

HAWAII STATE BAR ASSOCIATION

CONSTITUTION AND BYLAWS

*As Amended at the
September 18, 2009 Annual Meeting*

TABLE OF CONTENTS

Article I. Name	1
Article II. Purposes.....	1
Article III. Membership	1
(a) Active Members.....	1
(b) Judicial Members.....	1
(c) Inactive Members	1
(d) Law Student Members.....	2
(e) Affiliate Members.....	2
(f) Administratively Suspended.....	2
(g) Member Registration Statements.....	2
(h) Members Not Liable	2
Article IV. Meetings.....	3
Section 1. Annual, Special	3
Section 2. Quorum.....	3
Section 3. Presiding Officer in President's Absence, etc.	3
Section 4. Membership Activities	3
Section 5. Procedure	3
(a) Resolutions; Referred to Board of Directors; When	3
(b) Voting Procedures.....	3
(c) No Voting by Suspended Member	3
(d) Speeches, Limitation of	3
(e) Robert's Rules of Order Parliamentary Guide	3
Section 6. Annual Reports	3
Article V. Officers; Board of Directors; Board Committees; Executive Director	3
Section 1. Officers.....	3
(a) Officers, Duties	3
(b) Qualifications, Election and Terms.....	4
Section 2. Board of Directors	4
(a) Power and Functions	4
(b) Composition	4
(c) Terms of Office	5
(d) The Association Delegate to the House of Delegates	5
(e) The Standing Committee Chairpersons	5
(f) The County and Local Bar Association Representatives.....	5
(g) Meetings of Board of Directors and Board Committees; Removal for Non-Attendance	5
(h) Quorum; Secretary Pro Tem.....	5
Section 3. Funds and Property.....	5
Section 4. Committees of the Board of Directors.....	5
(a) Executive Committee.....	6
(b) Finance Committee	6
Section 5. Death of Member; Duties of Board of Directors	6
Section 6. Executive Director	6

Article VI. Dues; Objections to Use 6

Section 1. Dues 6

Section 2. Objections to Use of Dues 6

(a) Use of Dues 6

(b) Publication of Expenditures and Activities 6

(c) Objections 6

(d) Arbitrator 7

(e) Procedures for Arbitration 7

(f) Cost of Arbitration 7

Article VII. Elections; Appointments; Terms; Removal; Vacancies; Acting Officers or Members;
Auditors 8

Section 1. Terms, etc. 8

Section 2. Auditor 8

Section 3. Nominations 8

Section 4. Elections 8

Article VIII. Order of Business 8

Article IX. Judicial and Executive Appointments 8

Article X. Committees 8

Section 1. Classes; Appointments 8

Section 2. Standing Committees 9

Section 3. Liaison; Special Committees 9

Section 4. Jurisdiction 9

Section 5. Meetings; Reports; Staff Assistance 9

Article XI. Amendment of Constitution and Bylaws 9

Article XII. Young Lawyers Division 9

Section 1. Purposes 9

Section 2. Membership; Quorum at Meetings 9

Section 3. Bylaws 9

Section 4. Budget 10

Section 5. Voting 10

Article XIII. Distribution of Earnings and Assets Upon Dissolution 10

Article XIV. Sections 10

Section 1. Creation or combination 10

Section 2. Discontinuance and change of name 10

Section 3. General membership 10

Section 4. Officers 10

Section 5. Dues 10

Section 6. Meetings 10

HAWAII STATE BAR ASSOCIATION
CONSTITUTION AND BYLAWS

Article I. Name. The name of this Association shall be "HAWAII STATE BAR ASSOCIATION."

Article II. Purposes. The purposes of the Hawai'i State Bar shall be to aid the courts in regulating, maintaining and improving the legal profession, administration of justice and advancements in jurisprudence, in improving relations between the legal profession, the public and the various branches and instrumentalities of government in this State, and in promoting the interests of the profession in this State. The Bar shall have the power and responsibility for administering the statutes and rules of this court relating to governance of the profession (other than statutes and rules governing contempt of court), as follows: (1) The Bar shall assist this court in carrying out the functions under § 605-14, Hawai'i Revised Statutes [Unauthorized Practice of Law], Rule 1 [Admissions], Rule 2 [Discipline], and Rule 10 [Lawyers' Fund for Client Protection] while preserving to this court at all times its ultimate authority over admission and discipline of attorneys licensed to practice in this State; and (2) the Bar shall assume primary responsibility for the other rules of the court and programs relating to the profession, its governance and improvement, including Rule 6 [Professional Corporations], Rule 11 [IOLTA], and Rule 16 [Substance Abuse]. In the latter category, the Association shall have the power and responsibility not only of administration, but also of initiation of all changes and improvements therein, subject always to the oversight of this court through amendment of this rule as provided below, and in these endeavors the Bar shall have as its goal the improvement of the practice of law and the standards of professionalism of all attorneys in this State.

Article III. Membership. Members of the Hawaii State Bar Association shall be divided into the following classes:

(a) Active Members. Those persons admitted to practice law before the Supreme Court of the State of Hawaii and who are engaged in the practice of law in Hawaii, either full-time or part-time, salaried or non-salaried, employed by public agency or private enterprise, or who have been admitted as a foreign law consultant, shall be active members of the Hawaii State Bar Association. Those persons who are admitted to practice in this state but who are not presently so engaged may acquire active status by paying the fees and dues prescribed for active members and satisfying such other requirements as may be imposed by the Board and/or the Court. All active members, whether or not engaged in the practice of law or serving as a foreign law consultant, shall be entitled to vote and hold office in the Hawaii State Bar Association. Each active member shall file with the Hawaii State Bar Association an attorney registration statement as provided in paragraph (g) below.

