented legal advice, and even fewer can say they’ve walked a mile in the small business owners’ shoes.

According to Ross, some attorneys—especially young attorneys without real-world business experience—can easily fall into the trap of advising that something is not possible or too risky. But that also makes it impossible to run a business. “As business owners, we know we have to take on some amount of risk, often against the advice of our attorneys. As a business attorney who experienced many sleepless nights worrying about making ends meet during the pandemic, I understand my clients’ perspectives. Having the ability to navigate such situations sets my practice apart from many others in town,” said Ross.

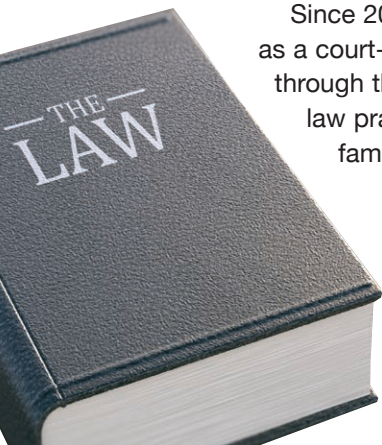
In addition to achieving positive outcomes for local small and medium-sized businesses, one of Ross’s most satisfying results came from representing a seller in a \$100 million construction company sale. “That was a big transaction involving national and international parties that took a lot of coordination across multiple offices and time zones. Often, a transaction of this size would have been handled by a larger firm in Los Angeles or New York, but it was rewarding for me to get to run point on this deal from start to finish. Whether helping a large company with a sizeable deal or assisting a small business owner in starting up a new entity, I remain anchored in the fact that everything I do is about helping real people who depend on their businesses for their livelihood,” added Ross.

Ross is a member of the American Bar Association, serving on various practice area section committees. He is also active with three Hawaii State Bar Association committees, including the tax section, for which he previously served as director, vice-chair and chair. He is a member of the Hawaii Estate Planning Council and sits as a board member for the Kapena School of Music and Creative Expression.

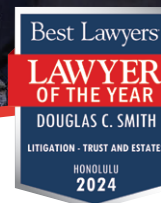
Since 2011, Ross’s community service work has focused primarily on children and family law. He serves as a court-appointed special advocate (Guardian ad Litem) for children involved in Hawaii’s foster care system through the Family Court’s CASA Program and a group facilitator for Kids First. After turning attention to his law practice, he continues his community service work primarily through pro bono appellate matters in family law and other fields.

Ross was named to the 2024 *Best Lawyers: Ones to Watch*<sup>®</sup> in America list in seven key practice areas. He is also recognized by Super Lawyers as a “Rising Star” in Estate Planning & Probate.

Our newest Director is among many skilled attorneys at Damon Key who provide advantageous solutions to complex business issues. To learn more about Ross and all our attorneys, visit [hawaiilawyer.com](http://hawaiilawyer.com).



# 2024 "Lawyer of the Year" & The Best Lawyers in America®



Above photo, first row L to R: Anna H. Oshiro (Construction Law), Diane D. Hastert (Commercial Litigation), Tred R. Eyerly (Insurance Law), Christine A. Kubota (Corporate Law), Matthew T. Evans (Litigation-Real Estate), Na Lan (Real Estate Law), Second row L to R: Gregory W. Kugle (Litigation-Land Use & Zoning), Mark M. Murakami (Eminent Domain & Condemnation Law), Michael A. Yoshida (Business Organizations, including LLCs and Partnerships) Kenneth R. Kupchak (Construction Law), Douglas C. Smith (Lawyer of the Year, Litigation-Trusts & Estates), Madeleine M.V. Young (Litigation-Trusts & Estates)

## Best Lawyers: Ones to Watch® in America

Left photo: Ross Uehara-Tilton (Tax Law), Casey T. Miyashiro (Commercial Litigation), Megan L.M. Lim (Trusts & Estates)

## Legacy of Service

Congratulations to Douglas C. Smith on being awarded the "Lawyer of the Year" honor and our colleagues on being selected by Best Lawyers® and Best Lawyers: Ones to Watch® in America. For 60 years, our firm has built a strong foundation on superior service and innovative solutions while assisting businesses, families, and individuals with their legal needs. Please scan the QR code or go to <https://hawaiilawyer.com/bestlawyers> to see the complete list of practice areas in which our colleagues have been recognized by Best Lawyers®.



