



American Board of Criminal Lawyers

THE ROUNDTABLE

Vol. MMXII, No. 4

April 2012

Super Simplified
Department of the Treasury - Internal Revenue Service
**Income Tax Return for Single and
Joint Filers With No Dependents (99)**

2011



OMB No. 1545-0074

Form **1040EZ**

Your first name and initial		Last name		Your social security number	
If a joint return, spouse's first name and initial		Last name		Spouse's social security number	
Home address (number and street). If you have a P.O. box, see instructions.				Apt. no.	
City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).				<input type="checkbox"/> Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. <input type="checkbox"/> You <input type="checkbox"/> Spouse	
Foreign country name		Foreign province/county		Foreign postal code	

Income

Attach Form(s) W-2 here.

Enclose, but do not attach, any payment.

How much did you earn last year? Send it in.

Payments, Credits, and Tax

7	Federal income tax withheld from Form(s) W-2 and 1099.	7
8a	Earned income credit (EIC) (see instructions).	8a
b	Nontaxable combat pay election.	8b
9	Add lines 7 and 8a. These are your total payments and credits.	9
10	Tax. Use the amount on line 6 above to find your tax in the tax table in the instructions. Then, enter the tax from the table on this line.	10

Refund

Have it directly deposited! See instructions and fill in 11b, 11c, and 11d or Form 8888.

11a	If line 9 is larger than line 10, subtract line 10 from line 9. This is your refund. If Form 8888 is attached, check here <input type="checkbox"/>	11a
b	Routing number	c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings
d	Account number	

Amount You Owe

12	If line 10 is larger than line 9, subtract line 9 from line 10. This is the amount you owe. For details on how to pay, see instructions.	12
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Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? Yes. Complete below. No

Designee's name	Phone no.	Personal identification number (PIN)
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Sign Here

Under penalties of perjury, I declare that I have examined this return and, to the best of my knowledge and belief, it is true, correct, and accurately lists all amounts and sources of income I received during the tax year. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name	Firm's EIN	Phone no.		
Firm's address				

"Super Lawyers: Georgia/2012"

Both Ed Garland and Don Samuel are among 'The Top 100.' Ed is the cover boy (see photo) and the subject of the lead profile, aptly titled 'The Master Storyteller.'

Jerry Froelich, Jim Jenkins, Bruce Maloy, and Bruce Morris round out the list of ABCL "Super Lawyers" in the Peach State.



From: Jan N. Friedman
Sent: Monday, February 27, 2012 7:06 PM
To: ABCL Fellows
Subject: Congratulations To My Friend Jon Paul Rion

For almost 3 years my office has been fighting off a life rape case where the step-daughter was the accuser. Twice just before the jury was sworn in the prosecutors dismissed without prejudice. There always seemed to be some issue and it was very frustrating that they could just keep doing it again. The third time around we needed fresh eyes on the case and Jon Paul immediately came to mind. Without hesitation he took over.

Today after more than a week in trial Jon Paul secured a dismissal with prejudice. His investigation yielded medical records that the prosecutors said did not exist. In the end, the judge read the riot act to the prosecutors, dismissed the case, called for a special investigation of the mother, and demanded that she be prosecuted for perjury. Basically, Jon Paul cleaned their clocks.

Jon Paul and his associate saved a man's life today. Wonderful work!

KNOW YOUR RIGHTS!



Foreigners convicted of sexually abusing children in Moldova will be mandatorily castrated, according to legislation introduced Tuesday. Parliament approved the law after lawmakers said the impoverished nation was attracting pedophiles from the West.



JIM THOMAS

BILL SWOR

Mr. Jerry H. Summers
 735 Broad St., Ste. 800
 Chattanooga, TN 37402

STEVE:
 The 86 year old
 Bumble Bee still has his
 "Stinger"
 Jerry Summers

Yates Defense Wilts Under Bobby Lee Cook Interrogation

Multi-Million-Dollar Case Settled; Judge Urges Family To Shake Hands, Reunite
 Wednesday, February 29, 2012

With Jo Ann Cline Yates on the stand enduring interrogation by legendary attorney Bobby Lee Cook, the defense in the Yates vs. Yates multi-million-dollar will dispute on Wednesday afternoon threw in the towel at Walker County Court in LaFayette, Ga.

Ms. Yates, widow of Pierce Allen Yates Sr., agreed to step aside as co-executor of the over \$10 million marital trust set up by her late husband. Brewster Yates, one of the five children of the elder Yates, also withdrew as executor.

In the settlement, each of the five children of Pierce Allen Yates will get an equal share. A granddaughter who had been disinherited by the "strong-willed" Yates was put back in as well.

Mr. Yates had changed his will a few months before he died in August 2007 at the age of 86. He took eldest son Allen Yates out except for a \$100,000 gift. He gave a double share to Brewster Yates, another son by a different wife.