COMMITTEE COMMENT: Derived from a combination of Hawaii State Bar Association Const. Art. III and Rule 3 of the Virginia Bar Rules (March, 1989). The language providing that all active practitioners "shall" be members is intended as a reference to the fact that membership is a condition to the privilege to practice law in this State. The Hawaii State Bar Association limitation of membership to those "in good standing" was deleted to make clear that even members under discipline or delinquent in dues payment remain subject to these rules.

1990 AMENDMENTS COMMENTS: A provision was added clarifying that persons employed by governmental agencies are within the class of active members. A provision for imposing additional requirements on reactivating members was added to permit the Board and/or Court to be satisfied that during a member's period of inactivity they had not suffered any event that would either render them ineligible to resume practice (such as a criminal conviction or disbarment in another jurisdiction), or had not lost proficiency in the law. The provisions for registration statements were relocated to a separate paragraph at the end of this section.

1996 AMENDMENT COMMENTS: In keeping with the Supreme Court's interpretation that foreign law consultants are admitted to practice law, albeit for a limited purpose, and should therefore be included in the unified bar, the HSBA Board determined that foreign law consultants should pay the same dues and fees and be entitled to the same privileges as active members.

(b) Judicial Members. All full-time Judges of Courts of record of Hawaii and of the United States Courts in Hawaii, shall constitute the judicial membership of the Hawaii State Bar Association. Judicial members shall pay such reduced dues as shall be determined by the Board, shall file registration statements as provided in paragraph (g) below, and shall be entitled to all of the privileges of active members, except that they shall not be entitled to run for elective office. Judicial members shall comply with any limitations on the practice of law imposed on them by statute or rule.

COMMITTEE COMMENT: Derived from Art. III of the Hawaii State Bar Association Constitution. A limitation to "full-time" judges of "Courts of record" was added to make clear that per diem and any other part-time judges and administrative law judges are not exempt from the dues and obligations of active members because of that status. Judicial membership was made automatic not only because the practice seems widespread in other integrated-bar states, but also because the Committee felt that both the bench and Bar would benefit from the inclusion of judges in Bar activities. The language relating to rights and privileges was taken primarily from the Virginia Bar Rules (March, 1989).

1990 AMENDMENTS COMMENTS: A clarifying provision was added showing the duty of judicial members to file registration statements in the same manner as other members.

(c) Inactive Members. Those persons who are admitted to practice law by the Supreme Court of the State of Hawaii but who do not engage in any practice of law in this State, and all persons on the law faculties of any law schools of this State that have been approved by the American Bar Association may become inactive members of the Hawaii State Bar Association upon application and payment of the required dues.

Inactive members shall not be entitled to practice law in this State, or to vote, hold elected office in the Hawaii State Bar Association or be counted in determining the presence of a quorum. Inactive members shall file registration statements as provided in paragraph (g) below. Inactive members shall pay such dues as the Board establishes.

The Board may establish classes of inactive membership, such as for lawyers who retire or resign from the practice of law in Hawaii, or lawyers who are placed on inactive status by court order. The Board shall determine what dues, if any, each class of inactive members shall pay. The Board shall determine the privileges, if any, of each class of inactive members.

The Board shall provide procedures for the change of status of a member, including the return from inactive to active status, and may require the payment of arrears, fees, and charges.

COMMITTEE COMMENT: *This section, derived in part from present Hawaii State Bar Association Art. III but primarily from Virginia Bar Rules (March, 1989) Rule 3(b), was intended to cover the situation of admitted but inactive members. It is intended that inactive members shall not enjoy any greater privilege of practice in this State than persons who are not members of the Hawaii Bar, so that an inactive member has no privilege to handle even a single case in Hawaii without going through the same pro hac vice procedures as persons not affiliated in any way with the Hawaii State Bar Association. The reference to law faculty inactive members in the Virginia rule was retained despite Hawaii's rule allowing law faculty to become full members pro tempore, so that the decision to assume the full expense and burden of active membership would remain optional to law faculty.*

1990 AMENDMENTS COMMENTS: *Clarifying amendments were made to the first paragraph. A requirement for filing attorney registrations was added in order to enable the Bar to keep track of the inactive members carried on its rolls. The Committee Comment was edited to remove references to deletions made in the prior amendments.*

(d) Law Student Members. Students enrolled in the William S. Richardson School of Law at the University of Hawaii and any other ABA-accredited law school shall be eligible to be admitted to law student affiliate membership upon payment of such dues as the Board of Directors shall determine.

(e) Affiliate Members. Lawyers licensed and in good standing in other States shall be entitled to become affiliate members of the Hawaii State Bar Association upon payment of such dues as shall be prescribed from time to time by the Board of Directors. Affiliate members shall not be entitled to practice law in this State or to vote or hold office in the Bar Association, but shall be entitled to such other privileges as the Board shall prescribe from time to time. Affiliate members shall not advertise or hold themselves out as members of the Hawaii Bar, nor shall they use or knowingly permit the use of their affiliate membership status in any directory or law list for the purpose of soliciting or obtaining business or financial advantage. Violation of this rule by an affiliate member shall be grounds for suspension or revocation of such member's affiliate membership status.

COMMITTEE COMMENT: *The two categories of "Law Student" and "Affiliate" membership are intended for law students and for lawyers from other States who want to establish some relationship with the Hawaii Bar without being admitted to practice here. It confers no privileges of practice, voting or holding office. The addition of a provision for Affiliate members, although unusual, was added at the suggestion of the Bar Association to provide for greater breadth of resources among the Bar membership, as well as an additional source of revenue. The prohibition on the use of affiliate membership status in advertising, directories or for soliciting business is designed to guard against improper use of the affiliate status to deceive or mislead the public.*

(f) Administratively Suspended. Those persons admitted to practice law before the Supreme Court of the State of Hawaii, whether active or inactive, who have failed to pay their applicable dues by their due date or who have filed an incomplete or inaccurate attorney registration statement, shall be administratively suspended in accordance with the Supreme Court Rules.