Tier 1 in 14 practice areas by Best Law Firms®

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# The Pay Transparency Law

By Kira-Nariese K. Brown

**E**ffective January 1, 2024, Act 203 (S.B. No.1057), also known as the Pay Transparency Law, requires employers to include pay or salary as part of a job advertisement to help increase pay transparency and equal pay for all employees. Hawaii joins California, Colorado, Connecticut, Maryland, Nevada, New Jersey (Jersey City), New York, Ohio (Cincinnati & Toledo), Rhode Island, and Washington in enacting legislation that promotes pay transparency within the workplace. Hawaii's Pay Transparency Law is codified in the Hawaii Revised Statutes, Section 378-2.8, entitled "Job listing; disclosures."



Hawaii's Pay Transparency Law requires all job listings to disclose the hourly rate or salary range that reasonably reflects the actual expected compensation of the advertised job. The Pay Transparency Law does not apply to job listings that: (1) are for positions that are internal transfers or promotions within a current employer; (2) are for public employee positions for which salary, benefits, or other compensation are determined pursuant to collective bargaining; and (3) are for positions with employers that have fewer than fifty (50) employees. Employers must advertise a reasonable hourly rate or salary range. For example, an employer cannot advertise a job with a salary range from \$1 - \$500,000.

Another hallmark of the Pay Transparency Law is to prohibit employers from discriminating against employees because of any protected category. Employers cannot pay an employee wages at a rate less than the rate at which the employer pays other employees in the establishment for substantially similar work. To reflect this, in conjunction with the enactment of the Pay Transparency Law, Hawaii Revised Statutes Section 378-2.3 was revised to expand the list of those protected from discriminatory pay practices. Employers may not discriminate against employees by paying them differently because of race, sex (including gender identity or expression), sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court records, reproductive health decisions, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status.



Employers in states and cities that have previously enacted pay transparency or equal pay and opportunities laws have reported numerous positive benefits. Namely, pay transparency laws have promoted a more efficient employee application process. Prospective employees can now apply for jobs that meet their salary or hourly pay minimums and employers can interview candidates that are already satisfied with the compensation amount. Additionally, the Pay Transparency Law may help reduce pay inequalities across our state. Lower-paying jobs will likely receive fewer applicants which will force employers to increase their hourly rate or salary range to compete with similarly situated employers. It is too early to tell how the enactment of the Pay Transparency Law will affect Hawaii's workforce, but initial signs from other states that have enacted similar laws have already shown promise.

**For more information or questions, please call Kira at (808) 531-8031, email her at [knkb@hawaiilawyer.com](mailto:knkb@hawaiilawyer.com) or scan the code with your smartphone.**



# Are They an Independent Contractor, or Your Employee?

By Daniel J. Koller

## The New Federal Test:

Effective March 11, 2024 the U.S. Department of Labor (USDOL) revised its test on how it determines whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA). This is important for all employers to consider since correctly classifying workers as either independent contractors or employees is essential to ensure compliance with applicable laws and regulations.

The new rule rescinds the 2021 Independent Contractor Rule and moves away from the age old “control test” to a more expansive “economic realities” test. The economic realities test adds factors to be weighed in determining whether workers are factually in business for themselves, or whether the workers are economically dependent on their employer for work. This new economic realities test is comprised of six non-exhaustive, equally-weighted factors. A “totality of the circumstances” analysis is conducted to evaluate the facts of the worker’s situation in relation to these new factors.

The six factors are:

- 1) The opportunity for profit or loss depending on managerial skill;
- 2) Investments by the worker and the potential employer;
- 3) The degree of permanence of the work relationship;
- 4) The nature and degree of control;
- 5) The extent to which the work performed is an integral part of the potential employer’s business; and
- 6) The worker’s skill and initiative.



No one factor or any combination is determinative. Further, the new rule allows for consideration of additional factors if they are determinative of the overarching question of whether the worker is economically dependent on the employer for work (an employee), or economically independent and in business for themselves (an independent contractor).

## State Law Tests and Preemption:

The new federal test does not preempt state or local laws for classifying workers. It only applies to USDOL’s application of the FLSA. State or local laws that are stricter in their determination, or provide greater worker protections will continue and likely satisfy this new federal test. However, all must be considered so that an employer abides by applicable federal, state, and local laws. For example, Hawaii’s unemployment insurance law (H.R.S. Chapter 386), uses the three-part “ABC Test” to determine whether a worker is an employee or independent contractor. This test is arguably stricter than the new federal test since it does not use a totality of the circumstances analysis, but instead takes an all or nothing approach to its three requirements. The ABC Test requires that:

- 1) The worker is free from control or direction from the hiring entity; and
- 2) The worker’s services are performed outside the usual course of business or place of business; and
- 3) The worker is customarily engaged in an independent, trade, occupation, profession, or business of the same nature as that involved in the contract of service.

