

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CELIA VALDEZ, *et al.*,

Plaintiffs,

v.

MARY HERRERA, *et al.*,

Defendants.

CIVIL ACTION NO. 1:09-cv-668 LH/DJS

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION FOR PROTECTIVE ORDER TO LIMIT DEPOSITIONS**

COME NOW the Plaintiffs, Celia Valdez et al. ("Plaintiffs"), by and through their counsel of record, in opposition to the March 17, 2010, Motion for a Protective Order by counsel for Defendants Hyde, Sandoval and Ingram ("Defendants").¹ Defendants seek without good cause to limit the number, form, and/or subject matter of depositions noticed by Plaintiffs of six officials of the New Mexico Human Services Department ("HSD"). These depositions go to the heart of Plaintiffs' case in chief and Defendants' anticipated defenses.

Accordingly, Plaintiffs respectfully join Defendant's request for expedited hearing on the Motion and request that the Court deny Defendants' Motion without delay.

Plaintiffs' claims against Defendants arise under Section 7 of the National Voter Registration Act ("NVRA"), 42 U.S.C. 1973gg-5 *et seq.* Plaintiffs claim that HSD for many years failed to provide voter registration to its clients as

¹ Defendants' Motion refers to "Defendant HSD" but the Defendants are HSD officials sued in their official capacities.

required by Section 7.² Plaintiffs also claim that Defendants' recent actions – which, as Plaintiffs understand, Defendants assert have since brought HSD into compliance with Section 7 – are inadequate, either to remedy the agency's longstanding Section 7 violations or to ensure future compliance with that law. The discovery plan in this action provides that Plaintiffs may take up to thirty depositions with no restriction as to their form, subject matter or deponent. *See* Joint Status Report and Provisional Discovery Plan [Docket No. 13]. Thus far Plaintiffs have taken two 30(b)(6) depositions – one from HSD and one from the State Motor Vehicle Division. A third 30(b)(6) deposition from the office of the Secretary of State was delayed for medical reasons. The instant dispute arises because Defendants seek to limit or prevent the depositions of three HSD Regional Managers and three HSD County Office Managers.³ Those depositions were noticed by Plaintiffs on March 15, 2010, after their dates and locations had been coordinated with, and agreed to by, Defendants' counsel. *See* Attachment C. Defendants now seek a protective order under Fed. R. Civ. P. 26(b)(2)(C)(i) and 26(c)(1), asserting that depositions of the noticed officials would be unreasonably

² Congress has recognized the significance of compliance with the NVRA by providing a specific right of action under which private parties may obtain injunctive relief. 42 U.S.C. § 1973gg-9.

³ Statewide there are five HSD regions, each with its own regional manager. Statewide there are thirty-five county managers.

cumulative and duplicative, and that the depositions would cause Defendant undue burden and expense.⁴

A Court may issue a protective order during discovery “for good cause.” Fed. R. Civ. P. 26(c)(1). “The party seeking the protective order ‘must submit a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.’” *Valencia v. Colo. Cas. Ins. Co.*, 2007 U.S. Dist. LEXIS 97723 (D.N.M. 2007) (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981)). For the following reasons, Defendants’ motion not only lacks good cause but is wholly without merit, and accordingly should be denied without further delay.

Defendants argue that the noticed depositions are unreasonably cumulative or duplicative and that they are burdensome and expensive. More specifically, Defendants contend that the one witness they have produced in a Rule 30(b)(6) deposition justifies limitations upon the noticed depositions. Defendants also contend that the testimony of the noticed regional and county managers would overlap to an unreasonable degree. Neither contention has any merit.

Plaintiffs’ depositions of the noticed Regional Operations Managers and County Directors will neither be cumulative nor duplicative. The depositions of these officials will establish the specific actions taken by officials delegated the responsibility for voter registration; or, as the case may be, the lack of action by

⁴ Defendants have not alleged that Plaintiffs’ notices of deposition would result in annoyance, embarrassment, or oppression of the Defendants.

those officials and those they supervise. The testimony of these officials about their own actions within their specific offices and regions *by definition* could not be cumulative or duplicative between regions or offices. The Managers in Region 5, for example, could not with any authority testify about the actions of the Managers in Region 3.

Furthermore, as discussed below, specific information about the actions of the Regional and County Managers has not otherwise been provided by Defendants. Unlike witnesses to a specific transaction or occurrence, the noticed officials – and not Mr. Roth, the only HSD official deposed to date – are in a position to have had repeated conversations and on-site visits pertaining to how county offices conduct voter registration services, the number and circumstances of which are not known in advance. Such witnesses are especially unsuited for written depositions (as Defendants have suggested as a substitute) because written depositions allow only limited opportunity for exploratory and follow-up questioning.

With respect to the 30(b)(6) testimony taken thus far, Plaintiffs respectfully direct the Court to the list of subjects contained in the Plaintiffs 30(b)(6) Notice of Deposition. *See* Attachment A. The testimony of the only witness produced by Defendants, Ted Roth, repeatedly confirms his lack of knowledge of subjects within the scope of the notice, including actions taken by regional or county HSD managers. *See* Attachment B. Mr. Roth lacked knowledge as to the actual practices in HSD offices on multiple topics. For example, Mr. Roth could not

confirm whether site coordinators at HSD offices provided voter registration training;⁵ what voter registration training materials were used by county offices;⁶ whether county offices were spot-checked for voter registration purposes by the Secretary of State;⁷ how counties capture voter registration information on reports produced by Defendants;⁸ whether old change of address forms were still being used in field offices;⁹ or how e-mailed change of address requests are handled.¹⁰ In addition, Mr. Roth testified that he did not “personally monitor[]” the voter registration procedures during client interviews at HSD offices.¹¹ Mr. Roth further

⁵ “Q. How do you know site coordinators were providing training on voter registration? A. They were expected to, but I can't confirm that they all were.” (Roth Depo. 132).