(g) Member Registration Statements. Each active, judicial and inactive member shall file an attorney registration statement setting forth his or her business and residence addresses and telephone numbers and designating the address to which mail and notices should be sent and (if applicable) the judicial circuit (and in the Third Circuit, the Region) in this state in which the member is entitled to vote. Members whose office and/or residence is in Hawaii shall be entitled to vote only in the Circuit or Region of either their business address or residence address at the option of the member; members having neither an office or residence address in Hawaii shall be entitled to vote in the Circuit or Region of their choice. The attorney registration statement required by this Section shall be filed upon admission and annually thereafter at the time of dues payment, and shall contain in addition to the member's name, addresses and telephone numbers such other information as the Board shall specify. All such information shall be available to the Supreme Court for such uses as it shall designate. A member shall notify the Hawaii State Bar Association in writing within thirty (30) days of any change of business or residence address or telephone number.

(h) Members Not Liable. No member of the Association shall, by virtue of such membership, be liable for any debt or obligation of the Association.

1990 AMENDMENTS COMMENTS: *This section was relocated from part of paragraph (a) so as to clarify and amplify the registration statement process. The requirement included in the registration statement provisions for furnishing the attorney's address and judicial circuit was adopted from the Virginia rules to aid in apportioning voting rights. It is intended that these registration statements would take the place of those formerly filed with the Disciplinary Board. Reference to members having their principal office in Hawaii was deleted, since membership is required of all attorneys admitted to practice here, whether or not they have their principal office in Hawaii. Reference to filing "with the Secretary" was deleted since in practice the statements are filed with the Bar staff.*

Article IV. Meetings

Section 1. Annual, Special. The annual meeting of this Bar Association shall be held at such time as shall be fixed by the Board of Directors. Notice of the annual meeting shall be given at least thirty (30) days in advance by the Secretary by mailing a copy of said notice to each member at their address last known to the Secretary or by publication thereof in newspaper published in each county in state of Hawaii or in the official publication of the Bar Association. Special meetings may be called at any time by the President, by a majority of the Board of Directors, or by the Secretary upon written request of not less than ten per cent (10%) of the membership of the Association, upon seven (7) days notice to be given in the manner aforesaid. No business shall be conducted at any such special meeting which is not noticed in the call of said meeting.

COMMITTEE COMMENT: Given the unique geographical diversity of Hawaii, it is hoped that the Bar will give due consideration to the possibility of rotating its annual meeting among the various islands, and/or developing other means of facilitating the participation of neighbor island members, such as teleconferencing or videoconferencing.

Section 2. Quorum. Seventy-five (75) members shall constitute a quorum, and no proxies shall be allowed.

COMMITTEE COMMENT: The committee considered but ultimately rejected a suggestion that proxies be allowed at the annual meeting (and another that they be allowed at Board meetings). While proxies would allow for more effectiveness in voting, particularly by neighbor island members not able to attend the annual meeting, there was also widespread concern shown at the public hearings on neighbor islands over the possibility of "block" voting by larger firms, which would be exacerbated by proxies. Also, since the election of officers and directors is done by mail-in ballot, proxies would not be applicable to those questions, but only to motions and to questions which arise during the course of the meeting. In addition, the committee considered the traditional objections to proxy voting, which include the possibility of abuses in proxy solicitation and use and the difficulty and expense of administering a proxy system, and concluded that all of these concerns taken together clearly outweighed whatever advantages may be derived from the adoption of proxy voting.

Section 3. Presiding Officer in President's Absence, etc. In the absence of the President, President-Elect, or the Vice President or any member of the Board of Directors may call the Association to order, and a President pro tem shall be elected.

Section 4. Membership Activities. Meetings may be called for the discussion and consideration of papers, or for debates, on serious topics within the purview of the objects of the Association, and for such action thereon as the Association may desire, and for other purposes properly within the objects of the Association. Banquets and other social gatherings of the Association may be held at such times and places within the State, and with such speeches and entertainment, as shall be determined by the Board of Directors. The Board shall have entire charge of such functions, and it may expend out of the funds of the Association such amounts as shall be necessary to defray the expenses arising out of the functions.

Section 5. Procedure.

(a) Resolutions; Referred to Board of Directors; When. All resolutions not published in the notice given of the meeting shall, if so voted by one-third (1/3) of the members present at any meeting of the Association, be referred to the Board of Directors for consideration and report, and said Board may report upon the same forthwith; but, failing so to do, it shall report thereon at a meeting immediately following the introduction thereof, unless given further time for consideration.

(b) Voting Procedures. Upon the demand of one-fifth (1/5) of the members present at any meeting, the vote upon any matter shall be taken by counting. The Board of Directors may establish procedures providing for voting by mail ballot or by electronic ballot. Proxy voting shall not be allowed.

(c) No Voting by Suspended Member. No member who has been suspended for any reason shall be entitled to vote at any meeting.

(d) Speeches, Limitation of. No member shall speak more than ten (10) minutes upon any matter before the Association, nor shall any member speak more than twice upon the same subject, unless by unanimous consent.

(e) Robert's Rules of Order Parliamentary Guide. The most recent edition of Robert's Rules of Order, or an edition specified by the Board, shall be the parliamentary guide for the Association and its Board of Directors.

Section 6. Annual Reports. The President and the Treasurer of the Association shall render reports at each annual meeting of the Association. The Treasurer's report shall be submitted for verification to the Auditor, if one is appointed, at least ten (10) days before the annual meeting.

