**COMMENTS OF THE
NATIONAL CONFERENCE OF BANKRUPTCY JUDGES
ON PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE
ANDS FORMS**

January 2012

Introduction

The National Conference of Bankruptcy Judges ("NCBJ") submits the following comments on Proposed Bankruptcy Rules 1014, 7004, 7008, 7012, 7016, 8002-4, 8006, 8009, 8010, 8013, 8015, 8016, 8018, 8023, 8018, 8023, 8024, 9023, 9024, 9027, 9033, and Proposed Form 6I. The NCBJ also submits general comments on the proposed revisions to Part VIII of the Bankruptcy Rules and to the proposed revisions of the Bankruptcy Forms.

Rule 1014

Subpart (b) of proposed Rule 1014 rule sets forth procedures to be followed when bankruptcy petitions are filed by or against the same or related debtors in different districts. The proposed amendment to the rule reverses the current procedure where the later-filed cases are automatically stayed upon the filing in the first-filed case of a motion for determination of the district or districts in which the cases should proceed. Instead, the amendment requires that a stay must await the affirmative order of the court in the first-filed case. The Committee Notes suggest that "[r]equiring a court order to trigger the stay will prevent the disruption of other cases unless there is a judicial determination that this subdivision of the rule applies and that a stay of related cases is needed while the court makes its venue determination."

The NCBJ is concerned that the court hearing the first-filed case would lack jurisdiction to order parties in the other cases, some of whom may not be parties in the first-filed case, not to proceed further. The Committee Note does not explain the origin of that court's power over parties in cases pending elsewhere. In addition, the NCBJ suggests a language change in the sentence at lines 14-17 of the proposed amendment to make clearer who is to receive notice of the motion in the first-filed case for a determination as to the district or districts in which the cases should proceed. The following sets forth the relevant text of the proposed amended rule with the NCBJ's suggested changes:

or any of the cases should proceed. The court may so determine

on motion and after a hearing, with notice to the following entities

~~in these cases~~: the United States trustee, entities entitled to notice

under Rule 2002(a) in the affected cases, and other entities as the court

directs.

Rule 7004

Subpart (e) of Proposed Rule 7004 establishes a time limit for a plaintiff to serve a summons and complaint in an adversary proceeding. The proposed amendment halves the time from fourteen days to seven. The Committee Note indicates that the amendment was motivated by the fact that Rule 7012 requires a defendant to answer the complaint within thirty days after issuance of the summons and a lengthy delay between issuance and service of the summons unduly shortens the time for defendant to respond.

The NCBJ is concerned that a seven-day time limit for service of a summons may be inadequate, especially if the plaintiff is pro se or if there is difficulty obtaining an address for service. The NCBJ believes that a better solution to the concerns expressed in the Committee Note would be to leave Rule 7004 unchanged and amend Rule 7012(a) to increase the time for defendant to answer.

Rule 7008

The proposed revision to subpart (a) of Rule 7008 deletes the requirement contained in the current version that the proponent of a complaint, counterclaim, cross-claim or third-party complaint state whether the proceeding is core or non-core. The proposed revision also expands the requirement that the pleader indicate whether he consents to the bankruptcy court's entry of final orders or judgment in *all*, not just non-core, adversary proceedings.

The NCBJ believes expanding the requirement of consent is an appropriate response to the Supreme Court's decision in *Stern v. Marshall*. The NCBJ does not agree, however, that eliminating the requirement of a statement about whether a proceeding is core or non-core advances the same objective. In the NCBJ's view, the court and the parties benefit from knowing early on in a case whether the parties contend a matter is core or non-core. For example, if a party states that the matter is core but does not consent to the court's entry of final orders or judgment, the court may choose to determine sooner whether it will issue a final order or judgment or will submit proposed findings and rulings to the district court. A prompt ruling on this question assists the parties in shaping their litigation and settlement strategy. *Stern* problems are adequately addressed by requiring parties to disclose whether or not they consent or in all adversary proceedings, core or non-core.