⁶ “Q. [B]efore the PowerPoint presentation, you're not sure what materials offices used in training . . . ? A. No.” (Roth Depo. 193).

⁷ “Q. Do you know whether the secretary of state's office ever did any random spot-checks on offices to see how they were providing voter registration? A. No.” (Roth Depo. 148).

⁸ “Q. Do you know how each county office captures the information that it reports on that 2009 report? A. I -- no, I don't. I believe it is from the logs that they keep, but, no, I don't.” (Roth Depo. 198-199).

⁹ “Q. [T]his address change report, does not include a declination question, right? A. Correct. Q. Earlier you said all applications, recertification, change of address forms included the declination question, correct? A. Correct. Q. But this one doesn't, correct? A. Correct. . . . Q. So are any of these floating around offices anymore? A. I can't say that they are or they aren't.” (Roth Depo. 122-24)

¹⁰ “Q. What about change of address by e-mail? A. I'm not sure if -- I'm not aware of if we have or haven't received those.” (Roth Depo. 174).

¹¹ “Q. So the hope or the expectation was that office employees were doing a face-to-face interview providing a client with a declination form? A. (No verbal response.) Q. How do you know that was happening? A. I don't. . . . Q. But you don't know that that was happening necessarily for all offices? A. No, I have not personally monitored that.” (Roth Depo. 185-86).

testified that he “always went through the regional manager” when he had concerns that a particular office had low numbers of registrations.¹²

The contested depositions are for the purpose of discovering the specific actions of a limited number of County Offices and Regional Directors. Plaintiffs are entitled to discover whether, and to what extent, the policies described by Mr. Roth are actually being put into practice, and they are entitled to learn about other activities and policy discussions within the scope of discovery but outside Mr. Roth’s knowledge. The noticed deponents can reasonably be expected to have specific and detailed knowledge of events within their county offices and within their region. In particular, they are in a unique position to testify as to whether they have identified problems in the Offices under their control and what, if anything, they have done to resolve such problems.¹³

Furthermore, in response to one of Plaintiffs’ interrogatories, the HSD

¹² “Q. So what did you instruct these regional managers to tell the county directors? A. To insure that their offices are reviewing that GI that was referenced earlier. Q. Anything else? A. There would also be encouragement – at that time we did start to collect data registration forms that were sent to the county clerk, and those were mostly focused at individual phone calls to a manager of why is this county so low, another one why is this county so high, what are they doing differently. Q. How many phone calls did you have -- well, were you involved in any of the phone calls for county offices who had low or high numbers? A. I recall that I always went through the regional manager. Q. Okay. So was the regional manager in charge of following up with county offices? A. Yes. Q. How did they get that instruction? A. From me when I talked to them about the numbers or the efforts of that local office.” (Roth Depo. 41-42).

¹³ Contrary to Defendants’ claim, stipulations as to what Regional and County Managers would testify generally are premature as none of them have yet testified. Plaintiffs would not foreclose such stipulations, however, once there is testimony under oath from some of these officials.

Defendants acknowledged the existence of “Management Evaluation Reviews” including the subject of NVRA compliance.¹⁴ So far, however, no such reviews have been provided to Plaintiffs. The noticed deponents are highly likely to have knowledge about the conduct of these evaluation reviews, the extent to which they may have changed over time, and the results of specific evaluations. Defendants are in an especially poor position to attempt to preclude Plaintiffs from obtaining discovery on evaluations and reviews, which go to the heart of the case, from regional and county managers.

Plaintiffs have used restraint in seeking to depose only three of the thirty-five County Directors and three of the five Regional Operations Managers. Plaintiffs did not schedule a full day for each deposition, but anticipate instead that each deposition will only require a half-day, allowing two depositions to be taken in one day. The depositions are to be held at the deponents’ own offices. The burden of these depositions accordingly is minimal.

For the preceding reasons, Plaintiffs respectfully request that the Court deny Defendants’ Motion.

Dated: March 18, 2010

¹⁴ Plaintiffs’ Interrogatory No. 9 to the HSD Defendants was as follows: “Identify and describe all reports, reviews, evaluations, audits, studies, other forms of analysis, and data compilations concerning compliance by HSD offices with the NVRA, since January 1, 1995.” After stating their objections Defendants responded as follows: “Excel spreadsheets compiled and maintained by NVRA division coordinator Rachel Moskowitz are being provided. *Management evaluation reports, parts of which contain NVRA review are being provided.*” Defendant Pamela Hyde’s Answers to Plaintiffs’ First Set of Interrogatories at 7-8 (emphasis added).

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EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CELIA VALDEZ, *et al.*,

Plaintiffs,

v.

MARY HERRERA, *et al.*,

Defendants.

