

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

DIRECTOR OF PROFESSIONAL)
RESPONSIBILITY,)
)
Complainant,)
)
v.)
)
JOSEPH R. BANISTER,)
)
Respondent.)
_____)

Complaint No. 2003-2

MOTION FOR DISCOVERY AND SUPPORTING MEMORANDUM

The respondent, Joseph R. Banister (“Banister”), by and through counsel, Robert E. Barnes, hereby moves this honorable court, to permit discovery, including interrogatories, requests to admit and requests for production of documents. The Complainant failed to cite with specificity what facts constituted the claims against the respondent. That failure forces the respondent to bear a disproportionate burden – to disprove a fact that has not even been alleged. Hence, discovery is required.

The respondent will seek interrogatories from the following:

1. Joe Gurnaby, IRS employee. Relevance: has information related to the respondent’s representation of Banister’s clients, including Thompson.
2. Vicki White, IRS employee. Relevance: has information related to the respondent’s representation of Banister’s clients, including Thompson.
3. Mark Dyson, IRS employee. Relevance: has information related to the respondent’s representation of Banister’s clients, including Thompson.

4. Priscilla Ousley, IRS employee. Relevance: has information related to the IRS treatment of the respondent's opinions and advice, including the acceptance of the IRS of these positions in reducing the tax liability of other similarly situated individuals.
5. Diana Rosique, IRS employee. Relevance: has information related to the respondent's representation of Banister's clients, including Thompson and Coleman.
6. Sue Erwin, IRS employee. Relevance: has information related to the respondent's representation of Banister's clients, including Thompson and Coleman.
7. Mrs. Lewis-Williams, IRS employee. Relevance: has information related to the respondent's representation of Banister's clients, including Thompson and Coleman.
8. Tom Dileanando, IRS employee. Relevance: has information related to the respondent's conduct while a special agent employed with the IRS.
9. Patrick McDonough, IRS employee. Relevance: has information related to the Director of Practice, the traditional customs for investigating, referring, and prosecuting practitioners, including his knowledge and awareness of investigation, referral and initiation of proceedings against Banister.
10. Robert Gorini, IRS employee. Relevance: has information related to the respondent's conduct while a special agent employed with the IRS and

also may have information concerning Ken Canfield's referral to the Director of Practice which precipitated this complaint.

11. Paul Varville, IRS employee. Relevance: has information related to the respondent's conduct while a special agent employed with the IRS and also may have information concerning Ken Canfield's referral to the Director of Practice which precipitated this complaint.
12. Ted Brown, IRS employee. Relevance: has information related to the respondent's conduct while a special agent employed with the IRS and also may have information concerning Ken Canfield's referral to the Director of Practice which precipitated this complaint.
13. Charles Rosotti, IRS employee. Relevance: has information related to the respondent's conduct while a special agent employed with the IRS and may have information concerning the reasons for the initiation of this proceeding.
14. Ernest Barone, IRS employee. Relevance: has information related to the investigation by the Director of Practice, which precipitated this complaint.
15. Jacqueline Prater, IRS employee. Relevance: has information concerning Ken Canfield's referral to the Director of Practice and the Director of Practice investigation into Banister, which precipitated this complaint.

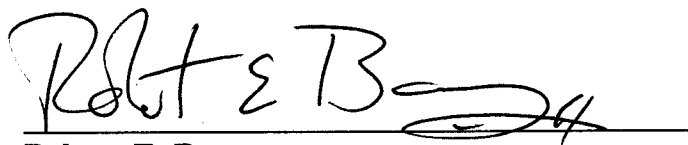
16. Ken Canfield, IRS employee. Relevance: has information related to Banister's representation of Coleman, and made the referral to the Director of Practice, which precipitated this complaint.
17. Brien Downing, IRS employee. Relevance: has information related to the Director of Practice's customs in investigating and referring cases for disbarment, as well as the knowledge of the facts and documents, all of which precipitated the allegations in the amended complaint.
18. Jay Kessler, Attorney for the IRS. Relevance: by his own admission, the allegations in the amended complaint did not originate through the proper IRS process, but rather "came to his attention." How it came to his attention is extraordinarily relevant to this case and necessary for the respondent's preparation of his defense.

The respondent will seek requests for production and requests for admission from the complainant directly. The subject matter of these requests will directly relate to the issue in dispute. These requests for interrogatories, admissions, and production of documents will be served according to the rules, more than 10 days prior to the day required for an answer, or as mutually agreeable to the parties.

Wherefore, the respondent moves the honorable Administrative Law Judge, William B. Moran, to permit the issuance of discovery as requested above.

Respectfully submitted this 29th day of October, 2003.

THE LAW OFFICE OF ROBERT G. BERNHOFT
Attorneys for the Respondent

By: 
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that true and correct copies of the foregoing "Motion for Discovery and Supporting Memorandum" and "Certificate of Service" were served on counsel for the Director of Professional Responsibility, by both courtesy facsimile transmission on this very date and by placing the same in the custody of the United States Postal Service for first class delivery, postage prepaid, on October 29, 2003, addressed as follows:

Jay J. Kessler, Esquire
333 Market Street
Suite 1200
San Francisco, California 94105
(415) 848-4829 facsimile



Daniel J. Treuden
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