The following sets forth the relevant text of the proposed amended rule with the NCBJ's suggested changes to subpart (a):

6 where the case under the Code is pending. In an adversary

proceeding before a bankruptcy ~~judge~~ court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or noncore and ~~that the proceeding is core or noncore and, if non-core~~ that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy ~~judge~~ court.

Rule 7012

The NCBJ has the same view of Proposed Rule 7012 that it has of Proposed Rule 7008. Requiring parties in all adversary proceedings to state whether they consent is a salutary change, but doing away with the requirement that the responsive pleader admit or deny any core/non-core allegation is unnecessary to address *Stern v. Marshall*, and there are practical benefits to the court and to parties in retaining this requirement.

The following sets forth the relevant text of the proposed amended rule with the NCBJ's suggested changes:

(b) APPLICABILITY OF RULE 12(b)-(I) F.R. CIV. P.

Rule 12(b)-(i) F.R. Civ. P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core and ~~shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core it~~ shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy ~~judge~~ court. ~~In non-core proceedings, final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties~~.

Rule 7016

The NCBJ believes the proposed amendment adding subpart(b) to Rule 7016 is unnecessary and confusing. Although the Committee Note is unclear, the placement of the proposed amendment and its title suggest that subpart (b) would require the bankruptcy court to choose one the three possible dispositions at an early pretrial stage of an adversary proceeding. But the court necessarily makes this determination in every adversary proceeding. Requiring the court to do so at an early stage of an adversary proceeding is unnecessary and an intrusion into the court's inherent case management authority.

The Report to the Standing Committee by the Advisory Committee on Bankruptcy Rules suggests that subpart (b) is a response to *Stern v. Marshall*. It is not readily apparent how requiring a bankruptcy court to make an early determination on the form of the bankruptcy court's disposition responds to *Stern*. The Report suggests that the proposed amendment fills the gap created by the discarding of all references to core and non-core in the proposed amendments to Rules 7008, 7012 and 9027. Since the NCBJ recommends retaining the requirement that parties declare whether an adversary proceeding is core or non-core, the proposed amendment to Rule 7016 does not serve this purpose. But even if the NCBJ's recommendation is not adopted and that requirement is discarded, subpart (b) is still unnecessary and confusing. Rule 7016 should be kept in its current form.

Revisions to Part VIII Generally

The NCBJ applauds and endorses the revisions to Part VIII. The original Part VIII rules were confusing, especially for federal appellate practitioners familiar with the Federal Rules of Appellate Procedure. Bringing the Part VIII rules more into line with the structure and organization of the Federal Rules of Appellate Procedure will reduce that confusion and improve the quality of appellate practice in bankruptcy matters. The NCBJ has no comments on Proposed Rules 8002, 8005, 8007, 8008, 8011, 8012, 8014, 8017 & 8019-22. The NCBJ's comments on the remaining rules relate principally, though not entirely, to ambiguities caused by what the NCBJ believes is the misordering of certain rules (or their subparts) and certain language in the rules.

Rule 8002

The NCBJ's comment is limited to the numbering of proposed Rule 8002 and its internal structure.

Proposed Rules 8002 and 8003 reverse the order of the corresponding federal appellate rules. Proposed Rule 8002 is equivalent to Fed. R. App. P. 4, and proposed Rule 8003, though drawn from several sources, is equivalent to Fed. R. App. P. 3. The order of the federal appellate rules is more logical: it makes sense to address *how* appeals as of right are taken before addressing *when* they are taken. The order of proposed Rules 8002 and 8003 should be reversed

and the rules renumbered to follow the order of the federal appellate rules. Proposed Rule 8003 should become 8002, and proposed Rule 8002 should become 8003.

Within Proposed Rule 8002, the order of subparts (c) and (d) should also be changed. Subpart (c) concerns appeals by prison inmates. Subpart (d) concerns extensions of time to file a notice of appeal. This reverses the order of the subparts in the corresponding federal appellate rule, Rule 4(a)(5) and (c). Since requests for extensions are common in bankruptcy cases and appeals by prison inmates are not, the order of the subparts in Rule 4 is more logical. Subparts (c) and (d) in Proposed Rule 8002 should be reversed: subpart (c) should be (d) and (d) should be (c).