CIVIL ACTION NO. 1:09-cv-668 LH/DJS

**NOTICE OF RULE 30(b)(6) DEPOSITION OF THE NEW MEXICO HUMAN
SERVICES DEPARTMENT**

TO: New Mexico Human Services Department

c/o Adrian Terry
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c/o Scott Fuqua
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New Mexico Attorney General's Office
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PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs Celia Valdez, Graciela Grajeda, Roanna Begay, Jesse Rodriguez, and the Association of Community Organizations for Reform Now hereby request you to designate and produce for oral deposition an officer, director, corporate executive, managing agent, or other such person who consents to testify as to matters known by or reasonably available to you with respect to all of the subjects listed on **Exhibit A** attached hereto, for evidence and discovery

and/or use of testimony for the November 15, 2010 trial of this matter. This deposition will take place at Freedman Boyd Hollander Goldberg & Ives, P.A., 20 First Plaza, Suite 700, Albuquerque, NM 87102 on February 24, 2010, commencing at 9:00 a.m. The deposition will take place before a certified court reporter authorized to administer the oath required by law and will be recorded stenographically. The court reporter reporting the examination will be providing real-time transcription. Any party desiring to have a computer connected to the reporter's writing device/computer at the examination or having access to the real-time transcript should notify Westlaw Deposition Services at (800) 548-3668 in advance of the deposition and make appropriate arrangements.

Respectfully submitted this 18th day of February, 2010.

/s/Allison L. Kierman

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David Urias

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CERTIFICATE OF SERVICE

I certify that on the 18th day of February, 2010, I served the foregoing by electronic means, on:

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PO Box 1508
Santa Fe, NM 87504-1508
Attorney for Defendant Mary Herrera
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Santa Fe, NM 87504-1508
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/s/ Katherine Sieckman

Exhibit A

1. The duties and responsibilities of the New Mexico Human Services Department (“HSD”) to implement, administer, coordinate, oversee, and assure compliance with the requirements under the National Voter Registration Act (the “NVRA”).
2. All HSD policies, requirements, practices, procedures, computer programs, computerized procedures, directives, guidelines, and instructions for implementing, administering, coordinating, overseeing, evaluating, auditing, studying, conducting training on, and assuring compliance with the NVRA, and all documents that concern such policies, requirements, practices, procedures, computer programs, computerized procedures, directives, guidelines, and instructions since January 1, 2006.
3. Every action HSD has taken to make sure that the State of New Mexico has been in compliance with the requirements of the NVRA and all documents that concern such action(s) since January 1, 2006.
4. All reports, reviews, evaluations, audits, studies, other forms of analysis, and data compilations concerning HSD’s compliance with the requirements of the NVRA since January 1, 2006.
5. The manner in which HSD personnel have been provided training and/or instructional materials about their duties and responsibilities under the NVRA and all documents regarding such training and/or instructional materials since January 1, 2006.
6. The process by which HSD offices a) identify what voter registration forms or other materials are required to comply with the NVRA, state law, and state voter registration policies; b) identify the number of voter registration application forms, voter notice forms, and

other supplies are necessary to offer voter registration to every individual who applies for benefits, recertifies or renews, or changes an address at an HSD office; and/or c) acquire an adequate supply of voter registration materials necessary to comply with the NVRA, including a description of any policy or procedure for determining when such supplies must be requested or ordered, from whom, and how such an order can be placed.

7. The procedures that an individual must follow in order to apply for public assistance benefits, recertify benefits, renew benefits, and submit a change of address relating to benefits, including whether persons seeking to apply for, recertify, or renew their benefits, or change their address, must appear in person at an HSD office, or can take all or some of the necessary actions via a home visit, or by telephone or electronically (by e-mail or other electronic correspondence), whether the HSD grants waivers of in-person interviews, whether clients must be interviewed, and if so, where and when in the process, and whether and in what specific manner the procedures for each public assistance program vary by HSD office and have changed since January 1, 2000.

8. Any complaints received by HSD since January 1, 2000 concerning voter registration services under the NVRA, the investigation undertaken regarding the complaint(s), and the result(s) of the investigation(s).

