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May 16, 2001

Andria E. Quintela  
Assistant Staff Counsel  
The Florida Bar  
Cypress Financial Center, Ste. 835  
5900 North Andrews Avenue  
Fort Lauderdale, Florida 33309

Re: Response to Complaint of David Xavier Wallace  
TFB Case No. 2001-51,490(17J)

Dear Ms. Quintela:

I am a member of The Florida Bar and was admitted to practice law in the State of Florida in September of 1997. I am a sole practitioner with the majority of my practice devoted to practicing labor law and that is where most of my experience is. The following is my response to Mr. Wallace's complaint.

In response to Mr. Wallace's general allegations listed on page 1 of his complaint, I have not found these specific numbered rules contained within the Rules Regulating the Florida. However, it appears that Mr. Wallace has cited the rules within the Florida Standards for Imposing Lawyer Sanctions. I realize that Mr. Wallace is not an attorney, but I feel that I may be at a disadvantage to respond to his allegations appropriately without first knowing the rule(s) he has alleged I violated. Therefore, I respectfully request Mr. Wallace to submit a more definite statement to include the specific rules he alleges that I violated. Perhaps someone in your office can assist him to cite the rules he alleges I violated. All this said, I will still attempt to respond to Mr. Wallace's specific allegations, but reserve the right to amend my response if the specific rules are cited.

The American Federation of Government Employees, Local 1458 (the Union), has retained me to perform legal services for the Union and some of its members. Susan Noe, an attorney in Miami, Florida, also performs legal services for the Union. I do not have a contract per se with the Union, but perform services for the Union on a contingency, flat fee and sometimes on an hourly basis. It all depends on the type of service rendered. In respect to Mr. Wallace, I performed services on both a flat fee basis, and on a contingency basis.

On the evening of April 12, 2000, the Union's President, William King, called me at home and requested that I help Mr. Wallace in reference to some allegations from his employer (the INS), in that he had a good faith reason to believe that the allegations may result in disciplinary action against him. The Union does not provide an attorney for each and every employee who faces a potential disciplinary action. The Union did so in this instance because they felt this was important case for the Union. Mr. Wallace, a Union Shop Steward at that time, had sent the Union's Vice President, Jose Touron, an e-mail informing Mr. Touron that the INS was planning to use INS Agents to remove Elian Gonzalez from his Miami family home. Mr. Wallace had been informed of this by his supervisor on April 11, 2000. The Union had a continuing issue with the INS about utilizing INS Agents for specific operations related to the Elian Gonzalez matter. Many employees did not feel they were properly trained for some of the details they were assigned to, and therefore, there was a safety issue with respect to some Union members. In January of 2000, Kendra Wallace, Mr. Wallace's spouse and a Union Shop Steward at the time, filed a grievance on behalf of the Union concerning this safety issue. Mr. Wallace sent Mr. Touron this e-mail via the INS's internal e-mail system. Mr. Touron drafted his own e-mail message and in his message added some of his own personal opinions about how he was against removing Elian from his Miami Family's home. Mr. Touron sent the message to many of the Union's and INS's top-ranking officials, but not to the public. He sent his e-mail message via the INS internal e-mail system and included Mr. Wallace's e-mail message. Apparently, INS managers were told about the e-mail and requested Mr. Wallace to answer in writing why he sent the message.

I made numerous phone calls on the evening of April 12th to aid Mr. Wallace in his case, and met with him the following morning (April 13, 2000) at Krome detention center to help with his response to the allegations. Upon finding out about Mr. Wallace's e-mail, the INS immediately transferred Mr. Wallace to Krome detention center, where he was assigned for a while thereafter. At that time I believe that Mr. Wallace informed me that his employer did intend to discipline him for his actions. Also at that time Mr. Wallace and I began to formulate a defense to the allegations, and that his defense would be that he was performing his duty as a Union representative by informing the Union about the ongoing safety concerns with the Union members, and that the same information he relayed to Mr. Touron was written in *The Miami Herald* on April 10, 2000. The Department of Justice had given this same information to the news media during a press release. I did inform Mr. Wallace at that time that I felt it was poor judgment of the part of Mr. Touron to include Mr. Wallace's e-mail message along with his own. For that portion of the representation, I requested, and the Union paid me on an hourly basis. At that point I also felt that Mr. Wallace had a good case, and in communicating with Mr. King, we agreed that if the INS attempted to discipline Mr. Wallace, the Union would retain me to perform the services on a contingency basis. In respect to many Federal employee discipline cases, the prevailing party's attorney may request attorney's fees and costs, and this was how I would have been paid if I had continued to represent Mr. Wallace, and we were successful in his defense. After Mr. Wallace discharged me, I never attempted to bill the Union, or Mr. Wallace, for my services rendered beyond the April 13, 2000 services.

