

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

In re:

PROCEDURES IN CHAPTER 13
CASES AND GUIDELINES
FOR CHAPTER 13 ATTORNEY
FEES.

ADMINISTRATIVE ORDER
Dated: October 17, 2006

**ORDER ADOPTING CHAPTER 13 PROCEDURES,
AS AMENDED OCTOBER 17, 2006, AND CHAPTER 13
ATTORNEY FEE GUIDELINES, AS AMENDED OCTOBER 17, 2006**

Pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules 2016-1(c) and 2083-1, the court hereby adopts the attached Chapter 13 Procedures, as amended October 17, 2006, and Chapter 13 Attorney Fee Guidelines, as amended October 17, 2006. Unless the court orders otherwise, the provisions in these procedures and guidelines apply in all cases commenced under or converted to Chapter 13 in the District of Hawaii on and after October 17, 2006.



/s/ Robert J. Faris
United States Bankruptcy Judge

Dated: 10/17/2006

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

CHAPTER 13 PROCEDURES

(effective October 17, 2006)

1. **Scope; Definitions.** Unless the court orders otherwise, these procedures govern all Chapter 13 cases in the District of Hawaii effective October 17, 2006. The term “debtor” includes the joint debtor, if any. The term “trustee” means the Chapter 13 Standing Trustee or other trustee appointed by the Office of the United States Trustee. The term “clerk” means the Clerk of the Bankruptcy Court or the clerk’s designee. The term “ECF” means the court’s electronic case files system.

MANDATORY USE OF FORMS

2. **Mandatory Use of Form Plan and Other Court-Issued Documents.** The Chapter 13 plan must conform substantially to the court-issued form plan (hib_3015-1). All other Chapter 13 papers filed by the debtor must conform substantially to the court-issued local forms identified in these procedures. Modification of a particular form is disfavored by the court but may be allowed if adequate notice of the modification is clear and conspicuous, and adequate notice of the modification is provided to all parties in interest. Additional terms and conditions not inconsistent with a court-issued form may be set forth in a section for special provisions or in an attachment. A memorandum of law, declaration or exhibit related to a court-issued form should be filed as a separate pleading, unless instructed otherwise.

FILING AND SERVICE OF PLAN

3. **Filing of Plan.** The form plan must be filed as a separate docket entry. The plan must not append any related motions, exhibits, or other attachments other than any cover or continuation sheets.

4. **Date of Plan.** For reference purposes, the date of the plan is the date the plan is signed by the debtor. If that date is not provided, the date of the plan is the filing date.

5. **Parties to Receive Copy of Plan.** The debtor is responsible for serving a copy of the proposed plan on the trustee, all creditors and parties in interest, and the State of Hawaii Department of Taxation (whether or not the department is listed as a creditor in the debtor’s bankruptcy schedules). A certificate of service for the plan and any related motions must be filed promptly. 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.

6. **Electronic Service Via ECF.** A copy of the proposed plan will be sent electronically via the court’s transmission facilities to case participants who are registered ECF users. The Notice of Electronic Filing related to the plan identifies the persons to whom the transmission was sent.

7. **Service Via BNC.** As a courtesy, the clerk will serve a paper copy of the original or amended plan by mail through the Bankruptcy Noticing Center (“BNC”) with the following limitations: (i) the plan conforms substantially to the court’s form plan, (ii) the plan is filed electronically by an attorney ECF user (*i.e.* no paper submissions), (iii) the electronic filing consists of a single PDF file with an image not exceeding 8.5 x 11 inches, (iv) there are no related motions, exhibits, or other attachments to the plan, (v) the creditors and other parties to be served are included on the creditor or mailing matrix submitted by the debtor, and (vi) it is not unduly burdensome for the clerk to do so. Notwithstanding this policy of service through the BNC, it remains the responsibility of the debtor to ensure that service has been made on all necessary parties.

FILING AND SERVICE OF RELATED MOTIONS

8. **Definition.** Related motions with respect to a 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).