Rule 8003

The NCBJ has two comments. First, for the reasons discussed in the NCBJ's comment on Proposed Rule 8002, the order of Proposed Rules 8002 and 8003 should be reversed.

Second, subpart (c)(1) of Proposed Rule 8003 makes the clerk of the bankruptcy court responsible for serving notices of appeal on parties or their counsel in appeals as of right. There is no similar responsibility in Proposed Rule 8004(c)(1) concerning interlocutory appeals, and there is no apparent reason why the responsibilities of the clerk of the court should differ depending on the nature of the appeal. More important, there is no reason why the clerk should be responsible for serving notices of appeal at all, since service of papers filed with a court is typically the responsibility of the party filing them. Subpart (c) of proposed Rule 8003 is best deleted. If subpart (c) is not deleted, the service requirements should at least be the same.

Rule 8004

The NCBJ has concerns about subpart (c)(2) of Proposed Rule 8004. That subpart requires the district court or BAP clerk to docket an interlocutory appeal "under the title of the bankruptcy court action." This phrase, which appears to be new, is at best ambiguous and at worst meaningless, since it is unclear what a "title" is or what a "bankruptcy court action" is. Generally, bankruptcy courts hear bankruptcy "cases," within which there can be "adversary proceedings." An "adversary proceeding" takes the form of a civil action, but a bankruptcy "case," though a civil proceeding, is not an "action."

Reviewing courts hearing bankruptcy appeals typically have difficulty deciding how to caption the appeals, since the distinction between bankruptcy cases and adversary proceedings is unfamiliar to the clerks of those courts. But the language of subpart (c)(2) is not helpful, and the terms "title" and "action" will only lead to confusion. A more detailed provision based on the distinction between "cases" and "adversary proceedings" would be better.

Rule 8006

The NCBJ has two comments on Proposed Rule 8006.

First, the subparts of the proposed rule are not in a logical order. To offer only one example, subpart (a), addressing when a certification becomes effective, comes before more basic provisions concerning who may certify and how a certification is accomplished. The subparts of Proposed Rule 8006 should be reordered, and the NCBJ suggests ordering them as follows: subparts (e), (f), (c), (d), (b), (a), and then (g). A reordering would likely require changes to he wording of certain parts, but no changes to the substance of the rule would be necessary.

Second, subpart (g), concerning how a party should proceed in the court of appeals following a certification, should also be changed to make clear that the request for permission to take a direct appeal filed with the circuit clerk is a request under Fed. R. App. P. 5. A reference to the applicable appellate rule would help ensure that parties file the proper documents in the court of appeals.

Rule 8009

If paper copies of something designated to be part of the record on appeal are needed, paragraph (a)(5) of Proposed Rule 8009 requires the party making that designation to provide copies of any item the clerk may request. Nonetheless, the proposed rule goes on to provide that if the party fails to do so, the clerk "must prepare the copy at the party's expense."

Although the directive that the clerk prepare copies when they are not provided is part of existing Rule 8006, the NCBJ believes it should be eliminated. The responsibility for ensuring an adequate record on appeal ultimately rests with the parties. If copies of something are needed for an appeal, there is no reason why the usual procedures for obtaining them from the clerk – and paying for them – are not adequate. Those procedures can and should be followed. Particularly in a time of limited resources, the burden and expense of furnishing something the parties are not willing to furnish should not fall to the court. If a party is not willing to provide copies of something the party wants included, the clerk should not be put to the trouble and potential expense of providing copies and then sending out a bill that may never be paid.

The same comment applies to proposed Rule 8010(b)(4), which has a similar requirement.

Rule 8010

Proposed Rule 8010(b)(1) directs the clerk to transmit the record on appeal "when [it] is complete." There are times, however, when a notice of appeal is filed but nothing more is done, and no one ever files the required designation. When that happens, the record is never

"complete" because in bankruptcy appeals (as opposed to appeals from the district court) the clerk does not assemble the record until the parties designate what the record should contain. To address the problems that arise when the parties to an appeal fail to do what they are supposed to do to prepare the record, the NCBJ suggests that Proposed Rule 8010(b)(1) fix an outside deadline by which the clerk must transmit the record. Once the deadline passes, the clerk would transmit to the reviewing court whatever the clerk has of the items required by Proposed Rule 8009(a)(4). The reviewing court could then proceed as it deems fit.