Article V. Officers; Board of Directors; Board Committees; Executive Director.

Section 1. Officers.

(a) Officers, Duties. The five officers of this Association are the President, the President-Elect, the Vice President, the Secretary and the Treasurer, whose duties shall be those usually appertaining to such offices.

(b) Qualifications, Election and Terms. All persons who are active members of the Hawaii State Bar Association shall be eligible to be elected as an officer. The Vice President, the Secretary and the Treasurer shall be elected by the members of the Association entitled to vote. The term of each is one year, beginning as of January 1 of the year following election. The President-Elect becomes the President of the Association upon completion of his or her term as President-Elect and the Vice President becomes the President-Elect of the Association upon completion of his or her term as Vice President, and neither shall thereafter be eligible for either office.

COMMITTEE COMMENT: The Committee considered adding a length of active membership and a standing committee experience requirement to the qualifications required for eligibility to be an officer, because the broadly expanded duties and responsibilities of the Officers under unification may require a greater degree of experience and commitment than was essential for directors of the voluntary bar. The idea was ultimately discarded because it would unduly narrow the pool of potential candidates in a Bar which, due to our small size, is already pressed to find enough candidates to fill the positions. "Active" members in this context means the same as defined in Article I's definition of classes of members.

Section 2. Board of Directors.

(a) Power and Functions. The Board of Directors shall have authority to exercise all of the powers of the Bar Association and shall have general charge of the affairs and activities of the Bar, including without limitation the powers and duties to do the following:

- i. Fix the time and place of the annual meeting and the date of election of the officers and directors of the Bar Association.
- ii. Make appropriations and authorize disbursements from the funds of the State Bar Association in payment of the expenses of the Bar Association, its officers, agents, employees and committees.
- iii. Prepare a budget, which shall be published to the members at least annually.
- iv. Cause proper books of accounts to be kept and procure a biennial audit thereof by a certified public accountant, a copy of which audit shall promptly be filed with the Supreme Court.
- v. Engage and define the duties of employees and fix their compensation.
- vi. Arrange for publications of an official State Bar Association bulletin and/or journal.
- vii. Receive, consider and take action on reports and recommendations submitted by committees, sections and the assembly of members of the association at any annual or special meeting.
- viii. Fill vacancies however arising, in the membership of the Board of Directors, or in any office which may be vacant, and in each case the persons appointed to fill such a vacancy shall hold said office until the expiration of the term of the person replaced, unless earlier removed pursuant to Section 1 of this Article.
- ix. Adopt resolutions, not inconsistent with these Bylaws, for orderly administration of the Bar's affairs and activities.
- x. Adopt and provide for programs concerning such matters as continuing legal education, pro bono, regulation of lawyer advertising, specialty certification, prepaid legal services plans, malpractice insurance plans and other matters or subjects it deems in the best interests of the members and the public.

COMMITTEE COMMENT: The opening paragraph was derived from Art. V, Section 2(a) of Hawaii State Bar Association Constitution, and the remainder from Section 4 of the Constitution of the Bar of Montana. The former Hawaii State Bar Association provision giving the membership authority to set the powers of the Board was deleted as being inconsistent with the expanded responsibilities of the Board for administering the Rules of the Supreme Court relating to governance of the profession, including disciplinary enforcement. Paragraph (x) is included to make clear that the various issues described there are within the purview of the Bar, and not the Court.

xi: Acquire real property and in so doing to borrow from any bank, savings and loan association, or other lender, and to mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, savings or assets of the Association, as authorized by resolution of the Board.

xii: To have such other powers and to do such other things as are authorized for nonprofit corporations under Hawaii law.

(b) Composition. The Board of Directors shall consist of the elected officers and directors composed of at least eleven members in addition to the President, President-Elect, Vice President, Secretary and Treasurer, elected as follows: at least one active member from each of the First, Second and Fifth Judicial Circuits, plus at least one active member from the West Hawaii Region (consisting of the Districts of North Kohala, South Kohala, North Kona, South Kona and Kau) and one from the East Hawaii Region (consisting of the Districts of Hamakua, North Hilo, South Hilo and Puna) of the Third Judicial Circuit, elected by members of the Association entitled to vote from each such respective Circuit and Region as provided in these Bylaws, and the President of the Young Lawyers Division elected by the members of the Young Lawyers Division, together with the following ex officio members:

The State Bar Association delegate to the House of Delegates of the American Bar Association,

The Chairpersons of the Standing Committees of the Association,

One representative each from the bar associations of Hawaii County, Maui County, Kauai County, and West Hawaii,
The President of the Hawaii State Trial Judges Association, and

The immediate past President of the Association.

All elected members of the Board of Directors present in person or participating by teleconferencing or videoconferencing or other electronic means, in accordance with procedures adopted by the Board, at a meeting of the Board shall be entitled to vote, and ex officio members shall have floor privileges, but shall not be entitled to vote.

Any Circuit or, in the case of the Third Circuit, the West Hawaii or East Hawaii Regions, having in any year more than 300 active members in good standing who are domiciled or principally practice their profession in such Circuit or Region shall be entitled to one additional member of the Board for each additional 300 members or major fraction thereof, to be elected at the next regular election of the Association. In the event that the membership in a Circuit or Region as of May 1 is such that it is no longer entitled to one or more additional members, the term of such additional member(s) of the Board shall end at the expiration of the term for which the member(s) was elected.

COMMITTEE COMMENT: The provisions for full membership and voting rights on the Board by appointed members (standing committee chairs, ABA delegate, County bar associations) was deleted as being inconsistent with the apportionment and representation concept of an elected Board of a unified bar. The language now tracks Supreme Court Rule 17(e) governing the composition of the Board.