I also represent various other Union members, both through the request of the Union, and some retain me individually. I believe sometime during the month of October 2000, another INS Agent by the name of Ricardo Ramirez contacted me about possibly representing him in an employment discrimination matter that is totally unrelated to Mr. Wallace's representation. Mr. Ramirez informed me that Mr. King had referred him to me. I entered into a professional relationship with Mr. Ramirez and during the next two months he informed me at different times about his personal knowledge to some wrongdoings in respect to INS management officials related to the Elian Gonzalez removal. He felt that what the INS had done was very serious and that it should be properly investigated. He told me about numerous incidents of anti-Cuban and anti-Hispanic paraphernalia being circulated at the Miami District Office of the INS, and that shortly after Elian's removal, one of his supervisors had ordered him and other employees to destroy any Elian Gonzalez related material from their computers. He also informed me that several of his co-workers knew about these same allegations. Mr. Wallace's name was not among them. I advised him at that time to contact the Office of Inspector General (OIG), which is the office within the U.S. Department of Justice charged with investigating these types of allegations. Mr. Ramirez was reluctant to contact OIG because of his legitimate concern that they would not handle the investigation properly.

Mr. Ramirez then informed me that the Miami Gonzalez Family was suing the Department of Justice over Elian's removal, and asked me to inform their attorney about the alleged wrongdoings, but to keep his and his co-workers' identities confidential (Mr. Ramirez has since come out publicly about the allegations on his own accord). Mr. Ramirez felt that possibly the Gonzalez Family attorney would investigate the allegations through their lawsuit. The lawsuit against the Department of Justice and the representation of Mr. Wallace were totally unrelated. The Gonzalez family lawsuit was about how the INS went about removing Elian from their home. Whereas, Mr. Wallace's case was totally unrelated in that he was not even involved in Elian's removal because he was detailed to Krome Detention Center at the time, and his case was about an internal INS disciplinary matter. I informed Ronald Guralnick, the Gonzalez family attorney about the allegations, and to my surprise Mr. Guralnick subpoenaed me for a deposition that was held on December 12, 2001.

Present at the deposition was several attorneys, including an attorney from the city of Miami, and a U.S. Attorney from Washington, D.C. by the name of Nina Pelletier. She was there representing the U.S. Department of Justice as a defendant in the lawsuit. I was questioned as to what I knew about Mr. Ramirez's allegations and told them what I knew. I was also asked who supplied me with the information and who else knew. I refused to divulge anyone's name as per Mr. Ramirez's request.

During the deposition Ms. Pelletier asked me if I represented Jose Tournon or David Wallace and whether the representation had anything to do with the Elian Gonzalez matter. It appeared Ms. Pelletier had done some investigating on who my clients were because she knew about several clients I was representing and what some of the cases were about. At that time it appeared to me that she felt that Mr. Tournon and Mr. Wallace were INS employees that had given me the information and asked me to relay this information to Mr. Guralnick. However,

this was not the case, and I felt I needed to speak on this issue enough to put at rest any ideas that Mr. Touron and Mr. Wallace had given me the information, because they had not. I answered that I represented Mr. Touron in a lawsuit filed on behalf of him, Mr. King and myself in a matter totally unrelated to the Elian Gonzalez matter. I also answered that I represented David Wallace in a disciplinary matter and that it was not directly related to the Elian Gonzalez matter. The attorneys appeared puzzled and I explained to them about the e-mail situation with Mr. Wallace and Mr. Touron, and that they were both disciplined. I was asked if I represented Mr. Touron in his disciplinary issue at that time and I answered no. At that time Richard Caldwell, an attorney in Coral Gables represented Mr. Touron in his disciplinary issue. I also told the attorneys that I did not think Mr. Wallace knew much about the allegations because he was detailed to Krome Detention Center at the time of the alleged wrongdoings.

