

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re:

CHAPTER 13 PROCEDURES and
CHAPTER 13 ATTORNEY FEES.

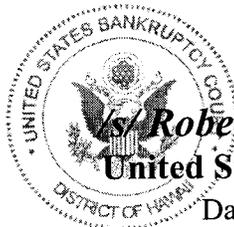
ADMINISTRATIVE ORDER

Dated: November 26, 2003

**ORDER ADOPTING GUIDELINES
FOR CHAPTER 13 PROCEDURES,
AMENDED DECEMBER 1, 2003, AND CHAPTER 13
ATTORNEY FEE GUIDELINES, AMENDED DECEMBER 1, 2003**

Pursuant to LBR 2083-1 and LBR 2016-1(c), and after consultation
with the Office of the United States Trustee and the local bar,

IT IS HEREBY ORDERED that the court adopts the Guidelines for
Chapter 13 Procedures (LBG_2083-1), as amended, and the Chapter 13 Attorney
Fee Guidelines (LBG_2016-13), as amended. These guidelines, attached hereto,
are effective December 1, 2003.



/s/ Robert J. Faris

United States Bankruptcy Judge

Dated: November 26, 2003

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

GUIDELINES FOR CHAPTER 13 PROCEDURES

(amended December 1, 2003)

1. **Scope; Definitions.** Pursuant to LBR 2083-1, the court has adopted these guidelines to govern procedures in Chapter 13 cases filed in the District of Hawaii on and after December 1, 2003, and, to the extent practicable, all Chapter 13 cases then pending. All references to the debtor include the joint debtor, if any, and, if the debtor is represented by counsel, include the attorney for the debtor unless stated otherwise. All references to the trustee are to the Chapter 13 Standing Trustee or other trustee as appointed by the Office of the United States Trustee. All references to the clerk are to the Clerk of the Bankruptcy Court.

MANDATORY FORMS

2. **Mandatory Use of Forms.** The Chapter 13 petition, schedules and statement of financial affairs and proofs of claim must be prepared as prescribed by the appropriate official form, pursuant to Fed. R. Bankr. P. 1007(b)(1). The Chapter 13 plan shall conform substantially to the court-approved form (hib_3015-1) attached hereto. All other Chapter 13 papers filed by the debtor shall conform substantially to the court-approved forms identified in these guidelines. National or local bankruptcy forms referred to in these guidelines are available for copying at the court and at the court's website: www.hib.uscourts.gov. There shall be no material variance from the mandatory court-approved forms, unless a request for modification is granted for good cause. Nothing in the court-approved forms or in these guidelines precludes a debtor from proposing, for good cause, amendments or modifications to a particular form. Additional terms and conditions not inconsistent with the court-approved forms may be contained in attachments. A memorandum of law, declaration or exhibit related to a court-approved form should be filed as a separate pleading.

FILING AND SERVICE OF DOCUMENTS

3. **Service of Plan.** The debtor is responsible for serving a copy of the proposed plan on the trustee, all creditors and the State of Hawaii Department of Taxation (whether or not the department is listed as a creditor in the debtor's bankruptcy schedules). Any related motions, as defined in Paragraph 4, must be included with the plan and shall be attached and served as part of the plan. As a courtesy, the clerk will serve on the above-mentioned parties a copy of the court-approved form plan and related motions *if submitted with the petition at the time of filing or if filed through the court's electronic case files ("ECF") system*, unless it is unduly burdensome to do so. Notwithstanding this policy of service of the plan by the clerk, it remains the responsibility of the debtor to ensure that service has been accomplished. If service is made by a party other than the clerk, a certificate of service must be completed and filed promptly. The clerk will not serve: (i) a plan not conforming to the court-approved form, (ii) a plan and related motions not accompanying the petition and not filed through ECF, or (iii) any amended plan not filed through ECF. The clerk will not serve documents on any creditor not listed in the original mailing matrix. Service of a plan or an amended plan later than 10 days before the first or continued meeting of creditors may be cause for continuing the meeting.

RELATED MOTIONS

4. **Definition.** Related motions with respect to a Chapter 13 plan are (i) motions to value collateral under 11 U.S.C. § 506(a) for the purpose of modifying the rights of holders of secured claims under 11 U.S.C. § 1322(b), and (ii) motions to avoid judicial and nonpossessory, nonpurchase-money liens under 11 U.S.C. § 522(f).

5. **Related Motions Attached as Part of Plan.** A related motion shall be made by a motion that substantially conforms to the applicable court-approved form (motion to value collateral - hib_3015-506, or motion to avoid lien - hib_3015-522), attached and included as part of the plan. Supporting documents such as appraisals, declarations, and legal memoranda should be filed separately and served on the trustee, lienholders and other parties with an interest in the subject property.

6. **Separate Notice of Related Motions.** Separate notice of a related motion and the opportunity to object shall be given to each creditor in interest by a notice that substantially conforms to the court-approved form (hib_3015-5n). The notice shall state that a party objecting to the motion must file an objection within 20 days after the later of (i) the date of the notice of the conclusion of the meeting of creditors, or (ii) 20 days after service of an amended plan and related motions.

