

**UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY**

**DIRECTOR,¹ OFFICE OF
PROFESSIONAL RESPONSIBILITY,**)

Complainant,)

v.)

JOSEPH R. BANISTER,)

Respondent.)

Complaint No. 2003-2

**ORDER ON COMPLAINANT'S MOTION
FOR SUMMARY JUDGMENT²**

In this action seeking to have the Respondent, Joseph R. Banister, disbarred from practice before the IRS, Complainant, Director, Office of Professional Responsibility, filed a Motion for Summary Judgment on October 31, 2003. Respondent filed its Response on November 17, 2003. As the IRS notes, it initiated this action based on the assertion that Mr. Banister, in the course of his representation of taxpayers Coleman and Thompson, advised them that they were not required to file federal tax returns because the Sixteenth Amendment to the Constitution was not properly ratified and because Sections 861-865 of the Internal Revenue Code defines "income" in a manner which excluded their earnings. By virtue of the first amendment to the Complaint, the IRS added Banister's alleged failure to file his individual federal tax returns for the years 1999

¹The Director, Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury was formerly known as The Director of Practice. For convenience and as a practical frame of reference, the Court will refer to the Complainant as the "IRS."

²**Some of the issues raised in this motion have been addressed in the Court's earlier issued Orders. Therefore, the Court's prior Orders are incorporated by reference in this Order.** Those Orders, issued between November 17 and November 21, 2003 are as follows: Order on Respondent's Motion to Dismiss the Complaint; Order on Respondent's Motion to Dismiss the Amended Complaint; Order Regarding Respondent's Motion to Adjourn the Hearing; Order on Respondent's Motion for Discovery; Order on Complainant's Motion to Amend the Amended Complaint and Motion to Amend the Prehearing Exchange Exhibits; Order Regarding Respondent's Motion to Abate the Case; and Order Regarding Complainant's Motion in Limine.

The Court has already addressed this contention in its Order on Respondent's Motion to Dismiss the Complaint and Order on Respondent's Motion to Dismiss the Amended Complaint, both of which were issued on November 17, 2003. As determined in that earlier Order, this assertion is also meritless.


F. Respondent's Affirmative Defense that the prosecution of the Complaint violates principles of sound public policy, fundamental fairness and equity.

This contention has been addressed and it too is completely devoid of any merit.

Conclusion

Based on the foregoing analysis and discussion, Complainant IRS's Motion for Summary Judgment is GRANTED, as to liability. The IRS has demonstrated, through clear and convincing evidence, that the Respondent, Joseph R. Banister committed the violations set forth in the original Complaint, as well as those charges added by the Amended Complaint. There remains for decision, the appropriate sanction to be imposed for these violations. That matter will be addressed in a subsequent Order.

SO ORDERED.



William B. Moran
United States Administrative Law Judge

Dated: November 24, 2003
Washington, D.C.