9. **Filing of Related Motions.** A related motion must use a form that substantially conforms to the applicable court-issued form (motion to value collateral - hib_506, or motion to avoid lien - hib_522). The provisions of a related motion must be consistent with the treatment of the subject claim proposed in the plan. Supporting documents such as appraisals, declarations, exhibits, and legal memoranda may be attached to the motion. A related motion must be filed separately and as soon as practicable after the plan has been filed.

10. **Service of Related Motions.** The debtor must serve the related motion promptly on the trustee, any lienholder and other parties with an interest in the subject property.

11. **Notice.** Notice of a related motion and the opportunity to object and request a hearing must be given to the trustee, any lienholder and party in interest. The required notice is included in the court-issued form motions.

12. **Notice of Provision Arguably Contrary to Bankruptcy Code.** If a related motion contains a provision for treatment of a claim arguably contrary to the Bankruptcy Code so that the plan cannot be confirmed unless the secured creditor accepts it, the debtor must complete the section of the form motion and notice entitled “Additional Notice for Motion Related to Chapter 13 Plan.”

13. **Objections to Related Motions.** A 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 an 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 confirmation hearing or (ii) 20 days after service of the related motion and notice. The objection will be considered together with any objections to the plan at the confirmation hearing.

14. **Amendment of Related Motions.** An amended related motion must be consistent with the proposed plan. The filing of an amended proposed plan does not require the filing of an amended related motion, so long as the treatment of a claim proposed in the amended plan remains consistent the originally filed motion.

15. **Disposition of Related Motions.** The court will decide a related motion in conjunction with plan confirmation. Absent a timely objection, the court may cancel the confirmation hearing, confirm the plan, and grant the debtor's request to value collateral or to avoid a lien. However, separate orders will be entered for plan confirmation and each related motion. An order disposing of the debtor's request to value collateral or to avoid a lien acts 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. Without prejudice to a legal argument to the contrary, the court's determination of valuation or lien avoidance will not be subject to modification through a subsequent motion to modify the plan after confirmation.

MEETING OF CREDITORS

16. **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 must 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 may provide for a 180-day bar to refile a subsequent petition by the debtor, pursuant to 11 U.S.C. § 109(g)(1).

17. **Continuance.** The trustee may exercise discretion in continuing the meeting of creditors. A continuance by the trustee does not extend the time for the debtor to file any unfiled tax returns required under 11 U.S.C. § 1308, unless the trustee explicitly directs that the meeting be held open for that purpose.

18. **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 must 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 refile pursuant to 11 U.S.C. § 109(g)(1) if the court finds willful failure to comply with a lawful order of the court.

AMENDMENT OF PLAN BEFORE CONFIRMATION

19. Filing and Service of Amended Plan. The debtor may file an amended plan at any time prior to confirmation. (A modification of plan after confirmation requires a motion to modify.) The treatment of a claim in an amended plan must be consistent with any related motion. (If plan provisions are amended with respect to valuation of collateral or avoidance of a lien, an amended motion must be filed.) The debtor must file and serve on all creditors a notice that substantially conforms to a court-approved form (hib_3015-1a) that states the deadline for filing an objection to the amended plan.

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

CONFIRMATION AND OBJECTIONS TO PLAN

21. Confirmation Hearing. Upon the conclusion of the meeting of creditors, the clerk will give notice to all creditors of the hearing on plan confirmation and the deadline for filing an objection.

22. Objections to Plan or Related Motions. An objection to the plan should be entitled “Objection to Chapter 13 Plan or Related Motion” and must be served by the objecting party on the debtor and the trustee. The objection will be timely if filed with the court within the later of (i) 20 days after the date of the notice of the confirmation hearing, or (ii) 20 days after service of an amended plan. In the absence of a timely filed objection to the plan and any related motions, the court may cancel the confirmation hearing, confirm the plan, and determine any related motions.

23. Plan Amended After Confirmation Hearing Scheduled. 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.

24. **Confirmation Order.** Absent any timely filed objections or if, after a hearing, all objections are overruled, the trustee will submit to the court a proposed confirmation order, attaching the plan as an exhibit. The trustee may delegate the responsibility to prepare the order to the debtor or the debtor's attorney.

25. **Procedure Upon Denial of Plan Confirmation.** If the court sustains an objection to the proposed plan, 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 and 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.