7. **Objections to Related Motions.** Any party wishing to object to a related motion must file an objection and serve it on the debtor, the trustee, and any party known to claim a secured interest in the subject collateral. Such objection must be filed within the later of (i) 20 days after the date of the notice of the conclusion of the meeting of creditors or (ii) 20 days after service of an amended plan and related motions. If an amended plan with a related motion is filed, all previously filed objections are deemed moot. If a party remains opposed to the related motion, a new objection must be filed in response. The related motion and the objection will be considered at the confirmation hearing. Absent a timely objection, the court may determine the debtor's request to value collateral or to avoid a lien without a hearing.

8. **Disposition of Related Motions.** An order confirming a plan shall dispose of related motions attached and included as part of the plan. An order disposing of the debtor's request to value collateral or to avoid a lien shall act as a final determination of the extent to which a claim is a secured claim, notwithstanding the amount indicated as secured in a creditor's proof of claim, unless the court orders otherwise. A plan will not be confirmed without a disposition of all related motions included with the plan.

MEETING OF CREDITORS

9. **Attendance.** The debtor and the debtor's attorney, if any, shall attend the meeting of creditors convened pursuant to 11 U.S.C. § 341. If the case is a joint case, both debtors shall appear. If the debtor or the debtor's attorney fail to appear at the meeting of creditors, the trustee may continue the meeting for cause and/or file a motion to dismiss the case for non-appearance at the meeting. The trustee's motion shall be served on the debtor, the debtor's attorney and the Office of the United States Trustee, and shall state that the case will be dismissed without further notice unless an objection and request for a hearing is filed with the court and served on the trustee within 15 days after the date of filing of the motion. Absent a timely objection, the case may be dismissed without further notice upon submission by the trustee of a proposed order of dismissal. The order shall provide for a 180-day bar to refiling a subsequent petition by the debtor, pursuant to 11 U.S.C. § 109(g)(1).

10. **Evidence of Current Income.** The debtor shall provide evidence of current income (pay stubs, tax return or other equivalent documentation) to the trustee at least 10 days before the meeting of creditors. Failure to provide this evidence may result in dismissal of the case upon motion by the trustee. Dismissal may include a 180-day bar to refiling pursuant to 11 U.S.C. § 109(g)(1) if the court finds willful failure to comply with a lawful order of the court.

11. **Operation of a Business.** If the debtor is operating a business that meets 2 of the 3 following conditions: (i) the business employs 3 or more individuals, (ii) the business earns gross receipts in excess of \$10,000 per month, or (iii) the business produces net receipts that comprise 50% or more of the debtor's income reported in Schedule "I", or if the debtor is notified in writing by the trustee that the trustee has otherwise determined that business

financial reporting is required, the debtor shall submit to the trustee, at least 10 days before the meeting of creditors, the following reports required to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the desirability of such business:

- (a) Projection of average monthly income and expenses;
- (b) Evidence of appropriate business insurance;
- (c) Inventory of goods as well as a list of furniture and equipment as of the date of the filing of the petition;
- (d) Monthly income and expense statements for at least the 6 months preceding the date of the filing of the petition, signed by the debtor under penalty of perjury, including a statement regarding incurred and unpaid expenses.

Failure to submit the reports as required above may result in dismissal of the case upon motion by the trustee. Dismissal may include a 180-day bar to refiling pursuant to 11 U.S.C. § 109(g)(1) if the court finds willful failure to comply with a lawful order of the court.

CONFIRMATION AND OBJECTIONS TO A PLAN

12. Objections to Plan. Upon the conclusion of the meeting of creditors, the clerk will serve a notice of conclusion of meeting of creditors and deadline for objections to plan on the debtor, the debtor's attorney, the trustee, and all creditors. The notice shall state that an objection to the plan or a related motion will be timely if filed with the court within the later of (i) 20 days after the date of the notice of the conclusion of meeting of creditors, or (ii) 20 days after service of an amended plan. A plan includes any related motions and will not be confirmed without a disposition of all related motions. The objection should be entitled "Objection to Chapter 13 Plan or Related Motion" and must be served by the objecting party on the debtor. If a timely objection is filed or the court determines that a hearing on plan confirmation is appropriate, the matter will be set for hearing with not less than 25 days' notice to the debtor, the debtor's attorney, the trustee, and all creditors. Nothing in this provision limits the court from setting a hearing on confirmation of a plan and determination of a related motion, notwithstanding the absence or untimeliness of any written objections.

13. Confirmation Order. In the absence of a timely objection to the plan or a related motion, the court may confirm the plan and determine related motions to value collateral or to avoid a lien, without a hearing. If one or more objections have been filed but are all withdrawn in writing prior to the hearing date, the matter may be removed from the calendar and determined as if no objection had been filed. Absent any objections or if, after a hearing, all objections are overruled, the trustee shall submit to the court a proposed confirmation order (hib_3015ord), attaching the plan as an exhibit. The trustee may delegate the responsibility to prepare the order to the debtor or the debtor's attorney. The proposed order may include an amendment of the original plan made orally at the hearing on the objection to the plan or related motion, or an amendment which, in the judgment of the trustee, is not prejudicial to any creditor.