EXHIBIT B

30(b)(6) Deposition of Ted Roth

2/24/2010

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<p>UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO</p> <p>CELIA VALDEZ, et al., Plaintiffs, vs. No. 1:09-CV-668-LH/DJS MARY HERRERA, et al., Defendants.</p> <p>DEPOSITION OF TED ROTH February 24, 2010 8:58 a.m. 20 First Plaza, Suite 700 Albuquerque, New Mexico</p> <p>PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, this deposition was:</p> <p>TAKEN BY: Allegra Chapman Attorney for Plaintiffs</p> <p>REPORTED BY: DEBORAH L. O'CONNOR, RPR, CRR New Mexico CCR No. 297 Bean & Associates, Inc. Professional Court Reporting Service 201 Third Street, NW, Suite 1630 Albuquerque, New Mexico 87102 (5513D) DEB</p>	<p>1 I N D E X PAGE</p> <p>2 TED ROTH</p> <p>3 Examination By Ms. Chapman 4</p> <p>4 Examination By Mr. Terry 218</p> <p>5 EXHIBITS</p> <p>6 EXHIBIT DESCRIPTION PAGE</p> <p>7 Plaintiffs</p> <p>8 Exhibit 1 Notice of deposition 8</p> <p>9 Exhibit 2 Division staffing structure 31</p> <p>10 Exhibit 3 Voter registration poster 68</p> <p>11 Exhibit 4 Address change report 121</p> <p>12 Exhibit 5 ISD memo, 1/22/08 149</p> <p>13 Exhibit 6 ISD memo, 9/5/08 161</p> <p>14 Exhibit 7 Application processing flow chart 170</p> <p>15 Exhibit 8 Declination form 194</p> <p>16 Exhibit 9 Voter registration report 196</p> <p>17 Exhibit 10 Voter registration reports 198</p> <p>18</p> <p>19 Defendants</p> <p>20 Exhibit 1 ISD 100 form 218</p> <p>21</p> <p>22 REPORTER'S CERTIFICATE 226</p> <p>23 WITNESS SIGNATURE/CORRECTION PAGE 228</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES</p> <p>2 For the Plaintiffs:</p> <p>3 Allegra Chapman, Esq. DEMOS: A Network of Ideas and Action 4 220 Fifth Avenue, 5th Floor New York, NY 10001 5 Phone: 216.633.1405 Fax: 216.633.2015 6 E-mail: achapman@demos.org</p> <p>7 Yolanda Sheffield, Esq. Project Vote 8 739 8th Street SE, Suite 202 9 Washington, DC 20003 10 Phone: 202.543.4173 Fax: 202.543.3675 E-mail: ysheffield@projectvote.org</p> <p>11 For the Defendants:</p> <p>12 Adrian Terry, Esq. Elaine P. Lujan, Esq. 13 Assistant Attorneys General 14 Office of New Mexico Attorney General 15 Villagra Building 16 408 Galisteo Street 17 Santa Fe, NM 87501 18 Phone: 505.827.6000 Fax: 505.827.5826 19 E-mail: atery@nmag.gov 20 E-mail: elujan@nmag.gov 21 22 23 24 25</p>	<p>1 TED ROTH,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (By Ms. Chapman) Please state your name</p> <p>5 for the record.</p> <p>6 A. Ted Roth.</p> <p>7 Q. Can you please spell that?</p> <p>8 A. T-E-D R-O-T-H.</p> <p>9 Q. Hi, Mr. Roth. My name is Allegra Chapman.</p> <p>10 I'm with DEMOS, and I'm one of the attorneys for the</p> <p>11 plaintiffs in this case. To my right is Yolanda</p> <p>12 Sheffield, and she is co-counsel and also lead</p> <p>13 counsel in this case.</p> <p>14 Today we're going to be taking your</p> <p>15 deposition about how HSD conducts registration</p> <p>16 services. And have you ever had your deposition</p> <p>17 taken before?</p> <p>18 A. I never have.</p> <p>19 Q. I'll just run through some of the</p> <p>20 guidelines. I'll be asking you questions, and I ask</p> <p>21 that before you answer, you let me finish so we're</p> <p>22 not talking over each other and the court reporter</p> <p>23 can take everything down. Because she needs to take</p> <p>24 everything down, all your answers have to be verbal.</p> <p>25 So no hand gesture cues, okay?</p>

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1 duties are insofar as providing voter registration
 2 training?
 3 A. To -- as I indicated, she's been there a
 4 little over a year. To provide on-site training
 5 through the trainers, to survey offices to which
 6 ones would need some extra training and provide them
 7 training. And there is a training packet that she
 8 also makes available to any office to access and
 9 utilize at any point.
 10 Q. You didn't issue these duties in like a
 11 memo, did you?
 12 A. The only thing I can recall is last
 13 September-ish, something like that, is I had sent
 14 out an e-mail to the office managers saying that I
 15 expected them to insure that their staff was
 16 trained. Whether that was through a trainer or that
 17 was through internal office personnel, that was not
 18 specifically indicated.
 19 Q. So you said they need to get the training,
 20 but you didn't tell them how they should do it?
 21 A. Correct, which one of those two methods to
 22 utilize.
 23 Q. And you didn't tell -- what's her name
 24 again?
 25 A. Rachel?

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1 Q. Yeah. You didn't tell Rachel specifically
 2 that she needed to provide these trainings?
 3 A. I don't remember that I told her
 4 specifically.
 5 Q. How often have you met with her to check
 6 in on, you know, how she's providing the voter
 7 registration trainings?
 8 A. Since she has went into this job, it's
 9 probably been two, three, four times on this subject
 10 that we've touched on.
 11 Q. And just to be clear, before Rachel took
 12 on this position, there was no official person
 13 conducting NVRA trainings?
 14 A. We had trainers, but we did not have a
 15 training coordinator that was responsible to make
 16 sure that the training needs were met.
 17 Q. Do you know whether these trainers were
 18 providing training on voter registration?
 19 A. I have no idea.
 20 Q. But you didn't create any materials before
 21 the time Rachel came on for trainers to use in
 22 talking about voter registration --
 23 A. You mean before?
 24 Q. I'm sorry, before Rachel came on.
 25 A. The GI is what we indicated was our

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1 training material.
 2 Q. And since Rachel has come on board, have
 3 you assisted her in creating a voter registration
 4 training?
 5 A. I did not directly. I don't know if
 6 anyone else did.
 7 Q. So how did she figure out she should be
 8 training these offices on voter registration?
 9 A. The ISD-GI.
 10 Q. What's that?
 11 A. That's the GI I drafted up beginning of
 12 February or beginning of 2008 because that has all
 13 the expectations that our office is required to
 14 follow with NVRA activities. So it would have been
 15 material from that that she would have utilized.
 16 Q. That's the only thing she would have used,
 17 is the GI, to determine in what way she was to
 18 provide voter registration training?
 19 A. Unless she had discussions with others I
 20 am unaware of.
 21 Q. Is the training package that Rachel offers
 22 different from the training materials provided by
 23 the secretary of state?
 24 A. Yes.
 25 Q. So you have your own HSD training packet?