(c) Terms of Office. The members of the Board shall be elected by the members of the Association to serve staggered terms of two years. At the first election held after adoption of this provision, half (or, in the event of an odd number, half plus one) shall be elected for one-year terms and the remaining number shall be elected for two-year terms. Upon expiration of their terms, their successors shall be elected for terms of two years.

(d) The Association Delegate to the House of Delegates. The Association's delegate to the House of Delegates of the American Bar Association shall be elected by the members of the Association for a term of two years.

1990 AMENDMENTS COMMENTS: The term of the ABA delegate was changed to conform to the ABA appointment process of two years.

(e) The Standing Committee Chairpersons. The chairperson of each standing committee shall be appointed by the President with the approval of the Board of Directors.

(f) The County and Local Bar Association Representatives. The representatives from the bar associations of Hawaii County, Maui County, Kauai County, and West Hawaii shall be elected or appointed by the respective county and local bar associations. Certification of such representatives' election or appointment shall be made to the Secretary of the Hawaii State Bar Association by the President of each county and local bar association.

(g) Meetings of Board of Directors and Board Committees; Removal for Non-Attendance. The Board of Directors shall meet at such times and places within the State of Hawaii as the President or any three (3) members thereof may direct, provided that no such meeting shall be without the District of Honolulu, proper, except with the prior authorization of a majority of the Board of Directors. The Executive Committee and Finance Committee and other committees of the Board of Directors shall meet at such times and places as members of said committees shall determine. Any member of the board who fails to attend or participate in three consecutive meetings and does not have good cause therefore, as determined by the President, shall be automatically removed from the Board. Any vacancy created through the removal of a director for non attendance shall be filled by a person appointed by the President and approved by majority vote of the Board.

(h) Quorum; Secretary Pro Tem. A majority of the Board of Directors shall constitute a quorum. The Board of Directors may designate as its Secretary Pro Tem (and in its discretion an Assistant Secretary) such person or persons, whether or not members of the Association, as it may determine.

Section 3. Funds and Property. The members of the Board of Directors shall have control of the funds and property of the Association, subject to the Constitution and Bylaws (as the same may be amended from time to time), and the Board of Directors shall carry out and give effect to the Constitution and Bylaws. All funds and property of the Association shall vest in the Association as a nonprofit corporation.

Section 4. Committees of the Board of Directors. To assist the Board of Directors and officers in the administration of the Bar, there shall be committees of the Board as enumerated below, together with such Standing Committees and other committees as the President or Board shall create from time to time.

(a) Executive Committee. The Executive Committee shall be composed of the officers of the Association and such other persons as the President shall appoint. The Executive Director of the Association shall be an ex officio member. The Executive Committee shall be responsible for monitoring the affairs and activities of the Association, for making policy and other recommendations to the Board of Directors, and for taking action in emergency situations. The Executive Committee shall conduct an annual evaluation of the Executive Director and make recommendations to the Board regarding the compensation of the Executive Director.

(b) Finance Committee. The Finance Committee shall be composed of the President-Elect, the Vice President, the Treasurer and one or more other persons appointed by the President. The Executive Director shall be an ex officio member. The Finance Committee shall have the principal responsibility for formulating recommendations concerning and monitoring the financial affairs of the HSBA, including oversight of the preparation of an annual budget for the following year, review of financial reports to minimize variances from budget, formulation of proposals for increasing revenues and reducing expenses, determination of the costs of proposed programs and activities and oversight of disbursements.

Section 5. Death of Member; Duties of Board of Directors. Upon the death of any member of the Association, the Board of Directors may make such arrangements for the obsequies, and take such action in connection therewith, as it may deem best.

Section 6. Executive Director. The Association shall employ an Executive Director, who shall report directly to officers of the Association and its Board of Directors and whose compensation shall be fixed by the Board of Directors annually after review and recommendation by Executive Committee. The Executive Director shall be the chief executive officer of the Association, with direct charge of the Association's administrative and staff operations, and with primary responsibility for hiring, training and discharging employees of the Association, in accordance with such guidelines, policies, and budget constraints as may be established by the Board of Directors; preparing, under the direction of the Finance Committee, the Association's annual budget for adoption by the Board; implementing the policies of the Association; monitoring and advising the Board and officers of developments affecting the practice of law and the legal profession and the activities of other bar associations relating to such developments; formulating recommendations concerning the objectives, policies, programs and activities of the Association; providing advice, staff and other support and assistance to the officers, committees, sections, and programs of the Association; and carrying out such other duties as may be directed by the President or the Board of Directors or as customarily may be performed by individuals holding comparable positions in other bar associations.

Article VI. Dues; Objections to Use.

Section 1. Dues. There shall be annual dues, in such amount as shall be determined by the Board of Directors, that are to be collected by a date determined by the Board for the following year. Any changes in the annual dues for the following year shall be fixed by the Board of Directors no later than December 20, and notice thereof given to the Supreme Court. The Board of Directors may reduce the annual dues of members who have been admitted to practice for less than five (5) years, or who do not reside in, or who do not engage in the practice of law in Hawaii, or who are law students or other associate members not admitted to the bar of the Courts of Hawaii. The Board of Directors may also exempt from further payment of dues members who have attained the age of 70 years. Any such reduction or exemption from dues may be modified or rescinded by the Board of Directors at any time.

COMMITTEE COMMENT: The purpose of notice to the Supreme Court of dues increases is to provide some measure of protection to the membership from arbitrary or unnecessary dues increases, without burdening the Court with the responsibility of reviewing and approving all Bar budgetary activities. Reference to the "education fee" was deleted as obsolete, since no separately designated "education fee" has been used in recent memory.

Section 2. Objections to Use of Dues.