14. Procedure Upon Denial of Plan Confirmation. If the court sustains an objection to the proposed plan or denies a related motion to value collateral or to avoid a lien, the order will provide that the case may be dismissed unless within 15 days after the entry of the order denying confirmation: (i) the debtor files an amended plan with any related motions, or (ii) the case has been converted or the debtor has filed a motion to convert to a case under another chapter.

AMENDMENT OF PLAN BEFORE CONFIRMATION

15. **Filing and Service of Amended Plan.** The debtor may file an amended plan at any time prior to confirmation. An amended plan shall include any related motions. The debtor is responsible for serving a copy of the amended plan as set forth in paragraph 3 of these guidelines. The debtor shall file and serve on all creditors a notice that substantially conforms to a court-approved form (hib_3015-1a) that states the deadline for objecting to the amended plan and any related motion.

16. **Objection to Amended Plan and Related Motions.** A party wishing to object to the amended plan or any related motion attached to the amended plan shall file an objection within the later of (i) 20 days after the date of the notice of the conclusion of the meeting of creditors or (ii) 20 days after service of the amended plan. Upon the filing of an amended plan, including any related motions, all previously filed objections are deemed moot. If a party remains opposed to confirmation, a new objection must be filed in response to the amended plan.

17. **Confirmation of Amended Plan.** Absent any objections, the amended plan may be confirmed without a hearing and the trustee shall submit to the court a proposed confirmation order, attaching the amended plan as an exhibit. If the debtor files an amended plan after the scheduling of a confirmation hearing, the matter will remain on calendar but will be continued to a date certain. If there are no timely objections filed before the continued hearing date, the court may take the matter off calendar and confirm the amended plan. As an alternative to filing a written amended plan and at the discretion of the court, the debtor may amend a plan or related motion orally at the hearing in order to resolve objections. The proposed order shall include the amendment of the original plan made orally at the hearing on the objection to the plan or related motion, and may include any further amendment which, in the judgment of the trustee, is not prejudicial to any creditor.

PLAN PAYMENTS TO TRUSTEE

18. **Plan Payments.** Plan payments to the trustee shall be made monthly by cashier's check, money order or other form acceptable to the trustee and shall commence within 30 days after the filing of the plan. Plan payments may be made pursuant to a wage order (hib_1322a1). In the event of the debtor's default in making plan payments, the trustee may request, with 15 days' notice to the debtor and the debtor's attorney, the issuance of a wage order. Funds from plan payments will be distributed pursuant to the plan as soon as practicable after a confirmation order is entered. If the case is converted or dismissed prior to confirmation, the trustee is authorized to retain for administrative expenses \$50 of any funds being held.

PROOFS OF CLAIM AND OBJECTIONS TO CLAIMS

19. **Need to File Proof of Claim.** A creditor must file a timely proof of claim (Form B10) in order to receive distributions under the plan. A debtor's attorney must file a proof of claim for compensation and reimbursement of expenses to be paid through plan distributions.

20. **Arrearage Portion of Secured Claim.** Notwithstanding Fed. R. Bankr. P. 3002(a), the holder of a secured claim must file a timely proof of claim in accordance with Fed. R. Bankr. P. 3002(c) in order to receive plan distributions for a prepetition arrearage or default. If the plan provides for payment of an "arrearage," the trustee shall make a distribution according to the amount stated on the proof of claim form (Form B10) as "Amount of arrearage and other charges at time case filed included in secured claim" in section 5 of the form, unless the court orders otherwise. The trustee will make no distribution on the secured portion of a claim that states the amount of the arrearage is \$0.00, none, or the like, or if the arrearage amount is left blank.

21. **Unscheduled Creditors Filing Claims.** A creditor filing a proof of claim not listed in the debtor's schedules shall be included in an existing class under the plan according to the classification of the claim stated on the proof of claim, unless the claim is disallowed or the court orders otherwise.

22. **Scheduled Creditors Not Filing Claims.** The debtor or the trustee may file a proof of claim on behalf of a creditor, with notice to be given pursuant to Fed. R. Bankr. P. 3004 and any local rule or order of the court. A proof of claim filed on behalf of a creditor may be superseded or amended by the affected creditor.

23. **Untimely Claims.** The trustee shall not make distributions on claims filed after the time periods stated in Fed. R. Bankr. P. 3002(c) unless the court orders otherwise. A stipulation to allow an untimely claim will be considered for approval by the court without a hearing if executed by the debtor and the trustee.

24. **Trustee's Notice of Filed Claims and Intent to Make Distributions.** Within the later of (i) 30 days after the latest claims deadline stated in Fed. R. Bankr. P. 3002(c) and (ii) 60 days after the entry of the plan confirmation order, the trustee shall file and serve on the debtor and the debtor's attorney the Trustee's Notice of Filed Claims and Intent to Make Distributions. The trustee's notice shall list the claims filed and advise that distributions under the plan will be made according to the classification and amount of claims as filed, unless the court already has decided the value of collateral securing a debt, avoided a lien, or otherwise disallowed or modified a claim by specific order. The notice may state that the actual distributions will be subject to changes including, but not limited to, determinations of objections to claims, amended claims, stipulations allowing untimely claims, and awards of attorney compensation.