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1 A. We have our own training packet as a
 2 refresher training, but it utilizes everything
 3 that's in the secretary of state one, just a little
 4 prettier, is really all it is.
 5 MS. CHAPMAN: Can we get that little
 6 prettier version? I don't think we've been provided
 7 with that.
 8 MR. TERRY: I haven't seen it.
 9 THE WITNESS: It was just recently --
 10 Q. (By Ms. Chapman) When was it recreated?
 11 A. Around November-ish.
 12 Q. Before this was created, what was Rachel
 13 using to train offices?
 14 A. She was not doing direct training. That
 15 was usually done by the site coordinator. And that
 16 would have been the secretary of state's packet.
 17 Q. How you do know site coordinators were
 18 providing training on voter registration?
 19 A. They were expected to, but I can't confirm
 20 that they all were.
 21 Q. And you never issued directives to the
 22 site coordinators telling them they were required to
 23 provide voter registration training?
 24 A. Not until a couple years ago.
 25 Q. What happened a couple years ago?

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1 A. Yes.
 2 Q. But before the PowerPoint presentation,
 3 you're not sure what materials offices used in
 4 training, you know, their staff about voter
 5 registration? Like you didn't specify what they had
 6 to use?
 7 A. No.
 8 Q. How does HSD train its offices on food
 9 stamp benefits?
 10 A. Again, we use our regional trainers to go
 11 out and do refresher type of trainings in specific
 12 areas, but all caseworkers have to go through a
 13 three-week basic training.
 14 Q. And that basic training doesn't include
 15 voter registration?
 16 A. I believe it does.
 17 Q. It does?
 18 A. Yes.
 19 Q. Since when?
 20 A. I couldn't give you a date on that. You
 21 know, I know that it was relooked at in the last
 22 couple years, but I, you know, haven't looked at the
 23 training materials before then to know if it was or
 24 wasn't.
 25 Q. Where do offices get posters from?

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1 A. They come from central office, and it
 2 depends on the nature of the poster of how central
 3 office gets them and is able to disseminate them.
 4 Q. Does the office have to ask for the
 5 posters or does the central office just send them
 6 out every so often?
 7 A. Central office sends them out, and then
 8 when I was talking about those management evaluation
 9 reviews, when they reviewed the required posters in
 10 the lobby, they always take a supply with them. So
 11 if there is a poster missing, it's put up before
 12 they leave the building.
 13 Q. I'm reminded that we haven't gotten copies
 14 of the three-week basic training materials, so I
 15 just ask that those be produced.
 16 Okay. I'm probably going to have
 17 another 30 minutes, maybe 40, but probably 30, maybe
 18 less. Can we take a quick break and then wrap it
 19 up?
 20 MR. TERRY: Sure.
 21 (A recess was taken.)
 22 (Exhibit 8 marked.)
 23 Q. (By Ms. Chapman) I'm going to have this
 24 marked as Plaintiffs' 8. I'm handing a copy to
 25 Mr. Roth and his counsel. I just wanted to make

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1 sure that this is the declination form that was
 2 being handed out for those applications or
 3 recertifications or change of addresses that didn't
 4 have declination language included in it.
 5 A. Yes. But, again, I mean, the applications
 6 all have this now. So, historically, yes, it was
 7 used for applications and other documents.
 8 Q. And this was the one form that was used
 9 from '95 through the time that, you know, the forms
 10 began including the declination question?
 11 A. Yes. It looks like it may have been
 12 cleaned up at some point from what I used in '93,
 13 but yes.
 14 Q. So did you have different forms?
 15 A. The same language but maybe a different
 16 layout or cleaner copies over the years.
 17 MS. CHAPMAN: Okay. If we could just get
 18 production of any declinations that have been used.
 19 MR. TERRY: I don't think we have any
 20 past --
 21 THE WITNESS: I think this is the same
 22 form. It's just I've never seen one that's nice and
 23 clean.
 24 Q. (By Ms. Chapman) And on the opposite side
 25 is the Spanish version?

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1 A. Yes.
 2 Q. And that's the way it looked?
 3 A. Yes.
 4 Q. I don't know if you read Spanish but --
 5 A. Yes.
 6 Q. I want to talk a little bit now about the
 7 agency reporting. I'd like to have this marked as
 8 Plaintiffs' 9. It's two-sided.
 9 (Exhibit 9 marked.)
 10 Q. It's a two-sided form -- I don't think
 11 that's what it looked like in its original, but I
 12 basically included two forms on one page. On one
 13 side is county office voter registration report and
 14 it includes number -- blank fields with number of
 15 registrations received for months in '08 and on the
 16 opposite side is the county office voter
 17 registration report for 2009. Mr. Roth, do you
 18 recognize these documents?
 19 A. I don't think I've seen these before.
 20 Q. So you didn't create them?
 21 A. No, I don't create them. I didn't create
 22 these.
 23 Q. Have you created a different voter
 24 registration report for offices to use?
 25 A. No. That is something that previously