26. **Trustee's Objection to Confirmation May Include Request for Dismissal.** In the event of multiple denials of plan confirmation, the trustee may include in an objection to confirmation a motion for dismissal of the case for prejudicial delay to creditors. Separate notice of the request for dismissal is not required.

PLAN PAYMENTS TO TRUSTEE

27. **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 petition or the entry of an order converting the case to one under Chapter 13. 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, 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. Pre-confirmation payments due under personal property leases or for adequate protection of secured creditors may be disbursed by the trustee as permitted elsewhere under these procedures. 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.

28. **Pre-Confirmation Lease Payments.** Pre-confirmation payments due under personal property leases governed by 11 U.S.C. § 1326(a)(1)(B) may be made directly by the debtor to the lessor only if the debtor's plan so provides or if no plan provision addresses payment of the debtor's lease obligation. If the plan provides for payment of the lease obligation by the trustee, the debtor must make the payment as part of the total payment to the trustee, and the trustee will pay the lessor, both before and after confirmation upon the filing of a proof of claim by the lessor.

29. **Pre-Confirmation Adequate Protection Payments.** Pre-confirmation adequate protection payments governed by 11 U.S.C. § 1326(a)(1)(C) may be made directly by the debtor to the secured creditor only if the debtor's plan so provides or if no plan provision addresses payment of the adequate protection. If the plan provides for payment of the secured claim by the trustee, the debtor must make the adequate protection payment as part of the total payment to the trustee, and the trustee will pay the secured creditor, both before and after confirmation upon the filing of a proof of claim by the creditor.

CLAIMS

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

31. **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 (Official Form B10) as "Amount of arrearage and other charges at time case filed included in secured claim" in section 4 (Classification of Claim) 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.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. 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.

38. 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.

39. Objections to Claims. To suspend distribution on a disputed claim, the debtor must 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

40. 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.

41. 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 must 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.

42. Motion to Modify Confirmed Plan. A request by the debtor to modify a plan after confirmation must be made by filing a motion and notice that substantially conforms to the court-approved form (hib_1329a). The motion must describe with specificity the proposed modifications to the plan then in effect. The motion and notice must 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.

43. Motions 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), must 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 must 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 must be served on the debtor, the debtor's attorney, the trustee and the Office of the United States Trustee, and are governed by LBR 9013-1, requiring 28 days' notice of the hearing on the motion to those parties and all creditors.

44. 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.

45. Motion to Sell Property.

a. Notice. 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 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, including identification of the property, purchase price, and total amount of liens and

encumbrances. The debtor shall serve the motion and notice on the trustee, the Office of the United States Trustee, and any parties with an interest in the subject property. The debtor shall also give notice of the motion to all creditors. The court may set the matter for hearing notwithstanding the absence of a timely filed objection.

b. Debtor's Attorney Fees and Costs. The motion may include a request that an estimated amount of motion-related attorney fees and costs be paid into a client trust account, with a final award subject to court approval of a separately filed application that includes billing time records.

c. Sales Commission. The motion may include a request for approval of payment of a commission or other fees and costs to a sales agent, auctioneer, or other professional whose employment has been approved by the court, or whose employment did not require court approval because the subject property is not property of the estate.

d. Plan Modification. If the sale proceeds will be used to complete all remaining payments due under the confirmed plan and no plan modification is being requested except for the acceleration of such payments, the debtor is not required to file a separate motion to modify the plan.

46. Motion to Obtain Credit or Incur Debt.

a. Notice. The debtor may move for court approval to obtain credit or incur debt by giving notice of the motion and the opportunity to request a hearing under LBR 9013-1(c). The notice shall substantially conform to the court-approved form (hib_9013-1c) and shall provide an adequate description of the relief being requested, including identification of the collateral, total amount of liens and encumbrances on the collateral, and the loan amount. The debtor shall serve the motion and notice on the trustee, the Office of the United States Trustee, and any parties with an interest in the collateral. The debtor shall also give notice of the motion to all creditors. The court may set the matter for hearing notwithstanding the absence of a timely filed objection.

b. Debtor's Attorney's Fees and Costs. The motion may include a request that an estimated amount of motion-related attorney fees and costs be paid into a client trust account, with a final award subject to court approval of a separately filed application that includes detailed billing time records.