The NCBJ also suggests that subpart (b)(4), which requires the clerk to prepare record items an appellant fails to provide "at the appellant's expense," should be eliminated or the reasons discussed in the NCBJ's comment to Proposed Rule 8009.

Rule 8013

The NCBJ believes Proposed Rule 8013 should be altered in three ways.

First, subpart (a)(2)(D)(ii) provides that when a motion is filed, "a notice of motion is not required." This appears to be drawn from Fed. R. App. 27(a)(2)(C)(ii) and makes sense in the courts of appeals where parties never appear on motions. The problem with making this provision applicable in the district courts is that district courts with a "presentment" motion practice (as opposed to a "negative notice" practice) require notices of motion for all motions. The Northern District of Illinois is an example. *See* N.D. Ill. Local Rule 5.3. To avoid altering the motion practice in the district courts, subpart (a)(2)(D)(ii) should either be modified to add the phrase "unless required by local rule" or should be deleted.

Second, subpart (f)(3)(A) says that a motion or response "must not exceed 20 pages." Some districts, however, have more restrictive page limits by local rule. Again, the Northern District of Illinois is an example. *See* N.D. Ill. Local Rule 7.1. To avoid altering the motion practice in the district courts, subpart (f)(3)(A) should be prefaced with the phrase "unless otherwise provided by local rule."

Third, subpart (g) adds a provision permitting intervention in a bankruptcy appeal. The appellate rule from which this new provision is drawn, Fed. R. App. P. 15(d), is not a general intervention rule but concerns intervention in administrative review proceedings in the court of appeals. No other federal appellate rule addresses the subject, although some circuits have found an inherent power to permit intervention at the appellate level, *see, e.g., United States v. Laraneta*, ___ F.3d ___, ___, 2012 WL 5897610, at *1 (7th Cir. Nov. 14, 2012).

It is unclear why an intervention rule just for bankruptcy appeals is necessary or what purpose subpart (g) is designed to accomplish. It is also unclear when a party who had not participated in proceedings in the bankruptcy court would have standing to participate on appeal and have a right to intervene. The Committee Note to proposed subpart (g) provides no reason for the new rule's adoption or any guidance in its application. Rather than adopt a special intervention rule for bankruptcy appeals, subpart (g) should be deleted.

Rule 8015

The NCBJ has only a technical comment regarding Proposed Rule 8015.

Subpart (a)(7)(C) requires that a principal brief and reply brief include a certificate of compliance with the type-volume limitation set forth in subpart (a)(7)(B). Subpart (a)(7)(C)(ii) then says that this requirement may be satisfied by a "certificate of compliance that conforms substantially to the appropriate Official Form." Subpart (a)(7)(C) is derived from Fed .R. App. P. 32(a)(7)(C)(ii), which refers to Fed .R. App. P. Official Form 6. However, there is no analogous Official Bankruptcy Form. The reference to "the appropriate Official Form" is therefore meaningless.

The NCBJ recommends either that subpart (a)(7)(C)(ii) be deleted or that simultaneously with the promulgation of the proposed rule, an Official Bankruptcy Form, modeled on Fed. R. App. P. Official Form 6, be promulgated.

Rule 8016

The NCBJ's comment on Proposed Rule 8016 is limited to subpart (f) addressing the consequences when either an appellant or appellee fails to file a principal or responsive brief on time. The NCBJ has two concerns.

First, Proposed Rule 8016 is not the right place for this provision, since the proposed rule concerns cross-appeals and subpart (f) concerns the failure to file briefs in more situations than cross-appeals. Second, a later rule, Proposed Rule 8018(a)(4), addresses the same subject in part, providing for dismissal if an appellant fails to file "a brief" on time. Proposed Rule 8018(a)(4) is both broader and narrower than Proposed Rule 8016(f) – broader because it provides for dismissal if an appellant fails to file "a brief" on time, presumably meaning a reply brief as well as a "principal brief," and narrower because it concerns appellants but not appellees.