25. **Debtor's Duty to Examine and Object to Claims.** Upon the expiration of the claims bar date for non-governmental creditors, the debtor shall examine the claims and file an objection to any claim with which the debtor disagrees and which has not yet been determined by the court.

26. **Determination of Holder of Claim and Address for Distribution.** The trustee shall make distributions in accordance with the name and address of the claimant stated on the proof of claim, subject to any amendment, assignment, transfer, change of address, or any other information filed with the court as part of the individual case record. The trustee shall not make a distribution to a claimant or address other than that stated on the proof of claim unless the notice of a change is filed as a court document. A distribution that has been returned to the trustee as undeliverable with no forwarding or change of address filed with the court may be deemed abandoned and subject to distribution to other creditors.

27. **Claims Amended, Assigned or Transferred After the Claims Bar Date.** If, after the claims bar date prescribed by Fed. R. Bankr. P. 3002 has passed, a claim is amended, assigned or transferred, the creditor amending the claim, the assignee or the transferee shall file promptly with the court the document amending, assigning or transferring the claim.

28. **Objections to Claims.** To suspend distribution on a disputed claim, the debtor shall file and serve the objection on the claimant not later than 30 days after the filing of the trustee's notice of filed claims and intent to make distributions. Pursuant to Fed. R. Bankr. P. 3007, the objecting party shall provide at least 30 days' notice of the hearing on the objection, using a notice that substantially conforms to the court-approved form (hib_3007-2). The notice shall advise that a response to the objection must be filed not later than 15 days before the hearing date and that absent a timely response, the court may determine the matter without a hearing. Pending a determination on an objection, the trustee shall cease making a distribution on the claim subject to objection. If the objection is overruled, at the request of the claimant or the trustee, the court may make provision for payment of any dividends not paid while the objection was pending. Nothing in this order shall prevent the debtor, the trustee or other party in interest from objecting to a claim after the deadline specified in this paragraph. However, any objection filed

after the deadline shall not, if sustained, result in any order requiring the claimant to refund past amounts paid on account of its claim, unless the court orders otherwise.

POST-CONFIRMATION MOTIONS

29. Trustee's Motion to Dismiss for Lack of Feasibility. If the trustee determines from the proofs of claims actually filed that the plan is not feasible, *i.e.* there will be insufficient funds to pay, in full, administrative expenses, secured claims, priority claims and any claims placed in a special class for full payment, the trustee will file and serve a motion to dismiss for lack of feasibility. Such motion shall give notice that the debtor is required to file, within 30 days of the date of the notice, (i) an objection to a claim, which, if sustained, would ensure feasibility, or (ii) a motion to modify the confirmed plan. Failure to file an objection to a claim making the plan not feasible, or a motion to modify the plan within the 30-day period, or an overruling of the objection to claim or denial of the motion to modify the plan, shall result in dismissal of the case without further notice. Alternatively, if the trustee determines that feasibility may be satisfied by extension of the duration of the plan, but not longer than 60 months, the trustee may file a motion to extend plan.

30. Trustee's Motion to Extend Plan. Because of defaults in plan payments or destruction of feasibility by claims actually filed, the trustee may file a motion to extend plan, advising that the plan will be extended up to 60 months after the time the first payment was due under the original confirmed plan in order to pay, in full, administrative expenses, secured claims, priority claims and any claims placed in a special class for full payment. The trustee shall serve the motion on the debtor, the debtor's attorney, and all parties who have filed a timely proof of claim. If no objection is filed within 20 days after the filing of the motion to extend plan, the request may be granted without a hearing.

31. Motion to Modify Confirmed Plan. A request by the debtor to modify a plan after confirmation shall be made by filing a motion and notice that substantially conforms to the court-approved form (hib_1329a). The motion shall describe with specificity the proposed modifications to the plan then in effect. The motion and notice shall be served promptly on the trustee, and (i) all creditors, or (ii) if filed after the deadline to file a proof of claim, those parties who have filed a proof of claim. The court may grant the motion if no objection is filed within 20 days after the filing of the motion. If no timely objection is filed, the debtor shall submit a proposed order, describing with specificity all modifications to the confirmed plan then in effect, a copy of which must be attached as an exhibit. If a timely objection is filed or if the court so directs, the debtor shall obtain a hearing date and file and serve, not less than 15 days before the hearing, a notice of hearing on the parties entitled to receive notice of the motion. A motion by a party other than the debtor to modify a confirmed plan shall be set for hearing with notice of not less than 28 days.