All three of these requirements must be met under H.R.S. Chapter 386, or the worker will be classified as an employee.

## Conclusion:

Are your independent contractors now your employees under this new federal law? You should carefully reassess all individuals who perform work for you to make sure they are properly classified and that you are in compliance with all applicable laws. If you are still unsure, consider contacting an attorney for further guidance.

**For more information or questions, please call Daniel at (808) 531-8031, email him at [djk@hawaiilawyer.com](mailto:djk@hawaiilawyer.com) or scan the code with your smartphone.**



## New Associate Kira-Nariese Kiana Brown Brings Passion for Advocacy

**B**orn in Honolulu and raised in Texas, Kira-Nariese Kiana Brown remembers wanting to be a lawyer from an early age. She was further influenced by the lead female character in the movie “Legally Blonde.” According to Kira, at the time, she could easily relate to the character who was readily underestimated throughout the film.

Today, in addition to attaining her dream of becoming an attorney, Kira is an aficionado of museums with an art history and business major and a black belt in Tae Kwon Do. It’s fair to say that she is no longer being underestimated. Kira’s tenacity is just one of the many reasons that we are pleased to have her join Damon Key as an Associate in the firm’s Litigation & Dispute Resolution and Wills, Trusts & Estates practice groups.

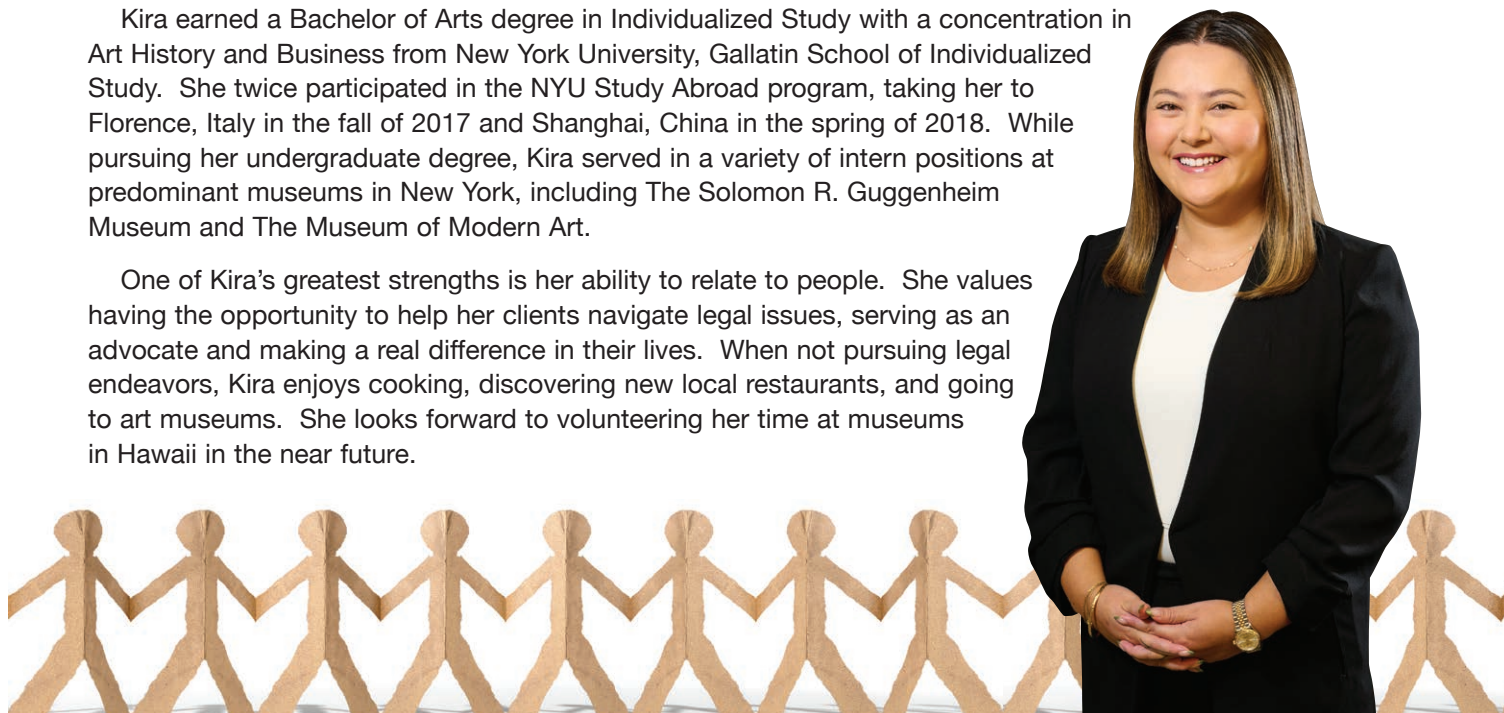
Kira earned her law degree, *cum laude*, from the University of Hawaii at Manoa, William S. Richardson School of Law. While there, she received a CALI Excellence for the Future Award for the highest grade in Lawyering Fundamentals II. She was a Casenote Editor and Staff Writer for the University of Hawaii Law Review. Kira was also a Teaching Assistant for Criminal Law I, a Treasurer for Phi Delta Phi International Legal Fraternity Richardson Inn and a recipient of the Sandi Portnoy Endowed Memorial Scholarship for Women’s Issues. While in law school, Kira served as a Judicial Extern to the Honorable R. Mark Browning, Chief Judge of the First Circuit, where she briefed and provided recommendations for weekly probate, conservatorship, guardianship, and trust petitions. This experience sparked her interest in Wills, Trusts & Estates.

