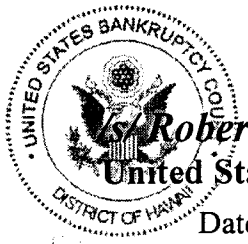
UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re: PROCEDURES IN CHAPTER 13 CASES.	Administrative Order Dated: January 3, 2005

ORDER ADOPTING CHAPTER 13 PROCEDURES

Pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 2083-1, the court hereby adopts the attached Chapter 13 Procedures. Unless the court orders otherwise, the provisions of these procedures apply in all Chapter 13 cases pending or commenced in, or transferred to, the District of Hawaii on and after January 3, 2005.



/s/ Robert J. Faris
United States Bankruptcy Judge
Dated: January 3, 2005

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

CHAPTER 13 PROCEDURES
(effective January 3, 2005)

1. **Scope; Definitions.** These procedures apply to all Chapter 13 cases pending or commenced in, or transferred to, the District of Hawaii. 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.**

(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.

35. **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 application, and (4) the trustee does not object to the motion. [See local form hib_364-13.]

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.