

UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY

DIRECTOR OF PROFESSIONAL)	
RESPONSIBILITY,)	
)	
Complainant,)	
)	
v.)	Complaint No. <u>2003-2</u>
)	
JOSEPH R. BANISTER,)	
)	
Respondent.)	
_____)	

RESPONDENT’S NOTICE OF APPEAL AND APPEAL
TO THE SECRETARY OF THE TREASURY

The respondent, Joseph R. Banister (“Banister”), by and through his attorneys, the Law Office of Robert G. Bernhoft, S.C., hereby appeals the judgment of the Administrative Law Judge. *See Decision of the Administrative Law Judge*, December 29, 2003.

The Secretary must reject the recommendation of the Administrative Law Judge (hereinafter “ALJ”), and dismiss the complaint against Banister. The decision of the ALJ merits no deference from the Secretary of the Treasury, due to its evident defects in matters of law. The actions of the agency warrant dismissal of the complaint, due to the agency’s egregious misconduct, including retaliatory action against their former agency whistleblower, conducting illicit secret audits and conferences with grand jury prosecutors, secret surveillance of Banister’s political appearances, relying on Banister’s political publications for initiating this action and recommending disbarment, and failure to follow their own rules and procedures at each stage of this inquisition into Banister, from the investigation to the recommendation for prosecution to their perjured testimony in the proceeding.

Banister files the following exceptions to the IRS' action: the IRS' failure to provide meaningful notice of the allegations prior to commencement of the complaint; the secret parallel criminal proceeding by the IRS; the IRS' retaliatory motives for Banister's free speech and former whistle-blowing activities; the IRS' failure to follow its own rules and attempt to punish Banister for conduct outside the scope of practice before the IRS. In short, the First Amendment and Fifth Amendment, as well as the Administrative Procedure Act and the rules governing the Director of Practice, all require dismissal of the complaint, not disbarment.

Separately, Banister also takes exception to the decisions of the ALJ, in his administration of this case. The ALJ erred in all of the following respects:

- denying Banister any discovery of any documents or any witnesses;
- denying Banister his right to testify on his own behalf as to the merits;
- denying Banister his right to cross examine any of his accusers;
- denying Banister any right to any hearing on the merits;
- applying the wrong standard for summary judgment;
- excluding the exculpatory testimony of IRS witnesses from the entire case;
- relying on the perjured testimony of an IRS official.

Indeed, this case is unprecedented in the history of administrative law. This political prosecution makes a mockery of any semblance of justice in the administrative process. Upholding the ALJ decision and IRS action seals the coffin on cherished ideals of American justice –the right to meaningful notice, the right to a hearing, the right to cross examine accusers in open court, the right to discover exculpatory evidence, the

initiating the proceeding, without alleging the requisite facts that constitute the offense, without informing him he was under a parallel criminal investigation, without affording him any discovery, without permitting him to even “argue” as to the merits of the statements IRS seeks disbarment for, and without even affording him meaningful notice or a meaningful hearing. Any one of these circumstances demands reversal; their aggregation necessitates dismissal of this entire proceeding.

Respectfully submitted this 23rd day of January, 2004.

THE LAW OFFICES OF ROBERT G. BERNHOFT, S.C.
Attorneys for the Respondent, Joseph R. Banister

By: _____

Robert E. Barnes
Wisconsin State Bar No. 1038252

207 East Buffalo Street, Suite 600
Milwaukee, Wisconsin 53202
(414) 276-3333 telephone
(414) 276-2822 facsimile
rebarnes@bernhoftlaw.com