32. Motion to Dismiss. A motion to dismiss for default in plan payments or other cause, filed by the trustee pursuant to 11 U.S.C. § 1307(c), shall be served on the debtor and the debtor's attorney with not less than 15 days' notice of the hearing given to the debtor, the debtor's attorney and the Office of the United States Trustee. A motion to dismiss filed by the Office of the United States Trustee shall be served on the debtor and the debtor's attorney with not less than 15 days' notice of the hearing given to the debtor, debtor's attorney and the trustee. No written opposition to these motions need be filed. However, failure to appear at the hearing in opposition to such a motion may result in granting the request of the trustee or Office of the United States Trustee. Motions to dismiss brought by parties other than the trustee or the Office of the United States Trustee shall be served on the debtor, the debtor's attorney, the trustee and the Office of the United States Trustee, and shall be governed by LBR 9013-1, requiring 28 days' notice of the hearing on the motion to those parties and all creditors.

33. Motion for Relief from Stay. LBR 4001-1 governs the procedures for motions for relief from the automatic stay under 11 U.S.C. § 362 and the codebtor stay under 11 U.S.C. § 1301. If the order unconditionally permits the secured creditor to foreclose on or repossess its collateral, the trustee, as soon as practicable, shall cease making payments to all creditors whose claims are based entirely on a secured interest in the collateral being foreclosed on or repossessed, unless the court orders otherwise.

34. Motion to Sell Property. The debtor may move for court approval to sell property by giving notice of the motion and the opportunity to request a hearing under LBR 9013-1(c). The debtor shall serve the motion and notice on the trustee, all creditors, and any parties with an interest in the subject property. The motion shall include a report as to the status of title for the subject property. The notice shall substantially conform to the court-approved form (hib_9013-1c) and shall provide an adequate description of the relief being requested. The court may set the matter for hearing notwithstanding the absence of a timely filed objection. A motion to sell property that includes a request for an award of attorney fees and expenses shall be set for hearing on not less than 28 days' notice and shall include detailed billing records.

35. Motion to Obtain Credit. The debtor may move for court approval to obtain credit by giving notice of the motion and the opportunity to request a hearing under LBR 9013-1(c). The debtor shall serve the motion and notice on the trustee, all creditors, and any parties in interest. The notice shall substantially conform to the court-approved form (hib_9013-1c) and shall provide an adequate description of the relief being requested. The court may set the matter for hearing notwithstanding the absence of a timely filed objection. A motion to obtain credit that includes a request for an award of attorney fees and expenses shall be set for hearing on not less than 28 days' notice and shall include detailed billing records.

ATTORNEY REPRESENTATION AND COMPENSATION

36. Representation. Pursuant to LBR 9011-1, any attorney who is retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor in all matters arising in the case before and after confirmation. A debtor's attorney is not required to represent the debtor in an adversary proceeding but must file with the court and serve on all litigants a notice of non-representation of the debtor in the adversary proceeding.

37. Withdrawal. An attorney representing a debtor in a Chapter 13 case seeking to withdraw shall comply with LBR 2019-1. The request shall be served on the debtor, the trustee and the Office of the United States Trustee. A motion to withdraw shall be set for hearing on not less than 28 days' notice.

38. Disclosure of Compensation. An attorney representing a debtor in a Chapter 13 case shall file with the petition or within 15 days thereafter a Disclosure of Compensation of Attorney for Debtor (Form B 203). Compensation paid to attorneys for the representation of debtors shall be determined according to these guidelines and the Chapter 13 Attorney Fee Guidelines or, where applicable, the Guidelines for Compensation and Expense Reimbursement of Professionals. After the filing of the petition, a debtor's attorney shall not accept from the debtor, or from another party on behalf of the debtor, any payment for services or cost reimbursement without first obtaining a court order authorizing the fees and costs and specifically permitting direct payment of those fees and costs by the debtor or a third party.

39. Rights and Responsibilities of Debtors and Debtors' Attorneys. Every attorney representing a debtor in a Chapter 13 case shall file with the petition or within 15 days thereafter a statement outlining the rights and responsibilities of Chapter 13 debtors and debtors' attorneys, signed by the attorney and the debtor. An attorney who elects the expedited approval of compensation and expenses under the Chapter 13 Attorney Fee Guidelines shall use the court-approved form (hib_2016-13r). An attorney who does not elect the expedited approval of fees through plan confirmation also is required to file this statement but may use a modified version of the form.

40. Award and Allowance of Attorney Fees and Expenses Through Plan Confirmation. Pursuant to LBR 2016-1(c), an attorney representing a debtor in a Chapter 13 case may seek the award and allowance of fees and reimbursable expenses as part of plan confirmation. The Chapter 13 Attorney Fee Guidelines govern such a request.

41. Award and Allowance of Attorney Fees and Expenses Outside Plan Confirmation. An attorney representing a debtor in a Chapter 13 case who does not elect use of the Chapter 13 Attorney Fee Guidelines shall seek the award and allowance of compensation and expenses under applicable authority including, without limitation, 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, LBR 2016-1, and these guidelines. The attorney shall maintain a client trust account, deposit and hold any funds received from or on behalf of the debtor in the trust account pending an award and allowance of fees by the court, maintain detailed billing records, file an application for compensation and reimbursement of expenses, and file a summary sheet that substantially conforms to the court-approved form (hib_2016-1b13). The application for compensation shall disclose any effect which the allowance of the requested fees and expenses may have upon the plan and payments to creditors.