(a) Use of Dues. The purposes of the Hawaii State Bar are set out in Rule 17 of the Rules of the Supreme Court of the State of Hawaii and in Article II of these Bylaws. Neither the Hawaii State Bar Association nor any of its committees or sections may engage in political or ideological activities involving the expenditure of compulsory membership dues unless it is determined by the Board of Directors or the Executive Committee that the activity is related to the purposes of the Hawaii State Bar as set forth in Rule 17 and Article II.

(b) Publication of Expenditures and Activities. The Bar shall publish to the members at least annually a detailed statement of its revenues and expenditures by category, and specifically setting out the total amounts of any expenditures for legislative, political or ideological purposes. In addition, the Bar shall publish notice of the adoption of legislative positions, either in support or opposition, in the Hawaii Bar Journal in the next available issue following the Board meeting at which the positions were adopted or in another manner as established by the Board.

(c) Objections. Any active or judicial member of the Hawaii State Bar may, within forty-five (45) days of the date of publication of the HSBA Annual Report which shall contain a notice of expenditures, file with the Executive Director a written objection to a particular position or political or ideological expenditure, or the failure of the Bar to properly classify a particular expenditure as political or ideological. Failure to object within this time period shall constitute a waiver of any right to object to the particular issue or expenditure.

(1) After a written objection has been received, the Executive Director shall promptly determine the pro rata amount of the objecting member's dues at issue and such amount shall be placed in an escrow pending determination of the merits of the objection.

(2) Upon the deadline for receipt of written objections, the Board of Directors shall have forty-five (45) days in which to decide whether to give a pro rata refund to the objecting members or to refer the action to arbitration.

(d) Arbitrator. Objections to legislative positions or political or ideological expenditures of the Hawaii State Bar may be referred by the Board of Directors to an arbitrator, who shall be mutually selected by the HSBA and objecting member(s). If the parties are unable to agree on an arbitrator, the civil administrative judge of the First Circuit Court of the State of Hawaii shall appoint the arbitrator.

(e) Procedures for Arbitration. Upon a decision by the Board of Directors that the matter shall be referred to arbitration, the Hawaii State Bar shall promptly prepare a written response to the objection and serve a copy on the objecting member(s). Such response and objection shall be forwarded to the arbitrator as soon as the arbitrator is selected. The arbitrator shall thereafter hold a hearing and decide whether the legislative matters or expenditures at issue are constitutionally appropriate for funding from mandatory Hawaii State Bar dues.

(1) The scope of the arbitration review shall be to determine solely whether the legislative matter or expenditure at issue was within those acceptable activities for which compulsory dues may be used under applicable constitutional law; and if so, the amount of the pro rata rebate to the objecting member(s).

(2) The proceedings of arbitration shall be informal in nature and shall not be bound by the rules of evidence. The decision of the arbitrator shall be binding as to the objecting member(s) and the Hawaii State Bar Association. If the arbitrator concludes that the legislative matter or expenditure at issue are appropriately funded from mandatory dues, there shall be no refund and the Hawaii State Bar shall be free to expend the objecting member's pro rata amount of dues held in escrow. If the arbitrator determines that the legislative matter or expenditure at issue is inappropriately funded from mandatory dues, the arbitrator shall order a refund of the pro rata amount of dues to the objecting member(s). The arbitrator's award may be confirmed, vacated, modified, corrected, stayed or appealed pursuant to HRS Chapter 658.

(3) The arbitrator(s) shall thereafter render a final written report to the objecting member(s) and the Board of Directors within forty-five (45) days of the constitution of the panel or selection of the arbitrator, as the case may be.

(4) In the event the arbitrator(s) order a refund, the Hawaii State Bar Association shall provide such refund within thirty (30) days of the date of the arbitration report, together with interest calculated at the judgment rate provided by law from the date on which the objecting member(s) dues payment was received.

(f) Cost of Arbitration. The arbitrator's fee and expenses shall be borne by the HSBA unless the arbitrator finds that the objection is frivolous, in which case the objecting party shall bear the entire cost of the arbitration, including the arbitrator's fee and expenses. Each party shall bear its own attorney's fees and expenses incurred in preparing for the arbitration or appeal.

1990 AMENDMENTS COMMENTS: The "Dues Objections" section has been completely rewritten in order to ensure compulsory membership dues are not used for political or ideological purposes not germane to the purposes of the Hawaii State Bar Association, in compliance with the decision of the United States Supreme Court in Keller v. State Bar of California, ___ U.S. ___, 110 S.Ct. 2228 (1990). In Keller, the Supreme Court held that membership in a unified bar does not violate a member's first amendment right to freedom of speech, provided that such member's compulsory dues are not used for political or ideological purposes which are not germane to the purpose of the compulsory organization and with which such member disagrees.

The revised language of this Section has been taken directly from the applicable Bylaws and rules of the Florida Bar, which were specifically approved as being in compliance with Keller by the Eleventh Circuit in Gibson v. The Florida Bar, ___ F.2d ___ (11th Cir. July 23, 1990), with the following exceptions:

(1) Paragraph (c) of The Florida Bar procedures allowed objection only for legislative activities; the corresponding Hawaii provision has been expanded to allow objections to any political or ideological activity in keeping with the broader provisions of Keller. Thus, publication of positions under paragraph (b) of the Florida rule was expanded from legislative to include the entire budget of the Bar.

(2) In keeping with the spirit of Keller, the permitted objections under paragraph (c) were expanded from just the activities classified by the Bar as "political or ideological" to permit an additional category of objection, to the Bar's determination of whether to classify an expenditure as political or ideological.

(3) In paragraph (d), the option for composition of the panel was expanded by offering the objecting member(s) the option of choosing a three-member panel of Bar members or a single AAA arbitrator. Although Gibson specifically approved the Florida Bar's limitation of the panel to Bar members, it was felt that the addition of a AAA option would remove any possible question about the impartiality of the arbitration.