Shortly thereafter, I spoke to both Mr. Touron and Mr. Wallace about the deposition and told them that a U.S. Department of Justice attorney questioned me as to whether Touron or Wallace were the clients that informed me of the allegations of wrongdoing. I did not go into full detail about the deposition, but I explained to both of them that I told the attorneys they were not involved, but at no time did I ever tell Mr. Wallace that there was no further discussion about his case during the deposition.

Shortly thereafter, Mr. Guralnick filed a Motion to Compel me to identify any clients that gave me information in reference to the alleged wrongdoings. A reporter from the *Sun-Sentinel* found the motion in the Court records, along with a copy of my deposition. On January 5, 2001, the reporter called me and told me he was going to do a story about the deposition and the Motion to Compel and asked me if I would answer some questions. I told him that the deposition spoke for itself and answered a few questions to clarify what was testified to in my deposition.

On January 6, 2000 the *Sun-Sentinel* printed a story about my deposition, and then for the next two weeks I was inundated with phone calls from the news media. At no time did I ever seek out the news media. It was never my intention, nor was it ever a strategy with Mr. Ramirez, any Union officials, nor any other client to seek out the news media and have this story publicized. When I was first asked by Mr. Ramirez to speak to Mr. Guralnick, neither Mr. Ramirez nor I ever thought in our wildest dreams that this would receive the attention that it did. Although Mr. Touron and Mr. Wallace were named in the deposition as clients of mine, and the e-mail incident was spoken about, the news media never printed anything about the e-mail incident when the story first became public. At that time it appeared that the news media had no interest in the e-mail incident.

Shortly after the story broke in the news media, Kendra Wallace called me and informed me of some concerns that she and Mr. Wallace had about my deposition becoming public. She did not want David's name or her name to appear in the press as any of the individuals that knew about any of the alleged wrongdoings. I informed her that I did not feel the two matters were related at all and that I would do whatever I could to keep her husband's name out of the news media. What the complaint does not address is that both Mr. and Mrs. Wallace have contacted

the news media on numerous occasions and fed information to the news media as INS Agents, asking that their names be kept confidential. A sworn statement from the person who has personal knowledge of this can be provided upon request.

At about the same time, David Wallace, Kendra Wallace and some other Union members and representatives became involved with some internal Union disputes with Mr. King and Mr. Touron, and other Union officers. I do not know all the particulars, but Mr. King and Mr. Touron will provide a sworn statement upon request. The internal Union dispute led Mr. King to relieve Kendra Wallace from her duties as a Shop Steward for the Union, along with a least one other individual. After that transpired I was told that the former Shop Stewards have filed several unfair labor practice charges against the Union with the Federal Labor Relations Authority. I do not get involved with internal union disputes. As a former union member and officer (Sheet Metal Workers' International Association), I understand how vicious internal union politics may be and I know better to not get involved in these types of matters. I believe the filing of this complaint by Mr. Wallace has something to do with the internal Union dispute, and I am now caught up in the middle. Mr. Wallace's allegations that I am controlled by the Union are not true. I often disagree with the Union's officials, and they could never order me to do something that I thought might be unethical.

Mr. Wallace alleges that I instigated *The Miami Herald* article of January 24, 2001. However, he offers no proof of this whatsoever, and this is entirely not true. Sometime in early January the Gonzalez Family attorneys became interested in the e-mail written by Mr. Wallace and Mr. Touron, and requested a copy from me. Jose Touron's disciplinary hearing before the Merit System Protection Board was held on December 13 and 14, 2000, where the e-mail now became part of the public record. (See 5 C.F.R. § 1201.52.) I advised the Gonzalez Family attorneys that they could file a FOIA request or issue a subpoena. They then reminded me that I was under a subpoena and that the Federal Courts hold highly a lawyers obligation of professionalism, where attorneys are supposed to cooperate with each other and if they have information which is relevant to a proceeding, a lawyer is supposed to provide the information if requested. (See Florida Rules of Professional Conduct, Rule 4-3.4, a lawyer shall not unlawfully obstruct another party's access to evidence.)