Kira was also a Summer Associate at Damon Key Leong Kupchak Hastert. During that time, she was able to see how the firm works together as a team. “I have worked in many different environments, but the environment at Damon Key is special,” said Kira. “I am most looking forward to nurturing my existing relationships and creating new ones with attorneys, staff, and most importantly, clients.”

Since June 2021, Kira has served as a Court-Appointed Special Advocate for foster children, providing a voice in court for abused and neglected children. In this volunteer position, she conducts monthly home checks and provides court reports detailing findings to a Family Court Judge.

Kira earned a Bachelor of Arts degree in Individualized Study with a concentration in Art History and Business from New York University, Gallatin School of Individualized Study. She twice participated in the NYU Study Abroad program, taking her to Florence, Italy in the fall of 2017 and Shanghai, China in the spring of 2018. While pursuing her undergraduate degree, Kira served in a variety of intern positions at predominant museums in New York, including The Solomon R. Guggenheim Museum and The Museum of Modern Art.

One of Kira’s greatest strengths is her ability to relate to people. She values having the opportunity to help her clients navigate legal issues, serving as an advocate and making a real difference in their lives. When not pursuing legal endeavors, Kira enjoys cooking, discovering new local restaurants, and going to art museums. She looks forward to volunteering her time at museums in Hawaii in the near future.



## Attorney Daniel J. Koller Sails into Damon Key with Maritime Industry Experience

With a degree in Marine Transportation in hand and 16 years of experience in the Maritime Industry under his belt, Daniel J. Koller made a bold move to pursue a career in law. This defining career change was made after feeling he could do more for the maritime industry including helping sailors with injustices he observed while conducting shipboard audits around the globe. Daniel applied to law school in 2020, shortly after realizing that he could do so much more as an attorney – versus an auditor and ship surveyor – to assist individuals on foreign-flag ships, shipyards, and even the community at broad.

Damon Key is pleased to welcome Daniel as one of its newest Associates, practicing in the firm's Business & Commercial Law, Litigation & Dispute Resolution, and Maritime/Admiralty Law practice groups. He graduated *cum laude* from the University of Hawaii at Manoa, William S. Richardson School of Law, receiving the CALI Excellence for the Future Awards for achieving the highest grade in the class for Contract Drafting and Criminal Procedure. While in law school, Daniel was a member of the Law and Business Organization and a Teaching Assistant for Professor Randle DeFalco in Criminal Law. He also worked pro bono for the University of Hawaii's Office of Innovation and Commercialization's legal department and served as a Summer Associate at Damon Key.

