

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re:

INTERIM LOCAL RULES
GOVERNING PRACTICE AND
PROCEDURE IN BANKRUPTCY
CASES, EFFECTIVE OCTOBER 17,
2005.

Administrative Order
Dated: October 14, 2005

ORDER ADOPTING INTERIM LOCAL BANKRUPTCY RULES

Whereas, on April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“the Act”) was enacted into law; and

Whereas, most provisions of the Act are effective on October 17, 2005; and

Whereas, certain provisions of the Act require the court to create or modify certain local procedures and forms;

NOW, THEREFORE, pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure, the Interim Local Bankruptcy Rules attached in Exhibit “A” are adopted by this court to be effective October 17, 2005. These Interim Local Bankruptcy Rules supplant and supersede existing Local Bankruptcy Rules and apply to all cases commenced on and after October 17, 2005, and, to the extent practicable and consistent with applicable law, all pending cases and proceedings in the bankruptcy court. The Interim Local Bankruptcy Rules shall remain in

effect until further order of the court.



/s/ Robert J. Faris

United States Bankruptcy Judge

Dated: 10/14/2005

INTERIM LOCAL BANKRUPTCY RULES

LBR 1007-1. Lists, Schedules, Statements, and Other Documents

- (a) DOCUMENTS SUBJECT TO THIS RULE. The documents that are subject to this rule include the schedules and statements required to be filed with the court under 11 U.S.C. § 521(a)(1)(B), other than copies of payment advices; the certificate from an approved nonprofit budget and credit counseling agency required to be filed under § 521(b); and any other document required to be filed with the petition or within 15 days thereafter under a statute, rule, or order, and which is the subject of a deficiency notice issued by the clerk.
- (b) DISMISSAL UPON FAILURE TO FILE REQUIRED DOCUMENTS.
- (1) *After deficiency notice issued.* In a voluntary case where documents identified under subdivision (a) of this rule are not filed with the petition, the clerk is authorized to issue an order to satisfy the deficiency and to give notice that failure to file the subject documents within 15 days after the date the petition was filed, or some later date as the court directs, may result in dismissal of the case without further notice, unless on or before the filing deadline the court enters an order providing for an extension of time to file the documents. An order dismissing the case under this provision may include a 180-day bar to refile a subsequent petition under 11 U.S.C. § 109(g)(1).
- (2) *Dismissal under § 521(i).* A request by a party in interest to dismiss a case under 11 U.S.C. § 521(i)(2) must be made by filing a motion with the court and serving a copy of the motion on the debtor, the debtor's attorney, the trustee, and the Office of the United States Trustee.
- (c) EXTENSION OF TIME TO FILE DOCUMENTS. A debtor may request an extension of time to file the documents identified in subdivision (a) of this rule by filing with the court a motion stating the date the petition was filed, the date set for the first meeting of creditors, the new deadline being requested, and the reason for the extension. A proposed order granting the extension should be submitted separately to the clerk at the time the motion is filed. Consideration of the motion may be expedited if an authorized representative of the Office of the United States Trustee in a Chapter 11 case and the Chapter 13 Trustee in a Chapter 13 case signs the order to signify that there is no objection to the request.

(d) NON-FILING OF PAYMENT ADVICES.

- (1) *In general.* Pursuant to 11 U.S.C. § 521(a)(1)(B)(iv), copies of all payment advices or other evidence of payment received by the debtor from any employer shall not be filed with the court unless the court orders otherwise. If the court permits the filing, the filing party is responsible for redacting all but the last 4 digits of the debtor's Social Security number and any financial account numbers.
- (2) *Submission to trustee.* The copies of payment advices or other evidence of payment required under 11 U.S.C. § 521(a)(1)(B)(iv) must be submitted to the trustee in a case under chapter 7, 12, or 13, or the Office of the United States Trustee in a case under chapter 11, not later than 7 days before the date first set for the first meeting of creditors under 11 U.S.C. § 341.
- (3) *Failure to submit.* If the debtor fails to submit to the trustee the copies of payment advices or other evidence of payment within the time specified in paragraph (2) of this rule, the trustee should file a motion to dismiss the case or, in the alternative, a motion for an order declining to dismiss the case for the reasons stated in 11 U.S.C. § 521(i)(4). In the absence of such motions, there will be a presumption that these documents have been submitted timely to the trustee and that the debtor's case is not subject to dismissal under 11 U.S.C. § 521(i)(1) or (2).