Allen Yates then filed suit against half-brother Brewster and step-mother Jo Ann. He brought attorney Cook back into the courtroom along with veteran attorney David Cunningham.

Questioned by attorney Cook, who said he has trouble hearing as well as standing for long periods, Ms. Yates said she first married Justin Brown, a part owner of Chattanooga Boiler and Tank. She said they were friends with Walter Cline and his wife and went skiing in Colorado with them. She said she was divorced from Mr. Brown after 19 years of marriage and married Mr. Cline, who also got a divorce. She moved into his Lookout Mountain home and that is where she lived with Mr. Yates.

Ms. Yates told attorney Cook she is 81. He responded, "I've got you beat. I'm 86."

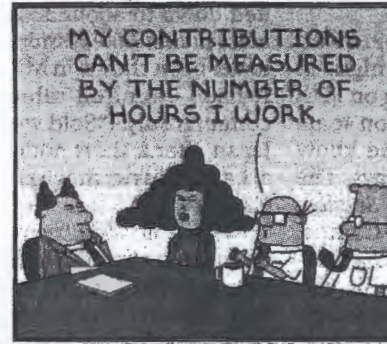
He questioned her in detail from Hospice records about the declining condition of her husband at the time he signed the revised will and also signed a \$140,000 check for a yellow, five-carat diamond that she said was a late anniversary present.

Attorney Cook also questioned her about Brewster Yates asking his father if he had "abandoned" his first family, saying he had heard that from the wife and daughter of Allen Yates.

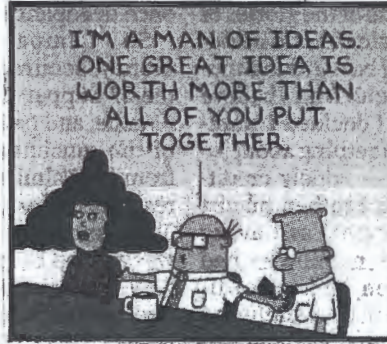
The Summerville lawyer said, "That's pretty hard stuff - even for someone who fought in the Battle of the Bulge."

The attorney asked if Brewster Yates "would say things without thinking; they would sort of jump out." He said, "If you bought a used car from him, you would want to look under the hood."

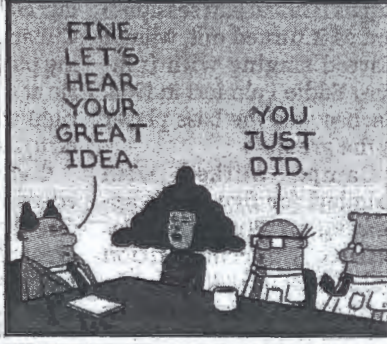
Ms. Yates agreed, but said, "Brew has a heart of gold."



DilbertCartoonist@gmail.com



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From The London Times: A Well-Planned Retirement
 A perfect example of government mismanagement.



Outside England's Bristol Zoo there is a parking lot for 150 cars and 8 buses. For 25 years, its parking fees were managed by a very pleasant attendant. The fees were for cars (£1.40), for buses (about £7). Then, one day, after 25 solid years of never missing a day off work, he just didn't show up; so the Zoo Management called the City Council and asked it to send them another parking agent.

The Council did some research and replied that the parking lot was the Zoo's own responsibility.

The Zoo advised the Council that the attendant was a City employee.

The City Council responded that the lot attendant had never been on the City payroll.

Meanwhile, sitting in his villa somewhere on the coast of Spain or France or Italy ... is a man who'd apparently had a ticket machine installed completely on his own, and then, had simply begun to show up every day, to collect and keep the parking fees, estimated at about £560 per day -- for 25 years.

Assuming 7 days a week, this amounts to just over 7 million pounds ... and no one even knows his name.

I think this is my favorite E-Mail ever!!

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Future Meetings

June 22-24, 2012: Broadmoor Resort, Colorado Springs
October 4-6, 2012: St. Regis, Dana Point, CA

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Federal Judge's Comments Affect Sentencing in \$74 Mil. Fraud Case

A district court judge's statements during a plea colloquy served to expand the appellate rights of the defendant beyond what was contained in the plea agreement, the 3rd U.S. Circuit Court of Appeals has ruled, remanding for resentencing the case of an Internet company owner convicted in a \$74 million fraud scheme.

Gina Passarella

2012-02-28 12:00:00 AM

A district court judge's statements during a plea colloquy served to expand the appellate rights of the defendant beyond what was contained in the plea agreement, the 3rd U.S. Circuit Court of Appeals has ruled, remanding for resentencing the case of an Internet company owner convicted in a \$74 million fraud scheme.

Neal Saferstein, who pled guilty to mail and wire fraud and submitting false tax returns related to his Philadelphia-based company GoInternet, was sentenced in 2010 by U.S. District Court Judge Cynthia M. Rufe of the Eastern District of Pennsylvania to 23 years in prison. And because his crimes were committed over a period of time in which two different federal sentencing guidelines were in place, Saferstein has now won a chance to be resented under the lower guideline range.