(4) Interest on refunds under paragraph (e)(4) is to be calculated from the date of receipt of the dues, rather than the date of the objection, in keeping with the Court's decision in Gibson.

Article VII. Elections; Appointments; Terms; Removal; Vacancies; Acting Officers or Members; Auditors

Section 1. Terms, etc. Officers of the Association and the members of the Board of Directors shall take office as of January 1st of the year following their election or appointment, and shall hold office until their successors are elected or appointed; except that the President-Elect shall succeed to the position of President and the Vice President shall succeed to the position of President Elect as provided in Article V, section 1. Members of the Board of Directors may be removed for cause at any meeting duly called for that purpose upon a two-thirds (2/3) vote of the total members of the Board of Directors entitled to vote. Vacancies in such offices, however arising, may be filled at any regular or special meeting of the Board of Directors called for that purpose, except that vacancies of representatives from the bar associations of Hawaii County, Maui County, Kauai County, and West Hawaii shall be filled by the respective county and local bar associations. An acting officer or member of the Board of Directors to serve during the temporary absence or incapacity of any such officer or member may be appointed by the President with the approval of a majority of the remaining members of the Board of Directors.

COMMITTEE COMMENT: The provision for removal without cause was eliminated, and the proportion of the whole board necessary to remove a director was increased, in view of the added responsibilities of a representative under the unified bar.

Section 2. Auditor. The Board of Directors, if it deems such action necessary or proper, may appoint an auditor or auditing committee for not more than one (1) year. The auditor or auditing committee shall audit the accounts of the Treasurer and report the results of the audit to the Association as requested by the Board of Directors or by the Association.

Section 3. Nominations. A nominating committee appointed by the President shall make nominations for officers and the elected members of the Board of Directors and publish such list of nominees in the official publication of the Association or a newspaper of general circulation in the State of Hawaii or by such means as the Board directs at least thirty (30) days before the date of the annual meeting. A member may also be nominated by written petition signed by twenty (20) regular members and submitted to the Secretary no later than fifteen(15) days after the publication date of the notice of the nominating committee's list of nominees. Members shall also be entitled to write in on their ballots votes for candidates not otherwise nominated. No person may be nominated for more than one office. Each nominee must signify a willingness to serve.

Section 4. Elections. A ballot containing the names of all nominees together with a return envelope shall be mailed or delivered electronically to all members who are eligible to vote at least thirty (30) days prior to the date of the annual meeting. The election may also be conducted via a secure, Internet based or online voting system. Completed ballots must be delivered to and received by the Secretary and/or electronic or Internet based voting must be completed not less than 48 hours prior to the time set for the Annual Meeting. The President shall designate so many members of the Association as the President deems necessary, none of whose names appear on the ballot, to act under direction of the President-Elect as a committee whose duty shall be to count and tabulate the votes shown on the ballots and/or confirm the results of electronic voting. The votes shall be counted after the deadline specified for the delivery of the ballots to the Secretary and prior to the commencement of the Annual Meeting. The results of the election shall be announced at the Annual Meeting. No public disclosure of the results of the election shall be made prior to such announcement at the Annual Meeting. Candidates for the respective officerships receiving the most votes shall be declared elected to the Board of Directors. In the event of a tie, the matter shall be determined at the Annual Meeting by majority vote of those present.

Article VIII. Order of Business. The order of business of this Association shall be as follows:

1. Reading of Minutes of previous meetings.
2. Reading of Communications
3. Reports of Officers and Committees
4. Unfinished Business
5. New Business

Article IX. Judicial and Executive Appointments. The Board of Directors may recommend persons for appointments to federal and state judicial office in Hawaii or the positions of Hawaii State Attorney General and Hawaii U.S. Attorney. The Board shall evaluate the qualifications of persons appointed to judicial office in Hawaii or the positions of Hawaii State Attorney General or Hawaii U.S. Attorney, and inform the confirming authority of such recommendations and evaluations.

COMMITTEE COMMENT: Reference to cooperation with the appointing authority and the ABA was deleted in view of the present role of the Judicial Selection Commission on the state level and the historical lack of involvement of the ABA.

The Board shall take all such steps as it deems advisable to ascertain the qualifications of persons who are nominated for judicial appointment. The Board may arrange for the presentation of evidence and witnesses before any confirming authority considering an appointment if it deems such course to be in the public interest.

Article X. Committees.

Section 1. Classes; Appointments. The classes of committees of the Association shall be standing committees and special committees. Unless otherwise provided in the Board resolution creating or ratifying a committee, the President shall appoint committee chairs with the approval or ratification of the Board. Each committee chair shall appoint committee members in

consultation with the President. To the maximum extent practical, each committee shall have members from more than one island. In the event of resignation, death or disqualification of any member of the committee, the chair shall appoint a successor to serve for the unexpired term.

Section 2. Standing Committees. The Standing Committees shall be determined by the Board by resolution from time to time.

1990 AMENDMENTS COMMENTS: The enumeration and descriptions of the various standing committees was deleted from the Bylaws in favor of Board discretion in creation and maintenance of standing committees in order to give the Board more flexibility in creating new committees as the need arises and deleting or restructuring old committees as their functions change or become obsolete, without the necessity and expense of a formal Bylaw amendment each time.

Section 3. Liaison; Special Committees. The President of the Association, subject to approval by the Board of directors, may appoint Association representatives to other organizations, and may create special or ad hoc committees to address specified issues (including matters which might otherwise fall within the jurisdiction of one or more of the standing committees).