LBR 2002-1. Notice of Preferred Addresses

- (a) ADDRESS SUPPLIED TO NOTICE PROVIDER. An entity and a notice provider may agree that when the notice provider is directed by the court to give a notice to that entity, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.
- (b) NOTICE OF ADDRESS UNDER § 342(f). A creditor's notice of preferred address to be used in all cases under chapters 7 and 13 pursuant to 11 U.S.C. §342(f) should be submitted directly to the National Creditor Registration Service ("NCRS"). A request for notice under § 342(f) must be made using the NCRS form. Forms and registration information are available at www.ncrsuscourts.com. Registration of a preferred address with NCRS will constitute the filing of a notice under § 342(f) with the court.

- (c) NOTICE OF ADDRESS UNDER § 342(e). A creditor's notice of an address to be used in a specific chapter 7 or 13 case must be filed with the court. The address contained in such notice will supersede any preferred address registered with the NCRS. A notice of address under 11 U.S.C. § 342(e) should be entitled "Notice of Override of Preferred Address" (a local form for this notice is available at the court's website at www.hib.uscourts.gov.)

LBR 3015-1. Chapter 13 Plan

- (a) MANDATORY FORM PLAN
 - (1) *Plans filed in cases commenced before October 17, 2005.* All Chapter 13 plans and amended plans shall conform with the court-approved form made part of the Chapter 13 Procedures.
 - (2) *Plans filed in cases commenced on and after October 17, 2005.* Until such time that the court approves an amended form plan in response to statutory provisions created or amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, all Chapter 13 plans and amended plans filed in cases commenced on and after October 17, 2005, must attach a court-issued cover page to the current court-approved plan. The information on the cover page will supersede any language contained in the attached plan.
- (b) DISMISSAL UPON FAILURE TO FILE PLAN. In any Chapter 13 case where the plan, required by 11 U.S.C. § 1321, is not filed with the petition, the clerk is authorized to issue an order to satisfy the deficiency and to give notice that failure to file the plan within 15 days after the date the petition was filed, or some later date as the court directs, may result in dismissal of the case without further notice, unless on or before the filing deadline the debtor requests and is granted an extension of time to file the plan. A request for an extension shall be submitted to the Chapter 13 Standing Trustee for approval. An order dismissing the case pursuant to this provision may include a 180-day bar to refile a subsequent petition pursuant to 11 U.S.C. § 109(g)(1).

LBR 3015-8. Interest Rate on Chapter 13 Plan Payments

- (a) STANDARD INTEREST RATE. Except for interest on tax claims and on administrative tax expenses governed by 11 U.S.C. § 511, the clerk will set and publish a standard interest rate to be used in payments on secured and other claims under a confirmed Chapter 13 plan. The setting of a standard interest rate does not bar a debtor or creditor from proposing a different interest rate. The interest rate in effect at the time of the filing of

the petition will remain in effect for the duration of the case.

(b) INTEREST RATE CALCULATION.

- (1) For plans in cases commenced between October 17, 2005, and November 30, 2005, the standard interest rate is the national prime rate of interest as published in the Wall Street Journal on October 17, 2005, plus 1.5%.
- (2) Effective December 1, 2005, for plans in cases commenced between December 1 in one year and May 31 of the following year, the standard interest rate is the national prime rate of interest, as published in the Wall Street Journal on the first business day of that period, plus 1.5%.
- (3) Effective June 1, 2006, for plans in cases commenced between June 1 and November 30 of the same year, the standard interest rate is the national prime rate of interest, as published in the Wall Street Journal on the first business day of that period, plus 1.5%.

LBR 3070-1. Pre-Confirmation Chapter 13 Plan Payments

- (a) 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.
- (b) 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.