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<p>1 expected training to be done regularly in offices. 2 But, you know, sometimes when you have a good 3 document out there that has clear mandates such as 4 that GI, you really don't have to issue a new 5 memorandum to say the same thing. 6 Q. So that's the one then aside from your 7 mandate saying that training needed to be done 8 regularly? 9 A. That's the only two that I can remember 10 that were put in writing. 11 Q. So you had some put in writing about 12 training needing to done regularly outside of that 13 GI? 14 A. Yes. There was an e-mail I sent -- in 15 September or October I sent an e-mail to our 16 managers. 17 Q. That's right. Do you know whether an NVRA 18 person was appointed for HSD before Chris Hayes? 19 A. I do not know the person, but I know, you 20 know, going back to whenever it was in the '90s that 21 this began that there was an NVRA coordinator, but 22 I've forgotten who that was. 23 Q. Where would that be listed? 24 A. I have no idea. 25 Q. Okay. If there's documentation on that,</p>	<p>1 Q. Aside from that secretary of state manual 2 that came out in '94 and '95 -- 3 A. Correct. 4 Q. -- did you receive any other policies or 5 written materials from the secretary of state's 6 office? 7 A. I don't remember anything. And as far as 8 contacts with them, they went through our general 9 counsel person with the communication back and 10 forth. 11 Q. What did you discuss at that one meeting 12 you had with the secretary of state's office? 13 MR. TERRY: I'm going to object to the 14 extent that that might be privileged. 15 MS. CHAPMAN: Okay. Can you tell me what 16 the privilege is? 17 MR. TERRY: Attorney-client if it's 18 related to this litigation. 19 Q. (By Ms. Chapman) Okay. Was an attorney 20 present there or were you speaking with an attorney? 21 A. Yes, and our department attorney was 22 sitting right next to me. 23 Q. Was the department attorney there for the 24 entire conversation? 25 A. Yes.</p>
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<p>1 we ask that it be produced. 2 And as of now your NVRA duties aren't 3 listed in a policy or job description? 4 A. Correct. 5 Q. And not for Rachel Moscovitz either? 6 A. As far as I know, but I can't say the 7 affirmative or negative on that. 8 Q. Going back to -- 9 A. Oh, no, I can. 10 Q. Okay. 11 A. It's in the GI. 12 Q. It's in the GI. As the NVRA point person 13 for the agency, are you required to meet with the 14 secretary of state's office on voter registration 15 issues? 16 A. No. 17 Q. Do you? 18 A. I had one meeting over there, but that was 19 concerning this litigation. 20 Q. Okay. But not before that? 21 A. Not before that, no. 22 Q. Did you meet or talk with anyone at the 23 secretary of state's office about voter 24 registration? 25 A. No.</p>	<p>1 Q. Did you ever talk to anybody at the 2 secretary of state's office without an attorney 3 present there? 4 A. Never. 5 Q. Did you learn of anything that happened in 6 that meeting outside from an attorney? 7 MR. TERRY: Can you rephrase that 8 question? I'm not quite sure what you're asking. 9 Q. (By Ms. Chapman) Yeah, I hear you. Well, 10 did you ever have a conversation with anybody 11 outside of that meeting who wasn't an attorney about 12 that meeting? 13 A. The only thing I can remember about that 14 was -- and I don't know if it was a letter or if it 15 was any type of litigation document or whatever. 16 The only conversations that I had was with our 17 attorney, Carol Baca, concerning those specific 18 documents. 19 Q. Okay. Fair enough. <u>Do you know whether</u> 20 <u>the secretary of state's office ever did any random</u> 21 <u>spot-checks on offices to see how they were</u> 22 <u>providing voter registration?</u> 23 A. <u>No, I didn't.</u> 24 Q. You were talking earlier about the 25 agency's role in insuring that offices are complying</p>

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<p>1 Florence would work with them or Rachel Moscovitz 2 would have created. 3 Q. And you didn't oversee any of that? 4 A. I was interested in what they said, what 5 was sent out. 6 Q. Well, did you ever talk with Rachel 7 Moscovitz or any of the other people in charge of 8 collecting this data about what kind of data they 9 should be asking for? 10 A. Yes. 11 Q. Okay. Who did you talk to? 12 A. To Rachel, and I think I might have had a 13 conversation with Florence at one point near the end 14 of when she was doing this before she retired. And 15 that was providing a little clearer instruction to 16 the offices of the information they needed to 17 submit. However, what they created here is probably 18 similar to a nice, simple version to what I would 19 have done myself. 20 Q. I'm looking at the '09 version. I see 21 here that No. 3 says, "On line 5 enter the number of 22 registration forms that were completed and sent to 23 the county clerk. This figure should be less than 24 or the same amount as the number on line 4. It 25 should not be higher than the figure on line 5."</p>	<p>1 <u>2009 report?</u> 2 A. I -- no, I don't. I believe it is from 3 <u>the logs that they keep, but, no, I don't.</u> 4 Q. What logs do they keep? 5 A. The logs of what was turned over and 6 submitted to the county clerk's office. 7 Q. So they keep like separate -- 8 A. And, unfortunately, I guess I need to 9 clarify this. When I was in the field, we did 10 have -- maintain a log of the forms -- of the 11 numbered forms that we received from the county 12 clerk and what we provided back to the county clerk 13 completed. However if those procedures have 14 changed, I can't say to that one way or the other. 15 Q. Okay. But when you were doing it, you 16 weren't keeping tabs of the numbers of registration 17 forms handed out. You were keeping tabs of the 18 numbers coming in from the county clerk? 19 A. Correct. 20 Q. And then the number of completed ones 21 going to the county clerk? 22 A. Correct. 23 Q. But you don't know what the process is 24 that offices use to kind of tabulate all this data? 25 A. No.</p>
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<p>1 Did something happen that caused this report to get 2 revised to include that instruction? 3 A. You know, I'm not aware of exactly what 4 had happened, but I think there was some confusion 5 of some offices getting those numbers possibly 6 reversed at times. But I can't say exactly what the 7 problem was. 8 Q. Aside from that, do you know of any, I 9 guess, technical problems that offices were having 10 in reporting their numbers? 11 A. No. 12 Q. I'd like this marked as Plaintiffs' 10. 13 I'll give a copy to Mr. Roth, his counsel. 14 (Exhibit 10 marked.) 15 Q. This is a -- it's a five-page document, 16 double-sided compilation of data reports. The front 17 page is entitled voter registrations, and it has a 18 list of offices and counties served along with an 19 Excel spreadsheet of numbers. Do you recognize 20 these sheets, Mr. Roth? 21 A. Yes. 22 Q. Before I ask about this, though, I want to 23 go back to that county office voter registration 24 report from '09. <u>Do you know how each county office</u> 25 <u>captures the information that it reports on that</u></p>	<p>1 Q. And you've never told Rachel Moscovitz 2 that they have to do it a certain way? 3 A. No. 4 Q. So looking back at 10, are these reports 5 that you have reviewed? I'm noticing that the first 6 one is from 2004 and the last one is from '09. 7 A. I began reviewing these from 2007 forward. 8 Q. From 2007? 9 A. Yes. 10 Q. Say July of '07? 11 A. Yes. 12 Q. So I just want to maybe go through some of 13 these. I mean, in reviewing the numbers for '07, 14 did -- what kind of action did you take? 15 A. For '07, I don't recall taking any action 16 on these numbers. 17 Q. Let's look at the Espanola office. It's 18 on line 3. It looks like July, August, September, 19 October, November, all zeros. Then in December 20 there was 14. Did you ever contact the office to 21 see why they had reported receiving zero 22 applications five months in a row? 23 A. No, I did not. 24 Q. What about the Grants office? You'll note 25 that for the entire year of '07, zero</p>