c. Plan Modification. If the loan proceeds will be used to complete all remaining payments due under the confirmed plan and no plan modification is being requested except for the acceleration of such payments, the debtor is not required to file a separate motion to modify the plan.

d. Ex Parte Relief. A motion by the debtor to obtain credit or incur debt may be granted without prior notice if: (1) the collateral for the new debt is property that vested in the debtor upon plan confirmation or otherwise is not property of the estate, (2) the loan proceeds will be used to satisfy all remaining payments to the trustee due under the plan, (3) any debtor's attorney's fees and costs related to the request will be paid into a client trust account, pending court approval of a separate through application, and (4) the trustee does not object to the motion. [See local form hib_364-13.]

ATTORNEY REPRESENTATION AND COMPENSATION

47. **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. An attorney representing a debtor in a Chapter 13 case seeking to withdraw shall comply with LBR 2019-1. 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.

48. **Rights and Responsibilities of Debtors and Debtors' Attorneys.** Every attorney representing a debtor in a Chapter 13 case must 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 must 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.

49. **Disclosure of Compensation.** An attorney representing a debtor in a Chapter 13 case must file with the petition or within 15 days thereafter a Disclosure of Compensation of Attorney for Debtor (Form B203). Postpetition, a debtor's attorney may not receive fees directly from the debtor, or from another party on behalf of the debtor, unless paid into a client trust account pending court approval.

50. **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.

51. **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 must 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.

52. **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 through the plan 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 \$350 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 \$350 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 October 17, 2006)

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 are 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. The following conditions must be satisfied for such expedited approval.

- (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 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 reviewed 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.

5. **Maximum Fee Amounts.** 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 consist of the following components.

- (a) **Basic Case.** This includes 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 documents required by 11 U.S.C. § 521, the plan and any amendments of these documents; 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; negotiating any unopposed assumption or rejection of leases; responding to objections to confirmation and motions to dismiss; and reviewing and objecting to claims.

Maximum amount: \$2100.

- (b) **Disposable Income Calculation.** This includes the calculation of disposable income by being required to complete all sections of Official Form 22C because the debtor's income is greater than the applicable median income.

Maximum amount: \$200.

- (c) **Tax Claims.** This includes services connected with negotiating or resolving disputes with the taxing authorities, including situations where there are outstanding tax returns or payments, and objections to plan confirmation.

Maximum amount: \$400.

- (d) **Secured Claims.** This includes services involving the avoidance of liens and the valuation of collateral to determine the amounts of secured claims.

Maximum amount: \$100 for motion to avoid lien; \$200 for motion to value collateral; Aggregate limit: \$500.

- (e) **Distressed Real Property.** This includes services related to 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.

Maximum amount: \$600.

- (f) **Vehicle Repossession/Garnishment.** This includes services for assisting the debtor in an ongoing repossession of a vehicle or other personal property, or if the debtor is the subject of wage garnishment.

Maximum amount: \$400.

- (g) **Business Reporting.** This includes financial reporting to the trustee and other bankruptcy-related services where the debtor operates a business.

Maximum amount: \$1500.

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, 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 Post-Confirmation 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 after plan confirmation, 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 the court orders otherwise. Postpetition, the attorney may not receive fees directly from the debtor, or from another party on behalf of the debtor, unless paid into a client trust account pending court approval. In the first distribution 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 \$350 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 \$350 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. The maximum fee amounts stated in paragraph 5 are effective in all cases filed under or converted to Chapter 13 on and after October 17, 2006.

Attorney or Party Name, Address, Phone, Fax, Email:	For court use only
UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII	
Debtor(s):	Case No.: Chapter 13
<u>RIGHTS AND RESPONSIBILITIES OF CHAPTER 13 DEBTORS AND ATTORNEYS</u>	

A debtor in a Chapter 13 bankruptcy case must understand the debtor's rights and responsibilities. The debtor must also know and understand his or her attorney's responsibilities 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, the debtor and the attorney agree as stated below. Reference to a debtor includes a joint debtor, if any.