LBR 5081-1. Fees - Form of Payment

- (a) [reserved]
- (b) DEPOSIT OF RENT UNDER § 362(l). A deposit of rent made under 11 U.S.C. § 362(l) must:
 - (1) be in the form of a cashier's or certified check or a money order;

- (2) be made payable to the landlord;
- (3) identify the subject real property or rent account; and
- (4) be accompanied by a copy of the judgment for possession.

LBR 6070-1. Tax Information Filed with Court

- (a) **IN GENERAL.** Unless the court orders otherwise, an individual debtor's tax return may be filed with the court only if the filing is required under 11 U.S.C. § 521(f). The term tax return includes a transcript of a tax return, if the debtor elects to file a transcript rather than the complete tax return. This rule only applies to tax information which is filed with the court. It does not affect the right of a trustee, the Office of the United States Trustee, or a party in interest to request that the debtor provide tax information directly to the requesting party.
- (b) **CONFIDENTIALITY OF TAX INFORMATION.** An individual debtor's tax return information that is filed with the court under § 521 is confidential. Persons other than judicial officers and court employees may not view such tax information without a court order. Public access to such tax information is limited to viewing a docket entry that may include the name of the taxpayer, the type of tax information (e.g., 2005 Form 1040), and the tax period.
- (c) **DOCKETING OF TAX INFORMATION.** When electronically filing tax information provided under § 521, the filer must use the specific docketing event prescribed by the clerk to safeguard the confidentiality of the tax information. Failure to use the correct docketing event may result in the transmission and display of confidential tax information to persons who are not entitled to view such information and may result in sanctions imposed on the filing party.
- (d) **REDACTION OF PERSONAL IDENTIFIERS.** All tax information filed with the court under § 521 is subject to the Policy on Privacy and Public Access to Electronic Case Files, promulgated by the Judicial Conference of the United States. Prior to filing such tax information with the court, the filing party must redact all personal identifiers as described in LBR 5003-9. Court employees are not responsible for making any redactions of personal identifying information.
- (e) **OBTAINING ACCESS TO TAX INFORMATION ON FILE.** A party in interest, including a creditor, the trustee, and the Office of the United States Trustee may seek access to the tax information filed under § 521 by filing a motion for access to tax information filed with the court. The motion must be served on the debtor and the debtor's attorney and must:

- (1) Describe the movant's status in the case;
 - (2) Describe the specific tax information sought;
 - (3) State that the information cannot be obtained by the movant from any other sources; and
 - (4) Show a demonstrated need for the tax information.
- (f) **ORDER GRANTING ACCESS TO TAX INFORMATION.** For good cause, the court may enter an order granting a party access to specific tax information. The order shall include language advising the movant that the tax information is confidential and that any disclosure, dissemination, or improper use of the information may result in sanctions.

LBR 6070-2. Creditor's Request for Copy of Tax Return

- (a) **REQUIREMENT TO FILE REQUEST.** A creditor's request for a copy of the debtor's tax return under 11 U.S.C. § 521(e)(2)(A) must be filed with the court and served on the debtor and the debtor's attorney.
- (b) **FORMAT OF REQUEST.** A request described in subdivision (a) should be entitled "Request for Copy of Debtor's Tax Return of Debtor under § 521(e)(2)(A)(ii)". The request must include:
 - (1) an acknowledgment by the requesting party that the requested tax information is subject to confidentiality provisions established by the court and that the information will not be disclosed, disseminated, or used improperly;
 - (2) an instruction to the debtor that the debtor redact the tax information to show only:
 - (A) the last 4 digits of any individual's Social Security number;
 - (B) the initials of a minor child rather than the child's full name;
 - (C) the year of any individual's birth date;
 - (D) the last 4 digits of any financial account numbers; and
 - (3) an address, with the name of an individual, to which the tax information may be sent.
- (c) **TIMELINESS.** A creditor's request for a copy of the debtor's tax return will be timely if filed and served not later than 15 days before the date

first set for the first meeting of creditors.

- (d) **DEBTOR'S CERTIFICATE OF SERVICE OF TAX INFORMATION.**
The debtor must file with the court a certificate of service to show compliance with a creditor's request for a copy of a tax return. The document should be entitled "Certificate of Service of Tax Information to Requestor".