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1 under that. The SCI program does not require an
 2 interview. The -- those are the main ones. I'm
 3 sure I'm missing some.
 4 Q. And then is there also -- can somebody
 5 request a waiver of an interview for any program?
 6 A. They cannot request a waiver of an
 7 interview, but they can request a waiver of a
 8 face-to-face interview.
 9 Q. So waivers could then like have a
 10 telephone interview?
 11 A. Correct.
 12 Q. For the Medicaid and SCI applicants, how
 13 would these applicants submit an application?
 14 A. The applications come in from multiple
 15 aspects, advocate agencies. We also have in the
 16 state presumptive eligibility, on-site application
 17 assistance, which would be like a school nurse. So
 18 any of those type of aspects can get an application
 19 delivered as well as an application can be faxed,
 20 mailed, dropped in the drop box outside the
 21 building.
 22 Q. Do you conduct any transactions over
 23 e-mail?
 24 A. We have not for -- with the clients, you
 25 mean?

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1 Q. Uh-huh.
 2 A. We have not. However, this seems to be a
 3 new interest that a lot of our clients now have, so
 4 there has been recently where they would send some
 5 verification proof to their caseworker, but not the
 6 applications.
 7 Q. What about recertifications by e-mail?
 8 A. Recertifications by e-mail we do for the
 9 Medicaid for families and for children programs.
 10 Q. What about change of address by e-mail?
 11 A. I'm not sure if -- I'm not aware of if we
 12 have or haven't received those.
 13 Q. So as far as you know, the only
 14 transactions that are covered by the NVRA occurring
 15 over e-mail are recertifications?
 16 A. Medicaid recertifications.
 17 Q. Just Medicaid --
 18 A. For women and children.
 19 Q. So for the Medicaid women and children and
 20 SCI applications that are either dropped off, faxed,
 21 delivered or mailed, how does the agency provide
 22 voter registration services to that applicant?
 23 A. The -- and this, again, is where we have
 24 done improvements of making sure that all of those
 25 forms have a declination language on it and staff

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1 are required to review that.
 2 Q. And then if they see a yes box checked,
 3 then they send a voter registration application?
 4 A. Correct.
 5 Q. Is there any cover letter or something
 6 that accompanies that application or does one just
 7 get sent in the mail from HSD to the client?
 8 A. The latter, it is just sent in the
 9 envelope to the household.
 10 Q. What happens if there is no box checked,
 11 like a yes -- neither a yes nor a no is checked on a
 12 completed application?
 13 A. The procedure or the policies around that
 14 is that that is treated as a no.
 15 Q. That's treated as a no. And does that
 16 policy apply for any application, whether it's been
 17 received, you know, in person, by mail, whatever?
 18 A. Yes.
 19 Q. How soon after someone at HSD reviews the
 20 application does a voter registration application
 21 get mailed out to the client?
 22 A. I cannot give you a time period on that.
 23 I don't know.
 24 Q. Okay. There's no policy on that?
 25 A. There is no policy on that.