BEFORE THE PETITION IS FILED

Debtor agrees to:

1. Discuss with the attorney the debtor's objectives in filing the bankruptcy case.
2. Inform the attorney of any and all prior bankruptcy cases filed by the debtor.
3. Timely provide the attorney with accurate, complete information about the debtor's financial situation, including assets and debts, income and expenses, domestic support obligations such as alimony, child support, and divorce agreements, and the status of tax returns and payments.
4. For the pre-bankruptcy period specified by the attorney, timely provide copies of:
 - a. Pay stubs or other evidence of payment received from an employer;
 - b. All federal tax returns or transcripts of the returns; and
 - c. All bills, notices, statements, or communications from creditors.

Attorney agrees to:

1. Personally meet with the debtor to review the debtor's financial information.
2. Personally counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case, discuss both procedures with the debtor as well as non-bankruptcy options, and answer the debtor's questions.
3. Personally explain to the debtor the requirement for obtaining budget and credit counseling from an approved agency prior to filing the bankruptcy petition and the need to file a certificate issued by the agency.
4. Personally explain to the debtor the requirement to complete a personal financial management course before a discharge may be granted.
5. Personally explain to the debtor the matters in which the attorney will represent the debtor.

6. Personally review with the debtor and obtain the debtor's signature on the completed petition, schedules, statements, and plan, or Declaration re: Electronic Filing if the documents are filed via ECF. (Clerical or paralegal staff may prepare the documents, but the attorney must perform the review.)
7. Timely prepare and file on the debtor's behalf the completed petition, schedules, statements (including the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income), plan with related motions to value collateral or to avoid liens, and any amendments before or after the petition is filed.
8. Personally 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 refile.
9. Personally explain which payments will be made directly by the debtor and which payments will be made through the plan, with particular attention to mortgage and vehicle loan or lease payments, as well as any other claims which accrue interest.
10. Personally 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.
11. Personally explain to the debtor that the plan payment must be made to the trustee monthly beginning 30 days after the petition is filed.
12. Personally 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.
13. Personally 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.
14. Personally 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.
15. Personally advise the debtor that failure to file current and delinquent tax returns will prohibit confirmation of a plan, delay the case, and may result in dismissal of the case.
16. Personally advise the debtor of the requirement to provide the Trustee with a copy of each federal tax return, or transcript of the return, for each tax year during the bankruptcy case.
17. Personally advise the debtor that a failure to be current on domestic support obligations will prohibit confirmation of the plan and delay the case.
18. Personally advise the debtor that court approval is required for post-confirmation sales of real or personal property and incurring new debt that exceeds \$1,000.

AFTER THE PETITION IS FILED

Debtor agrees to:

1. Appear punctually at the § 341 meeting of creditors with recent proof of income, a photo identification card, proof of Social Security number, and any financial documentation as requested by the attorney or the Trustee.
2. Timely make the required payments to the Trustee and to any creditors being paid directly.
3. Timely pay any domestic support obligations, such as alimony and child support.
4. Promptly inform the attorney if the debtor loses his or her job or has other financial problems, including missing payments to the Trustee, on a mortgage or other secured debt, or domestic support obligation.
5. Provide the Trustee annually with copies of the most recent federal tax return and updated schedules "I" and "J" for income and expenses, and a statement of monthly income that shows how income, expenditures, and monthly income are calculated.

6. Keep the trustee and the attorney informed of the debtor's current address and telephone number.
7. Inform the attorney of any wage garnishments or attachments of assets which occur or continue after the filing of the case.
8. Inform the attorney if the debtor is sued or wishes to file a lawsuit during the case.
9. Contact the attorney before buying, refinancing, or selling real property and before entering into any long-term loan agreements to find out what approvals are required.
10. Maintain liability, collision and comprehensive insurance on vehicles securing loans or leases, and appropriate insurance if the case involves a business.
11. Complete a personal financial management course from an approved agency prior to making the last payment due under the plan.
12. At the time of the last plan payment, certify that all domestic support obligations have been paid.

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, and file a claim on behalf of the debtor when failure to do so will adversely affect the debtor's case or its successful completion and discharge or such failure will adversely affect the debtor after case completion and discharge.
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.
11. Promptly respond to the debtor's questions and inquiries during the pendency of the case.