These rules should be altered so the dismissal provisions do not overlap. Either (1) Proposed Rule 8016(f) should be confined to dismissals in appeals with a cross-appeal and Rule 8018(a)(4) to dismissals in appeals without a cross-appeal; or (2) better still, a single dismissal rule should be drafted and given its own number. As drafted, the proposed rules are partly redundant even though they are not contradictory.

Rule 8018

The NCBJ's concern is that subpart (a)(4), the dismissal provision, is partly redundant of subpart (f) of Proposed Rule 8016. See NCBJ comment to Proposed Rule 8016.

Rule 8023

The NCBJ recognizes that the content of Proposed Rule 8023 is derived from current Rule 8001(c)(2), and the NCBJ supports the adoption of the proposed rule. However, the NCBJ points out that the proposed rule perpetuates two arguable weaknesses in the current Rule for consensual dismissals of appeals.

First, the proposed rule does not account for the possibility that the matter on appeal may be an objection to discharge under 11 U.S.C. § 727(a). Under Fed. R. Bankr. P. 7041, a plaintiff may not dismiss a § 727(a) action without certain additional notice and may do so only "on order of the court containing terms and conditions which the court deems proper." A body of law has developed on the propriety of dismissals of § 727(a) proceedings in the bankruptcy court. *See, e.g., Carbone v. Beltran (In re Beltran)*, Nos. 09 B 17482, 09 A 778, 2010 WL 3338533 (Bankr. N.D. Ill. Aug. 25, 2010); *In re Roqumore*, 393 B.R. 474 (Bankr. S.D. Tex. 2008); *In re Babb*, 346 B.R. 774 (Bankr. E.D. Tenn 2006). Many courts believe that proper disposition of these matters requires the careful exercise of the court's discretion. The NCBJ believes that the safeguard built into Fed. R. Bankr. P. 7041 should find some expression in Proposed Rule 8015.

Second, the proposed rule does not take into account that one of the parties to the appeal may be the bankruptcy trustee, who is obliged under Fed. R. Bankr. P. 9019 to obtain court approval of any compromise. As written, the proposed rule does not acknowledge this requirement and could be read to override Rule 9019.

Because these problems exist under the current rules and do not appear to be disrupting bankruptcy administration unduly, and because a number of different approaches might be considered in addressing the problems, the NCBJ does not believe it critical to delay adoption of Proposed Rule 8023 based on these concerns – although the Rules Advisory Committee might want to address these problems now if it considers it feasible to do so. If the Rules Advisory Committee chooses to proceed with the proposed rule in its current form, the NCBJ suggests that these problems be considered in the near future.

Rule 8024

The NCBJ recognizes that Proposed Rule 8024 is based on current Rule 8016, and the NCBJ supports the adoption of the proposed rule. However, the NCBJ points out that the proposed rule carries forward a problem in the current rule.

Proposed Rule 8024, like its source Rule, provides, among other things, that upon entry of judgment on appeal, the clerk of the reviewing court must transmit notice of the judgment to the parties, the U.S. Trustee and the bankruptcy clerk, along with a copy of the opinion.

Notice of the disposition of the appeal to the bankruptcy clerk should result in notice to the bankruptcy judge. In its current form, however, Proposed Rule 8024 fails to address another important question: when does jurisdiction re-vest in the bankruptcy court after an appeal?

The appellate rules solve this problem in appeals from the district court to the court of appeals by providing in Fed. R. App. P. 41 for the issuance of a "mandate." "Until the mandate issues . . . the case ordinarily remains within the jurisdiction of the court of appeals and the district court lacks power to proceed further with respect to the matters involved with the appeal." Charles Alan Wright, Arthur R. Miller, Edward H. Miller & Catherine T. Struve, *Federal Practice & Procedure* § 3987 at 613-15 (4th ed. 2012). Under Rule 41, the mandate usually consists of the judgment and the opinion, but Rule 41 also says when the mandate must issue, when it is effective, and under what circumstances issuance can be stayed.