Saferstein's plea agreement contained a waiver of his appellate rights with the exception of "the assertion of constitutional claims that the relevant case law holds cannot be waived," according to the 3rd Circuit's opinion in *United States v. Saferstein*, made precedential last week.

But during his colloquy, Rufe said the appellate waiver "of course is not intended to bar you [from] raising constitutional claims, and only the court can decide whether they are constitutional claims or some other kind of claim," according to the opinion.

It was that last part of Rufe's statement, about courts having the power to determine whether Saferstein had constitutional claims on appeal, that led him to raise three issues on appeal to the 3rd Circuit.

"The district court's statement is clearly at odds with the otherwise plain and straightforward language of the agreement," Circuit Judge Joseph A. Greenaway Jr. said. "That statement thus created a plausible and tangible ambiguity and seemingly expanded Saferstein's appellate rights."

Greenaway said the 3rd Circuit has never ruled on the impact of a sentencing court's oral statements during a plea colloquy on the interpretation of a plea agreement. He pointed to a 10th Circuit opinion that found the court's words during sentencing do have an effect.

A plea agreement is akin to a contract and the parol evidence rule requires contracts be interpreted only by what is contained within them and no other extrinsic evidence, Greenaway said.

"However, the plea colloquy has no analogue in contract law; indeed, regardless of the clarity of a written plea agreement, Rule 11(b) of the Federal Rules of Criminal Procedure obligates a district court, before accepting a plea of guilty, to place the defendant under oath and to address the defendant orally and in open court." Greenaway said.

Given the fact that defendants must knowingly and voluntarily waive appellate rights and that the government has tremendous bargaining power in entering plea agreements, Greenaway said, a district court's statements could create ambiguity where none exists in the plain text of the plea agreement. He therefore allowed Saferstein to raise constitutional claims on appeal "as the district court represented during the colloquy that he would be able to do."

Saferstein raised three issues on appeal, but only one was addressed by the 3rd Circuit as actually being of "constitutional moment and meritorious."

Saferstein argued the district court violated his due process rights by denying him credit he said he was due for accepting responsibility, denied him his right to allocution at sentencing and violated his rights under the ex post facto clause. The 3rd Circuit found only the ex post facto claim raised a valid constitutional issue.

Saferstein's sentencing was done in accordance with the 2009 Guidelines Manual. The mail and wire fraud counts for which Saferstein was convicted occurred in December 2002 and June 2003. The base offense level for fraud under the guidelines was increased in November 2003. The filing of false tax returns for which Saferstein was convicted occurred after the guidelines were amended, according to the opinion.

The Guidelines Manual supports a one-book rule in which the manual in effect on a particular date shall be applied in its entirety. Greenaway said the guidelines comments are not binding on federal courts, which have held that the ex post facto clause requires the application of old sentencing guidelines if the retroactive application of the new guidelines would result in harsher penalties.

Greenaway remanded the case back to the district court to calculate Saferstein's base offense level in accordance with the sentencing guidelines that were in place when the mail and wire fraud was committed. U.S. District Court Judge John E. Jones III of the Middle District of Pennsylvania, sitting by designation, joined Greenaway in the decision along with Circuit Judge D. Michael Fisher.

Solo practitioner Peter Goldberger of Ardmore, Pa., and [Stephen R. LaCheen](#), of LaCheen Wittels & Greenberg in Philadelphia represented Saferstein. Goldberger did not return a call for comment. A spokeswoman for the U.S. Attorney's Office for the Eastern District of Pennsylvania said the office would proceed in accordance with the court's opinion.

Saferstein served as president, CEO and majority owner of GoInternet from 1997 until 2004. The Philadelphia telemarketing company attempted to sell businesses Internet services packages, including a Web page, dial-up Web access and an e-mail account. The company then began charging its customers who agreed to receive a "welcome packet" \$29.95 a month onto their phone bill unless the customers called within 15 days to cancel the services, according to the opinion.

The welcome packet looked like unsolicited junk mail and often went unopened by the customers. If the packets were read, the disclosures of the monthly fee were hard to find, Greenaway said.

In 2000, the Federal Trade Commission sued Saferstein and GoInternet. They entered a stipulated judgment in which GoInternet would alert all of its customers that they were being charged this fee, but Saferstein ignored the agreement, the judge said. A criminal indictment later followed.

Gina Passarella can be contacted at 215-557-2494 or at gpassarella@alm.com. Follow her on Twitter [@GPassarellaTLI](#).

Copies of the 15-page opinion in [United States v. Saferstein](#), PICS No. 12-0436, are available from The Legal Intelligencer. Please call the [Pennsylvania Instant Case Service](#) at 800-276-PICS to order or for information.) •