42. Payment of Attorney Fees and Expenses Through Plan Distributions. Pursuant to 11 U.S.C. § 1326(b), attorney fees and expenses allowed by the court will be paid before or at the same time of each payment to creditors. Allowed attorney fees and expenses shall be paid first from any funds being held in a client trust account before distributions from funds being held by the trustee. The Chapter 13 Attorney Fee Guidelines govern the payment of attorney fees and expenses awarded and allowed pursuant to those guidelines. For the payment of attorney fees and expenses awarded and allowed outside the Chapter 13 Attorney Fee Guidelines, the trustee shall reserve 50% (or such other amount as the court orders) of the total plan payments received from the debtor prior to the entry of the confirmation order (“50% reserve”). If the debtor’s attorney fails to file an application for compensation and reimbursement for expenses within 60 days after the date of entry of the confirmation order or as the court otherwise orders, the trustee shall distribute the 50% reserve to creditors according to the plan. If the debtor’s attorney files a timely application, the trustee will continue holding the 50% reserve pending a determination of the application. Upon the entry of an order allowing attorney fees and expenses, unless the court for good cause orders otherwise, the trustee shall pay the attorney the 50% reserve if so entitled and shall disburse until the fee is paid in full the lesser of 50% of each monthly plan payment after confirmation or \$250 per month of each plan payment after confirmation. For further awards of attorney fees and expenses, the trustee shall disburse monthly to the attorney the lesser of 50% of each monthly plan payment or \$250 of each plan payment, commencing with the first distribution period after the entry of the order allowing the further fees and expenses, unless the court for good cause orders otherwise.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

CHAPTER 13 ATTORNEY FEE GUIDELINES

(amended December 1, 2003)

1. **Scope.** Pursuant to LBR 2016-1(c), the following are guidelines under which the court will, as part of the plan confirmation process, award and allow compensation and reimbursable expenses, and provide for their payment under the plan, to attorneys representing Chapter 13 debtors.

2. **Attorney Options.** An attorney may decline to seek an award, allowance, and payment of compensation and expenses, pursuant to these guidelines. If an attorney so declines, the award, allowance, and payment of compensation and expenses shall be governed by applicable authority including, without limitation, 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, LBR 2016-1, and the Guidelines for Chapter 13 Procedures. This authority requires, at a minimum, that detailed billing records be kept and filed with a fee application and summary sheet.

3. **Expedited Approval of Fees Through Plan Confirmation.** Attorneys may have their fees and expenses awarded and allowed as part of the Chapter 13 plan confirmation process without filing a separate detailed application. To request this expedited approval, all of the following conditions must be satisfied:

- (a) The attorney has filed the disclosure of compensation required under 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b);
- (b) The attorney has filed an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Debtors’ Attorneys,” a copy of which is attached hereto;
- (c) The amount requested does not exceed the maximum amounts stated in paragraph 5, and
- (d) No objection to the request has been filed.

4. **Reasonable Fees for Normal and Customary Services.** Having considered comments by the Office of the United States Trustee, the Chapter 13 Trustee, and members of the local bar, and a review of attorney fee applications and attached billing statements on file, the court has determined, in accordance with 11 U.S.C. § 330(a)(4)(B), that the amounts stated in paragraph 5 are presumptively reasonable for normal and customary legal services rendered by an attorney in representing the interests of the debtor in connection with the bankruptcy case. These amounts represent the maximum amount of fees and expenses that may be awarded and allowed through plan confirmation without the filing of a detailed compensation application. These amounts are subject to periodic review by the court and the Office of the United States Trustee.

5. **Maximum Fee Amounts.**

- (a) The maximum amounts which may be awarded and allowed through the procedure described in paragraph 3, including expenses and any general excise tax but not including the fee for filing the petition, shall be determined by fees corresponding to the following components:
 - (1) **Basic Case** - normal and customary legal services and expenses, including without limitation: analyzing the debtor’s financial situation; providing all necessary advice, explanations, and counsel to the debtor about the bankruptcy case; preparing and filing the

petition, schedules, statement of financial affairs, plan and any amendments of these documents; preparing and filing unopposed motions to avoid liens and value collateral; representing the debtor at the meeting(s) of creditors and confirmation hearing(s); providing information on the debtor's income or other matters as requested by the Chapter 13 Trustee in a consumer case; negotiating any unopposed assumption or rejection of leases; responding to objections to confirmation and motions to dismiss; and reviewing and objecting to claims;

- (2) **Tax Claims** - requiring the attorney to negotiate or resolve disputes with the taxing authorities, including situations where there are outstanding tax returns or payments, and objections to plan confirmation;
- (3) **Secured Claims: Personal Property** - involving vehicles or other personal property that are subject to valuation or avoidance disputes, requiring the attorney to negotiate or resolve disputes with secured creditors, including matters concerning relief from stay and adequate protection, and objections to plan confirmation;
- (4) **Secured Claims: Real Property** - involving real property in foreclosure or anticipated to be the subject of foreclosure which the debtor is or will be opposing, requiring the attorney to negotiate or resolve disputes with secured creditors, including matters concerning relief from stay, adequate protection, valuation and extent of a security interest, and objections to plan confirmation; and
- (5) **Business Reporting** - requiring the attorney to advise the debtor with respect to periodic financial reporting to the trustee.