Although Proposed Rule 8024 provides for transmission of notice of the entry of judgment and the opinion, there is nothing in the Part VIII rules comparable to Fed. R. App. P. 41. As a consequence, it is unclear when jurisdiction re-vests in the bankruptcy court following completion of an appeal to a district court or BAP. Adoption of a mandate requirement, complete with time limits for the mandate's issuance and an indication of when the mandate is effective, would help avoid jurisdictional quandaries when bankruptcy appeals conclude.

As with Proposed Rule 8023, the problem identified here exists under the current rule and does not appear to be disrupting bankruptcy administration unduly. A number of different approaches might also be considered in addressing the problem. The NCBJ therefore does not believe it is critical to delay the enactment of Proposed Rule 8024 – although the Rules Advisory Committee might want to address the problem now if it considers it feasible to do so. If the Rules Advisory Committee chooses to proceed with the proposed rule in its current form, however, the NCBJ urges that the problem identified here be considered in the near future.

Rule 9023

The NCBJ objects to the proposed amendment which would add a sentence stating that "[i]n some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending." The proposed sentence is more akin to a cross-reference than a rule, and the Committee Note confirms as much. The phrase "[i]n some circumstances" also is vague and unhelpful. For these reasons, the proposed amendment may be appropriate as part of the Committee Note, but it is not suitable as part of the text of the rule itself.

Rule 9024

The NCBJ objects to the proposed amendment to Rule 9024 for the same reason as the proposed amendment to Rule 9023. The amendment adds a sentence that is more akin to a cross-reference than a rule, and the Committee Note confirms as much. The phrase "[i]n some circumstances" also is vague and unhelpful. For these reasons, the proposed amendment may be appropriate as part of the Committee Note, but it is not suitable as part of the text of the rule itself.

Rule 9027

The NCBJ has the same comment on Proposed Rule 9027 as on Proposed Rules 7008 and 7012: requiring consent in all situations is salutary, but eliminating the requirement that parties assert (or respond to the assertion) whether a matter is core or non-core is not.

The following sets forth the relevant text of the amended Rule and tracks the NCBJ's suggested changes:

(1) *Where filed; form and content*. A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action that the proceeding is core or non-core and whether the ~~proceeding is core or non-core and, if non-core, that~~ the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy ~~judge~~ court, and be accompanied by a copy of all process and pleadings.

* * * * * *

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice

of removal that upon removal of the claim or cause of action the proceeding is core or non-core.~~.~~ ~~If the statement alleges that the proceeding is non-core, it shall state~~ and stating that the party does or does not consent to entry of final orders or judgment by the bankruptcy ~~judge~~ court.

Rule 9033

The NCBJ has no objection to the proposed amendments to Rule 9033 but does suggest an additional change to subpart (a). Under the rule as currently written and as it would be amended, the clerk is required to serve copies of the court's proposed findings and conclusions "on all parties *by mail*" (emphasis added). The requirement of service "by mail" appears to date back to the adoption of the original rule in 1987, well before the transition to electronic case filing. With the advent of ECF, service of proposed findings and conclusions by mail is anachronistic and unnecessary and will generate needless additional expense to the court.

The NCBJ suggests that the proposed rule be further revised by placing a period (.) after the word "parties" and deleting the remainder of the sentence – i.e. the words "by mail and note the date of mailing on the docket." Whether service is effected electronically or by mail would then depend on whether the party served is an electronic filer, in which case that party would automatically be served via ECF, or not, in which case service would have to be by mail. As for the requirement that the date of mailing be noted on the docket, the notice of electronic filing that ECF generates system when proposed findings and conclusions are docketed would adequately fulfill that need.

Official Forms

The NCBJ applauds and endorses the revisions to the forms. The revised forms are far more "user friendly" than their predecessors. They are readable, easy to fill out, and easy to understand. Considerable effort plainly went into the revisions, and the effort was successful. The revised forms represent a significant improvement.

Official Form 6I

The revision to Form 6I deletes the following language contained in the current version of Schedule I: "The column labeled 'Spouse' must be completed in all cases filed by joint

debtors and by every married debtor whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed."

The NCBJ believes this language should be restored so that the "spouse" column is completed in every case. Restoring the deleted language would not only provide more complete disclosure and continue existing practice, it would conform revised Form 6I to the instructions for filling out the form.