ATTORNEY FEES

Fixing the attorney fees for a chapter 13 case is a two step process. First, the attorney and the client must agree upon an amount. Second, the court must decide whether that amount is reasonable.

Normally, in order to obtain the court's approval of attorney fees, the attorney must file a detailed application listing specific work done on specific dates. However, the court will approve chapter 13 attorney fees without a detailed application in order to make routine cases faster and less expensive. The total amount of attorney fees will be approved as part of plan confirmation so long as the amounts being charged are not greater than certain maximum amounts set by the court for particular services. The total amount of fees that will be approved will depend on the number and complexity of the issues in the case. Issues that make a case more difficult and more expensive usually involve an ongoing foreclosure, repossession, or garnishment; delinquent tax returns or payments; alimony, child support, and other domestic obligations that are past due; asking the court to value property that secures a mortgage or loan, and requesting the court to make a lien or security interest void.

For cases filed on and after October 1, 2006, the court has set the following **maximum** amounts for services that an attorney normally performs before a plan is confirmed. These amounts include associated costs.

- ▶ The basic attorney's fee is **\$2100**.
- ▶ If the debtor's income is greater than the applicable median income, which requires the attorney to calculate disposable income by completing all sections of Form 22C, the attorney may charge an additional **\$200**.
- ▶ If the debtor has not filed all required tax returns or there are tax payments past due, the attorney may charge an additional **\$400**.
- ▶ If the debtor wishes to file a motion to avoid a lien on personal property, the attorney may charge an additional **\$100** per motion. If the debtor wishes to file a motion to value personal property collateral, the attorney may charge an additional **\$200** per motion. (The total additional charge, however, for motions to avoid liens on personal property and to value personal property collateral may not exceed **\$500**.)
- ▶ If the debtor owns real property which is involved in a foreclosure or which is likely to be the subject of a dispute, the attorney may charge an additional **\$600**.
- ▶ If the debtor is involved in an ongoing repossession of a vehicle or other personal property, or if the debtor is the subject of a wage garnishment, the attorney may charge an additional **\$400**.
- ▶ If the debtor operates a business, the attorney may charge an additional **\$1500**.

The amounts above are only maximum amounts that the court will approve as part of plan confirmation. In some cases, the above amounts may be more or less than what is needed to fairly compensate the attorney. The attorney and the client may agree to lesser amounts. But if the attorney and the client agree upon higher amounts, the attorney must file a detailed application and obtain the court's approval. The court always has the power to increase or decrease the amount to which the attorney and the client have agreed.

The debtor may pre-pay all or part of the attorney fees before the petition is filed, but the attorney may not accept more than the amounts stated above. The chapter 13 Trustee will pay any fees which the court approves and which the debtor did not pre-pay.

In some cases, the attorney has to do more work than expected after the plan is confirmed. If this occurs, the attorney may ask the court to approve additional fees. If the court approves additional fees, the chapter 13 Trustee ordinarily will pay them, unless the court orders otherwise. After the bankruptcy petition is filed, the attorney may not receive any fees directly from the debtor or from anyone else on the debtor's behalf unless the court gives permission; the attorney may, however, request and receive a retainer from the debtor or another party and deposit it in the attorney's trust account, but the attorney may not draw on the retainer without the court's approval.

Additional information about attorney fees is posted on the court's website, www.hib.uscourts.gov.

Debtor(s) and Attorney agree that this case involves the following issues and fee components:

Basic services (not more than \$2,100)	\$
Form 22C disposable income calculation (not more than \$200)	\$
Delinquent tax returns or payments (not more than \$400)	\$
Avoidance of lien(s) (not more than \$100/motion)	\$
Valuation of collateral (not more than \$200/motion)	\$
Real property foreclosure or dispute (not more than \$600)	\$
Repossession or garnishment (not more than \$400)	\$
Business operation (not more than \$1500)	\$
Total of fee components being charged in this case:	\$
Amount debtor paid before the petition was filed:	\$
Balance of attorney fees and costs to be paid through the plan:	\$

/s/ _____
Attorney for Debtor(s)

/s/ _____
Debtor

/s/ _____
Joint Debtor (if any)

Dated: _____

Dated: _____

Dated: _____