



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
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**UNITED STATES OF AMERICA  
THE DEPARTMENT OF THE TREASURY**

<b>DIRECTOR,<sup>1</sup> OFFICE OF</b>	)	
<b>PROFESSIONAL RESPONSIBILITY,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Complaint No. 2003-2</b>
	)	
<b>JOSEPH R. BANISTER,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER REGARDING RESPONDENT'S MOTION  
TO ADJOURN THE HEARING**

Respondent, Joseph R. Banister, through counsel, filed, on October 29, 2003, a Motion to Adjourn the Hearing.<sup>2</sup> Aside from its incorporation by reference of the reasons already advanced in its other motions, the Motion asserts that the "Complainant waited until the eve of the hearing to add the amended charges, without availing the Respondent of the proper administrative process. In addition, Respondent claims that the absence of factual specificity in the first and amended complaints, as well as the glaring omission of the names of potential witnesses further impairs his ability to prepare a defense. Finally, Respondent believes that "the potential use of these proceedings as a masked criminal investigation warrant adjournment."

In its Opposition to the Motion, the IRS first contends, in the efficient style adopted by the Respondent in this motion, that in its Opposition to Respondent's Motion to Abate the Case, it has already addressed the assertion that this proceeding is simply a tool for the criminal investigation of the Respondent. The assertion that IRS waited until the eve of the hearing to amend the Complaint deserves little comment. As the IRS notes, the motion to amend the Complaint was filed on August 8, 2003, which was several months before the scheduled start of the hearing on December 1, 2003. In addition, as the parties know, the general rule is that liberal amendment of the pleadings is permitted under modern civil practice. In this instance the amendment adds the contention that the Respondent did not file his own individual federal tax returns for the years 1999 through 2002 and that he was required to so file. The IRS immediately

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<sup>1</sup>The 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."

<sup>2</sup>In support of its Motion, Respondent incorporates by reference the reasons it advanced in its motions to dismiss, to abate and for discovery. The Court, following this device, incorporates by reference all of its Orders regarding those other Motions.

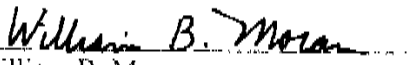
filed the prehearing exchange exhibits, upon which it relies, to prove these allegations. It is noted that these allegations, which were denied, do not require extensive time to develop any defenses which may obtain.

As to the assertion that the IRS failed to follow the proper administrative process regarding the amended Complaint, the IRS notes that the motion fails to specify the nature of these alleged shortcomings. Further, the IRS observes that the Respondent never filed any opposition to its Motion to Amend the Complaint. The IRS points out that, at least in this Motion, the Respondent offers nothing to describe how the Complaint lacks factual specificity.<sup>3</sup> It also reminds that 31 U.S.C. § 330 authorizes the Secretary of the Treasury to regulate the practice of those representatives who appear before it and that, upon notice and the opportunity for a hearing, it may urge sanctions against those who are incompetent, disreputable, or who otherwise violate the regulations governing such representatives.

In the IRS response to the claim that the Complaints lack factual specificity, it observes that the Motion only declares that to be the case. However, the IRS notes the claimed deficiency did not thwart the Respondent's ability to file an answer to either complaint and that the Respondent filed no objections along those lines in its Answers. Last, responding to the claim that there is a "glaring omission of [IRS's] potential witnesses," IRS points out that it listed its witnesses, along with a brief summary of their expected testimony, as required by the Court's Prehearing Exchange Order. Thus, it describes the Respondent's assertion as frivolous.

This Motion requires little additional comment by the Court. The one paragraph motion is comprised of bald assertions. Upon consideration of the Motion and the IRS opposition thereto, each of the Respondent's contentions is rejected. Accordingly, Respondent's Motion to Adjourn the hearing is **DENIED**.

**SO ORDERED.**

  
William B. Moran  
United States Administrative Law Judge

Dated: November 17, 2003  
Washington, D.C.

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<sup>3</sup>As with assertion that the IRS failed to afford the Respondent with the proper administrative process, the IRS notes that the Respondent adds some detail to this claim in its Motion to Dismiss the Complaint. For that reason, the IRS responses to these claims appear in connection with the motion that actually asserts a basis for those claims. As only an assertion was lodged, the same approach was taken with the Respondent's claim that the Complaints lacked factual specificity.

In the Matter of Joseph R. Banister, Respondent  
Complaint No. 2003-2

CERTIFICATE OF SERVICE

I certify that a true copy of **Order Regarding Respondent's Motion To Adjourn The Hearing**, dated November 17, 2003, was sent this day in the following manner to the addressees listed below:

  
Nelida Torres  
Legal Staff Assistant

Dated: November 17, 2003

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