Additionally, if I objected to their request the e-mail would have become even more publicized through the news media, and that may have put Mr. Wallace at risk for much more news media coverage than he received. At that time I thought it was in his best interest to turn over the e-mail, since they had a right to receive it anyway, and they would eventually get the e-mail because it is a public record. The one thing that I did not do was consult with Mr. Wallace before releasing the e-mail to the Gonzalez Family attorney's. As a sole practitioner, this was a very stressful period in my practice, and all the news media attention took a huge toll on both my personal and professional life. I truly believe that I did not benefit from the story. I did not do this with any intent to benefit myself or the Union, to injure Mr. Wallace, and at no time did I ever deceive Mr. Wallace as to what my intentions were.

As stated above, I at no time turned over the e-mail with any intent to benefit the Union or myself. My only concern at that time was to attempt to keep Mr. Wallace's name out of the news media as much as possible. I at no time turned over the e-mail with any knowledge that it would be unlawful. I still fail to see how my actions caused Mr. Wallace any injury or any potential injury to him. Any injury or potential injury he may perceive he had come from the sending of the e-mail itself. Sending e-mails through the INS internal e-mail system is the same as filing a government document that is public record. I always advise all my public sector clients to not send any electronic messages on any government electronic system, if they do not want the world to see the e-mail. Once it is sent it becomes public record. Additionally, his employer already knew that he sent the e-mail, and *The Miami Herald* article did not inform them of something they did not already know.

Apparently, the Gonzalez Family attorneys filed the e-mail with the court clerk and Jay Weaver of *The Miami Herald* found the e-mail in the court files. He then called me and asked if he could speak to me about the e-mail and I asked him how he acquired it and he told me through the court files. He asked me if Touron and Wallace had opposed the Elian Gonzalez seizure and I asked him if he was going to write an article about the e-mail and he responded he was. I told him I would talk to him only if he printed the article accurately. Jay Weaver had written an article for *The Miami Herald* about a week prior. He wrote that article after speaking to me and he wrote that article accurately. At that time I felt if I did not speak to him the chances of him writing the article inaccurately would be much greater.

When speaking to Jay Weaver I highly stressed that Mr. Wallace's only involvement with the e-mail was a communication to Touron about his concerns for the health and safety of the union members because they may not have been properly trained to carry out the mission. I told him this was all brought forth in my deposition and that he should read the deposition before writing the article. I also emphatically told him that it was my contention that Mr. Wallace never expressed an opinion as to whether or not he opposed the Elian Gonzalez seizure and that his involvement was strictly due to the safety concern. Unfortunately, Mr. Weaver never printed that part I asked him to. However, I felt that if I did not speak to Jay Weaver at that time, Mr. Wallace's interests would not have been protected at all, because he was going to write the story anyway. I at no time contacted Jay Weaver and asked him to print this story. He contacted me. Additionally, Mr. Weaver appeared to be the only reporter interested in the story, because it ever received any other attention.

I still feel to this day that I handled the situation correctly, except for not contacting Mr. Wallace before giving up the e-mail, and that I did my best to protect his interest. If I did not give up the e-mail and talk to *The Miami Herald* reporter, I feel that Mr. Wallace would have received much more press and that there was a good chance that the press would have been worse.

Mr. Wallace then became concerned that he may be disciplined because I turned over the e-mail to the Gonzalez Family attorneys. I informed him that I felt they could not discipline him for my action. (See my letter to Mr. Wallace dated January 30, 2001.) At that time Mr. Wallace

also requested that I write a letter to the Robert Wallis, the District Director for the Miami INS, and explain to him that I turned over the e-mail, and I did that. (See my letter to Robert Wallis dated January 31, 2001.)

Mr. Wallace makes several accusations against me that I was deceptive and misrepresented my intent in his representation, and that I acted to benefit of the Union and myself. His accusations are not true. The whole time I was involved with the Elian Gonzalez matter, and the Gonzalez Family attorneys, I made it a point to refrain from discussing this with the Union officials, including Mr. King and Mr. Touron. The only person I was discussing these matters with was Mr. Ramirez. Mr. Wallace also accuses me of intentionally misleading the Gonzalez Family attorneys, by claiming I had several clients who had information related to the alleged wrongdoings. This also is not true. When Mr. Ramirez informed me of the allegations, he also told me about some other INS bargaining unit members who knew this same information, and asked that I not divulge any of their names. At that time I thought it was my duty to not divulge any of their names, and to this day I have not (Mr. Ramirez has gone public on his own accord). There was never any plan associated with any of my representations with any intent to benefit the Union or myself. I always attempt to act as a professional and put my clients' best interest before mine. Mr. King, Mr. Touron and Mr. Ramirez can attest to that.