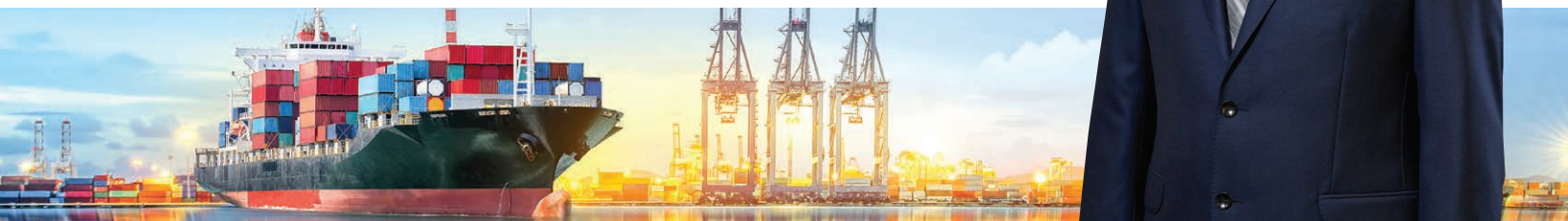
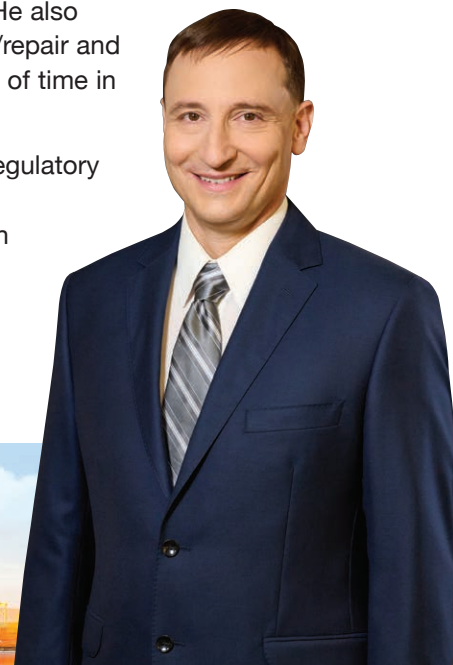
In 2003, Daniel earned a Bachelor of Science degree in Marine Transportation from the California State University Maritime Academy. While there, he also earned his USCG Unlimited Tonnage Merchant Marine Officer license and then sailed as an officer on container ships and research vessels throughout the Pacific and Asia Pacific.

Daniel holds three British Standards Institution (BSI) certifications. The BSI certifications qualified Daniel to provide external certification audits of companies seeking ISO (International Organization for Standardization) certification, which led to auditing ship-owning companies and their associated vendors. These BSI certifications allowed Daniel to further train and become a shipboard regulatory auditor of ship management systems and certify ships to the ISM Code (International Ship Management), ISPS Code (International Ship and Port Security), MLC Code (Maritime Labor Convention), and to HSQE (Health, Safety, Quality, and Environmental) standards.

For more than a decade, Daniel held various positions in various countries with the American Bureau of Shipping (ABS), a regulatory body that oversees the design, construction, operation, repair, and management of ships. During that time, Daniel was a Lead Auditor in the areas of Health, Safety, Quality & Environment, International Ship Management, Maritime Labor Convention, and International Ship & Port Security. He also held the position of Senior Regulatory Ship Surveyor of vessels in service, drydock/repair and new construction. While with ABS, Daniel lived as an expatriate for varying lengths of time in China, Vietnam, United Arab Emirates and South Korea.

With his experience in reading, interpreting, and implementing large volumes of regulatory instruction, Daniel's skills align well with his law career. However, his ability to be compassionate also plays a vital role, as he finds himself driven to take action when he encounters someone in trouble.

Daniel is fluent in conversational Spanish at an intermediate level. His hobbies include paragliding, boogie boarding, biking, and hiking with his wife and kids.



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## ADVERTISING MATERIAL

Legal Alert is published periodically by Damon Key Leong Kupchak Hastert to inform clients of legal matters of general interests. It is not intended to provide legal advice or opinion. To opt out of receiving this publication, please email [info@hawaiilawyer.com](mailto:info@hawaiilawyer.com).

### Attorneys in the News

On May 26, 2024 and July 13, 2024, **Na Lan** presented in person on “Board and Owner Rights and Responsibilities” and “Management of Association” at the annual training sessions hosted by the Hawaii Council of Community Associations for directors and officers of condominium and community associations.

Na also attended the Inter-Pacific Bar Association conference in Tokyo, Japan. As Chair of the Hawaii State Bar Association (HSBA) International Law Section, she visited the office of the Dai-ichi Tokyo Bar Association (DITBA). She was greeted by Chairman Masashi Ichikawa and made a speech at its regular council meeting to strengthen the long-standing friendship between HSBA and DITBA and promote further collaboration among their members.



**Christine A. Kubota** was at this year’s Kristi Yamaguchi Always Dream GALA at the Pacific Club which raised over \$300,000 for keiki in Hawaii. Sitting: Myles Shibata, Wendy Abe, Carole Hayashino; Standing: Mr. and Dr. Irene Ohbe-Arakaki, Mr. and Mrs. Seta, Kristi Yamaguchi, Christine, Mr. and Mrs. Uy.