(b) The maximum amounts for the above-described components are:

- (1) **Basic Case** - \$1,800;
- (2) **Tax Claims** - \$300;
- (3) **Secured Claims: Personal Property** - \$100 for each motion to avoid lien included with the plan, and \$200 for each motion to value collateral (personal property) included with the plan, but not more than \$500 in the aggregate;
- (4) **Secured Claims: Real Property** - \$400; and
- (5) **Business Reporting** - \$1,000.

6. Failure to Satisfy Conditions for Expedited Approval. An attorney who has elected the expedited approval of fees and expenses under these guidelines but who has not satisfied all the conditions stated in paragraph 3 shall not receive any plan distributions for payment of an administrative expense, shall not draw on any funds advanced and held in trust for the debtor, and may be required to refund all or a portion of any fees received in connection with the bankruptcy case, pursuant to 11 U.S.C. § 329(b). Unless the conditions of paragraph 3 are satisfied in full prior to confirmation, the attorney must seek approval of attorney fees and expenses by separate application under LBR 2016-1(a) and other applicable authority. The pendency of such an application shall not delay plan confirmation or the commencement of plan payments pursuant to a confirmed plan.

7. Fees for Additional Services. If the amount of fees and expenses awarded and allowed in the plan confirmation order is not sufficient to compensate the attorney for the actual legal services rendered in the case due to unforeseeable circumstances, the attorney may apply for additional amounts by completing and filing an application and notice that substantially conforms to the court-approved form (hib_2016-13a), and attaching detailed billing records. The application for additional fees shall disclose any effect which the allowance of such fees may have on the plan and payments to creditors. The application and notice shall be filed and served on the debtor, the Office of the United States Trustee, the Chapter 13 Trustee, and all creditors. Absent an objection filed within 20 days after the date of such notice, the court may award and allow additional fees and expenses without a hearing.

8. Payment of Fees Through Plan. Except for any attorney fees and expenses paid by the debtor prior to the filing of the petition, all fees shall be paid through the plan unless otherwise ordered. Postpetition, the attorney may not receive fees directly from the debtor, or from another party on behalf of the debtor. In the first distribution period after the entry of the order confirming a plan and authorizing the payment of attorney fees, the trustee shall pay the attorney 50% of the funds then held by the trustee. Thereafter, the trustee shall disburse monthly to the attorney the lesser of 50% of the monthly plan payment or \$250 per month of each plan payment until the fee is paid in full. For additional fees awarded under paragraph 7, the trustee shall disburse monthly to the attorney the lesser of 50% of the monthly plan payment or \$250 of each plan payment, commencing with the first distribution period after the entry of the order allowing the additional fees and expenses.

9. Payment of Attorney Fees in Dismissed or Converted Case. If an attorney has elected the approval and payment of fees and expenses under these guidelines and the case is dismissed or converted prior to confirmation of a plan, absent a contrary order, and to the extent funds are available, the trustee shall pay to the attorney an administrative claim equal to 65% of the total fee the debtor agreed to pay less any prepetition retainer. The attorney shall not collect or receive additional fees from the debtor or a third party unless authorized by the court.

10. Inherent Authority of Court to Review Fees. On its own motion or the motion of any party in interest, the court may review any fees and expenses paid or requested to be paid.

11. Effective Date. These guidelines are effective in all Chapter 13 cases in the District of Hawaii on December 1, 2003, to the extent practicable. The maximum fee amounts stated in paragraph 5 are effective in all cases filed under or converted to Chapter 13 on and after December 1, 2003. Previous guidelines dated January 1, 2001, remain effective for fee amounts in Chapter 13 cases pending before December 1, 2003.

Attorney/Party Name, Address, Phone, Fax, E-mail:	For court use only
UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII	Case No.
In re: Debtor(s).	Chapter 13
RIGHTS AND RESPONSIBILITIES OF CHAPTER 13 DEBTORS AND DEBTORS' ATTORNEYS	

It is important that a debtor in a Chapter 13 bankruptcy case understands the debtor's rights and responsibilities. It also is important that the debtor knows and understands his or her attorney's responsibilities in performing certain services and the importance of communicating with the attorney to make the case successful. In order to assure a mutual understanding of these rights and responsibilities in the bankruptcy process, absent a contrary court order, the debtor and the attorney agree as below. Reference to a debtor includes a joint debtor, if any.

BEFORE THE PETITION IS FILED

Debtor agrees to:

1. Provide the attorney with accurate financial information.
2. Discuss with the attorney the debtor's objectives in filing the case.