In reference to Mr. Wallace's allegations of violating Rule 4-1.9 (Conflict of Interest), Richard Caldwell, an attorney from Miami, Florida, represented Mr. Touron during the administrative process (MSPB) in his disciplinary appeal. Mr. Touron's case included the e-mail allegation, and other allegations not related to Mr. Wallace. Both parties never disputed the fact that they sent the e-mail. The whole argument for both Mr. Wallace and Mr. Touron was based on legal arguments, because the facts were not in dispute. Both parties had separate cases. Mr. Touron was disciplined much earlier than Mr. Wallace, and therefore, his case came up first. His decision came down in January 2000, and Mr. Touron informed me that he was not happy with the representation he received from Mr. Caldwell. He then asked me if I would handle his appeal with the Merit System Protection Board.

I never at anytime felt there was a conflict of interest in representing both Mr. Wallace and Mr. Touron. Mr. Wallace did not like Mr. Touron, and that is why he did not want me to represent him. That is the only reason. At no time was the representation of Mr. Touron materially adverse to Mr. Wallace's. All along I felt that both parties did nothing wrong in sending an e-mail that included what the INS perceived as sensitive information, when the Department of Justice had released this same information to the news media two days prior to the e-mail. I wrote an appeal brief for Mr. Touron, and nothing in the brief was materially adverse to Mr. Wallace. After Mr. Wallace informed me that he felt it was a conflict to represent Mr. Touron, I called The Florida Bar's Office of Ethics Opinions and inquired as to if they felt I was in conflict. (See Copy of February 8, 2001 Call Record.) I explained the situation to a Ms. Lisa Pease and she also felt that I was not in conflict, and did not think their interests were materially adverse. Just because a client does not like another client does not put me in conflict.

In regards to Mr. Wallace's allegation that my involvement with the Elian Gonzalez matter infuriated the INS so much that it kept me from settling the matter, is also not true. As I said before, I represent numerous INS employees as clients. I speak to the INS attorneys, their Labor Relations Specialists, and their high-ranking officials on a regular basis. The Elian Gonzalez matter never interfered with any of my relationships with any of these INS officials, nor in anyway with any attempt at negotiating a settlement for Mr. Wallace. In fact when Mr. Wallace informed me to stop working on his case for three weeks, prior to him terminating me, I was in the process of beginning settlement talks.

The acknowledgment order from the MSPB, dated December 28, 2000, orders the parties to attempt settlement. (See Acknowledgement Order.) At approximately the same time as I was having the difficulties with Mr. Wallace, I was negotiating a settlement on behalf of another client with Laurence Zeiff, INS Counsel that handles labor matters such as disciplinary actions. Mr. Zeiff was opposing counsel for Mr. Wallace's case, and for this other client I was representing who was accused of something much more serious than Mr. Wallace's case, and we settled, with the approval of the client. I always attempt to settle these types of cases, and if Mr. Wallace had continued to retain me I would have attempted to settle his. Many times these cases settle just moments before the administrative hearing begins. I in no way feel that any of my actions put Mr. Wallace's case at risk of settlement, and he has not shown any evidence of this.

Finally, when Mr. Wallace decided to terminate me from his representation, I cooperated fully with his new counsel, Robert Weisberg. I even took the time to write him a letter stating where I was in the process of Mr. Wallace's case to bring him up to speed. (See letters to Robert Weisberg dated February 15 and 19, 2001.)

I understand that Mr. Wallace may be upset, but I in no way ever did anything to jeopardize his case. Mr. Wallace has been upset with some of the Union's officials, in particular Mr. Tournon, for some time now. David and Kendra Wallace, along with some other Union members, have an ongoing and continuing dispute with the current Union leadership. I do not want to become involved in this dispute, nor should I be brought into the dispute. This is the reason Mr. Wallace filed a complaint against me. Thank you for your consideration.

Respectfully submitted,

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By: \_\_\_\_\_  
DONALD APPIGNANI  
Florida Bar No. 115071



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May 16, 2001

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing, along with all the attachments,  
was sent by United States Mail to David X. Wallace on this 16th day of May, 2001.

By: \_\_\_\_\_  
DONALD APPIGNANI