Section 4. Jurisdiction. Each committee shall, subject to such regulations and directions as may from time to time be adopted by the membership or the Board of Directors, have jurisdiction of all questions within their respective fields, as described in Section 2 in the case of Standing Committees or as otherwise assigned by the officers or Board of Directors, so far as the same is germane to the purposes of the Association. It shall be the duty of each committee to carry into effect its own recommendations in the manner and to the extent authorized or directed by the membership or the Board of Directors, but the Association shall not be charged with any expenses incurred by any committee without specific authorization or ratification thereof.

Section 5. Meetings; Reports; Staff Assistance. Each committee shall hold meetings and conduct its business in accordance with rules adopted by such committee. Each committee, and each person appointed by the President as a representative of the Association to another organization, shall regularly report to, and prior to the annual meeting, make a report to the Board of Directors. The Executive Director and other employees of the Association shall provide administrative and other assistance reasonably necessary to support the operation of all Association committees.

1990 AMENDMENTS COMMENTS: The Bylaws' original reference to adoption of the Codes of Professional Responsibility and Judicial Conduct was deleted as being obsolete. Since unification, all members are subject of these Codes by virtue of existing Supreme Court rules.

Article XI. Amendment of Constitution and Bylaws

This Constitution and Bylaws may be amended at any annual or special meeting of the Association by a two-thirds (2/3) vote of the members voting; provided, that at least thirty (30) days' notice of the proposed amendment shall be given by the Secretary either in writing to each member, by publishing in the official publication of the Association or by electronic communication, fully setting forth the proposed amendment. The Board of Directors, as set forth in Article IV, Section 5(b) may establish procedures for voting by mail ballot or electronically.

Article XII. Young Lawyers Division

Section 1. Purposes. There shall be a division of the Hawaii State Bar Association known as the Young Lawyers Division, the purposes of which shall be to stimulate the interest of and to provide a more effective means of participation by the younger members of the Bar in Hawaii in the objective of the Hawaii State Bar Association.

Section 2. Membership; Quorum at Meetings. The membership of the Young Lawyers Division shall consist of all members of the Hawaii State Bar Association in good standing under thirty-six (36) years of age and those members who have been admitted to their first Bar less than five years. Membership in the Division shall terminate automatically at the close of the calendar year within which a member attains thirty-six (36) years of age or five years after admission to the member's first Bar, whichever last shall occur, or upon such person's ceasing, prior to that time, to be a member of the Hawaii State Bar Association. Seventy-five (75) members of the Young Lawyers Division shall constitute a quorum at any of its annual or special meetings except that proxies may be allowed.

1990 AMENDMENTS COMMENTS: The prohibition on proxies was deleted at the request of the Young Lawyers Division Board to enhance participation at meetings.

2005 AMENDMENTS COMMENT: Amendment to increase from less than three years to less than five years effective 01/01/2005.

Section 3. Bylaws. The Young Lawyers Division shall be governed by such Bylaws as are adopted by majority vote of its membership present at any duly called meeting, provided, however, that no Bylaws may be enacted by this section which shall be inconsistent with the Articles of Incorporation or Bylaws of the Hawaii State Bar Association. The Bylaws shall be amended or repealed in the same manner as their adoption.

Section 4. Budget. The Board of Directors of the Association shall allot a specific sum of money each year for the activities of the Young Lawyers Division based upon a proposed budget submitted annually by the Young Lawyers Division. All funds which may be appropriated to the Young Lawyers Division shall be expended as determined by the Board or its executive committee of the Young Lawyers Division, but the Young Lawyers Division shall have no authority to incur any indebtedness against or in the name of the Hawaii State Bar Association.

Section 5. Voting. Voting on items in the Young Lawyers Division may be handled in accordance with the procedures established for voting by mail ballot by the Board of Directors in Article IV, Section 5(b), except that proxies may be allowed.

Article XIII. Distribution of Earnings and Assets Upon Dissolution

No part of the net earnings of the Association shall inure to the benefit of any member or officer of the Association, or any private individual (except that reasonable compensation may be paid for services rendered to the Association), and no member or officer of the Association shall be entitled to share in distribution of the Association's assets on dissolution. In the event of dissolution of the Association or the winding up of its affairs, the assets of the Association shall be distributed exclusively to charitable, scientific, literary or educational organizations which would then qualify under the provision of Section 501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended.

Article XIV. Sections

Section 1. Creation or combination. The Board of Directors by a two-thirds (2/3) vote of the members present may create a new section or combine existing sections for the purpose of improving the education and technical skills of lawyers practicing in the field of law for which the section is designated. At least 60 days before the Board of Directors votes upon the creation or combination of any section, the proponents of the section shall file with the Board of Directors a statement setting forth and including:

- (a) The name of the proposed section
- (b) The need for the proposed section
- (c) The contemplated jurisdiction of the section, which must be within the purposes of the Bar and must not substantially conflict with the jurisdiction of any other section or committee previously authorized by the Board of Directors.
- (d) The proposed bylaws of the section, including a description of its jurisdiction
- (e) The proposed budget for the section for the first two years of its operation following approval
- (f) The names of the lawyers who will be the initial members of the section upon approval
- (g) In case of a combination of sections, the revised jurisdiction and what if any jurisdiction of the constituent section that will be deleted.

Section 2. Discontinuance and change of name. The Board of Directors by a two-thirds (2/3) vote of the members present may discontinue or change the name of any section.

Section 3. General membership. Members of the section must be members of the Association unless the section's bylaws provide otherwise and must meet the bylaw requirements of the respective section.

Section 4. Officers. A section shall have a chairperson and such other officers as its bylaws provide. The officers shall be the governing board of the section unless the bylaws otherwise provide.

Section 5. Dues. With the approval of the Board of Directors, section members may be required to pay dues, including additional dues to the Association.

Section 6. Meetings. A section shall have not less than two meetings per year.