Attorney agrees to:

1. Meet with the debtor to review the debtor's debts, assets, liabilities, income, and expenses.
2. Counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case, discuss both procedures with the debtor, and answer the debtor's questions.
3. Explain what payments will be made directly by the debtor and what payments will be made through the debtor's Chapter 13 plan, with particular attention to mortgage and vehicle loan payments, as well as any other claims which accrue interest.
4. Explain to the debtor how, when, and where to make the Chapter 13 plan payments, and discuss the availability of a wage order as a means to ensure payments to the Trustee.
5. Explain to the debtor how the attorney's fees and the trustee's fees are paid and provide an executed copy of this document to the debtor.
6. Explain to the debtor that the plan payment must be made to the trustee monthly beginning 30 days after the plan is filed.
7. Advise the debtor of the requirement to attend the § 341 Meeting of Creditors, and instruct the debtor as to the date, time and place of the meeting and other information which will be sent by the court in the notice of the commencement of the case.
8. Advise the debtor of the necessity of maintaining liability, collision and comprehensive insurance on vehicles securing loans or leases, and appropriate insurance if the case involves a business.

9. Prepare for timely filing the debtor's petition, schedules, statements, and plan with related motions to value collateral or to avoid liens.
10. Advise the debtor that, unless an extension is granted, a failure to file the schedules, statements and plan by certain deadlines may result in dismissal of the bankruptcy case with a 180-day bar to refiling.
11. Advise the debtor that failure to file current and delinquent tax returns will delay or inhibit confirmation of a plan.

AFTER THE PETITION IS FILED

Debtor agrees to:

1. Keep the trustee and the attorney informed of the debtor's address and telephone number.
2. Inform the attorney of any wage garnishments or attachments of assets which occur or continue after the filing of the case.
3. Contact the attorney promptly if the debtor loses his or her job or has other financial problems, including missing payments on a mortgage or other secured debt.
4. Let the attorney know if the debtor is sued during the case.
5. Contact the attorney before buying, refinancing, or selling real property or before entering into any long-term loan agreements to find out what approvals are required.
6. Maintain liability, collision and comprehensive insurance on vehicles securing loans or leases, and appropriate insurance if the case involves a business.

Attorney agrees to provide the following legal services:

1. Appear at the § 341 Meeting of Creditors with the debtor.
2. Prepare, file and serve necessary amended statements and schedules, and notice of any change in the debtor's address, in accordance with information provided by the debtor.
3. Respond to objections to plan confirmation, and where necessary, prepare an amended plan.
4. Prepare, file, and serve necessary modifications to the plan in the best interest of the debtor which may include suspending, lowering, or increasing plan payments or duration.
5. Prepare, file, and serve necessary motions to buy, sell, or refinance real property when appropriate.
6. Object to improper or invalid claims, if necessary.
7. Represent the debtor in motions for relief from stay and motions to dismiss.
8. Where appropriate, prepare, file, and serve necessary motions to avoid liens on real or personal property.
9. Prepare and submit the proposed order confirming plan, if not prepared by the trustee.
10. Provide such other legal services as are necessary for the administration of the present case before the bankruptcy court, except that representation or non-representation in an adversary proceeding may be the subject of a separate agreement of the debtor and the attorney.

ATTORNEY FEES

The fees charged for a Chapter 13 bankruptcy case are subject to negotiation between the attorney and the debtor. However, these fees must be approved by the court as reasonable. For the attorney wishing to obtain an expedited approval of fees as part of plan confirmation, the court has set certain maximum amounts. These maximum amounts are calculated according to the particular issues that are likely to arise in the case, and are described more fully in the court's Chapter 13 Attorney Fee Guidelines, posted at the court's website: www.hib.uscourts.gov. The fee amounts include all charges and expenses except the court's fee for filing the petition (\$194 in a Chapter 13 case).

The maximum fee amounts (effective in cases filed on or after December 1, 2003) are:

Basic services in the case:	\$1,800	
Tax-related issues:	\$ 300	
Personal property (e.g., vehicle) issues:	\$ 500 maximum	<i>(\$100 per motion to avoid lien and \$200 per motion to value collateral, up to a maximum of \$500)</i>
Real property issues:	\$ 400	
Business reporting:	\$1,000	

These amounts are the maximum amounts that may be approved as part of confirmation of a Chapter 13 plan. Lower, or higher, fees may be appropriate depending upon the circumstances. If the debtor and the attorney agree to fees greater than the amounts noted above, the attorney must ask for court approval of the fees in a separate application.

If within the above dollar limits, the initial attorney fees may be paid, in whole or in part, directly by the debtor prior to the filing of the petition. To the extent not paid by the debtor before the filing of the petition, the fees must be paid through the plan by the trustee.

If the initial fees agreed to are not sufficient to compensate the attorney for the legal services rendered in the case, the attorney must apply to the court for approval of any additional fees. Attorney fees payable after the filing of the petition shall be paid through the plan unless otherwise ordered. After the petition is filed, the attorney may not receive fees directly from the debtor or from another party on behalf of the debtor without court approval.

Debtor and Attorney agree:

Initial fees (not including filing fee) charged in this case are: \$ _____

Debtor has paid before the petition was filed: \$ _____

Attorney fees to be paid through the plan: \$ _____

Attorney for Debtor(s)

Debtor

Joint Debtor (if any)

Dated: _____

Dated: _____

Dated: _____