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1 Q. Do the voter registration applications
 2 that get mailed out to clients get captured in the
 3 monitoring reports or the data reports that offices
 4 complete?
 5 A. Only if the participant brings the
 6 registration back to us.
 7 Q. Is the participant advised of what to do
 8 with that voter registration application when he or
 9 she gets it in the mail?
 10 A. You know, as indicated, we do not have a
 11 standardized cover letter to go out with those
 12 registrations, but a nice idea. I like that.
 13 Q. So just to follow up on that, they're not
 14 told where they can deliver a completed voter
 15 registration application?
 16 A. It does indicate on the form -- I can't
 17 swear to it, but I believe all the county clerks
 18 have the county clerk information on the
 19 registration form.
 20 Q. So you're handing out -- I mean each -- I
 21 guess each county has its own voter registration
 22 application?
 23 A. As far as I understand, county clerks
 24 often have that specialized within their area. But
 25 I'm not an expert on that area, so I really have not

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<p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. That would be covered at the interview.</p> <p>4 Prior to the declination information getting printed</p> <p>5 in the applications, that was treated as a process</p> <p>6 of the recertification but was not necessarily</p> <p>7 mailed off to the client to complete.</p> <p>8 Q. How did office workers know that that</p> <p>9 would happen at the interview rather than at the</p> <p>10 mailing stage?</p> <p>11 A. Just because the mailing was done out of</p> <p>12 central office --</p> <p>13 Q. So they couldn't have done it?</p> <p>14 A. Right. They do not mail out the</p> <p>15 reapplication form.</p> <p>16 Q. So up until 2008, recertification,</p> <p>17 reapplications were going out without declination</p> <p>18 language?</p> <p>19 A. Now, you could probably go back to the mid</p> <p>20 '90s and, yes, it was done by the local office. But</p> <p>21 many years ago that shifted to centralized mailing.</p> <p>22 Q. <u>So the hope or the expectation was that</u></p> <p>23 <u>office employees were doing a face-to-face interview</u></p> <p>24 <u>providing a client with a declination form?</u></p> <p>25 A. (No verbal response.)</p>	<p>1 Q. And when they were filling out a form, the</p> <p>2 expectation was that a caseworker would also provide</p> <p>3 a declination form?</p> <p>4 A. If they noted that the change report was</p> <p>5 about a change of address.</p> <p>6 Q. But there was no specific instruction on</p> <p>7 that?</p> <p>8 A. Just what it was in the secretary of</p> <p>9 state's training manual.</p> <p>10 Q. Okay. Let's talk a little bit about the</p> <p>11 agency site coordinators. Is there a list kept of</p> <p>12 the names and contact information of all the agency</p> <p>13 site coordinators?</p> <p>14 A. Yes.</p> <p>15 Q. When did HSD start maintaining that?</p> <p>16 A. I don't know. I became aware of it with</p> <p>17 our monthly tracking log, but I have no idea prior</p> <p>18 to that who was maintaining it or if a list was</p> <p>19 maintained.</p> <p>20 Q. And when was that?</p> <p>21 A. That would have been 2007 sometime.</p> <p>22 Q. So basically there's nothing that lists</p> <p>23 what the site coordinator's responsibilities are</p> <p>24 aside from that secretary of state's manual from '95</p> <p>25 and the GI 8-01?</p>
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<p>1 Q. <u>How do you know that was happening?</u></p> <p>2 A. I don't.</p> <p>3 Q. And the hope also was during a telephone</p> <p>4 interview a client was being asked whether he or she</p> <p>5 wanted to register to vote?</p> <p>6 A. Correct.</p> <p>7 Q. You don't know whether that was happening</p> <p>8 either, right?</p> <p>9 A. Correct.</p> <p>10 Q. What are all the ways that a person can</p> <p>11 change an address with HSD?</p> <p>12 A. Primarily, change of address happens at</p> <p>13 the recertification application. That is probably</p> <p>14 when most change of address updates occur. The</p> <p>15 other situation is that the client may fill out that</p> <p>16 change report card, they may contact the office by</p> <p>17 phone, and they may also fill out that other form</p> <p>18 that I mentioned earlier that is a change report</p> <p>19 form.</p> <p>20 Q. So if they were doing it by phone, how</p> <p>21 would they get offered voter registration services?</p> <p>22 A. The employee is supposed to cover that.</p> <p>23 Q. <u>But you don't know that that was happening</u></p> <p>24 <u>necessarily for all offices?</u></p> <p>25 A. <u>No, I have not personally monitored that.</u></p>	<p>1 A. Nothing more than I am aware of.</p> <p>2 Q. The site coordinator is the one</p> <p>3 responsible for issuing numbers of -- or reporting</p> <p>4 the numbers of completed voter registration</p> <p>5 applications to the division coordinator?</p> <p>6 A. Yes.</p> <p>7 Q. And that's always been the case?</p> <p>8 A. Yes.</p> <p>9 Q. But they're not required to keep numbers</p> <p>10 of declinations, right, like the number of</p> <p>11 declinations that get handed out?</p> <p>12 A. Correct.</p> <p>13 Q. So there's no way for an office to know</p> <p>14 based on the system that's in place already whether</p> <p>15 each one of their employees is providing voter</p> <p>16 registration services with every covered</p> <p>17 transaction?</p> <p>18 A. Well, we know now with the revised form</p> <p>19 that that opportunity is being offered to every</p> <p>20 applicant in those circumstances that applies for</p> <p>21 benefits or renews their benefits.</p> <p>22 Q. Well, you don't know that that question is</p> <p>23 included in all applications, that, you know,</p> <p>24 clients who see this will check yes or no? But with</p> <p>25 this system, you know, an office -- or a site</p>

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<p>1 policy commission? 2 A. I think you can kind of guess on that one, 3 but the answer is no. 4 MS. CHAPMAN: Okay. Does anyone need a 5 break? 6 THE WITNESS: I could use a couple 7 minutes. 8 (A recess was taken.) 9 MS. CHAPMAN: Okay. I'd like to have this 10 marked as Plaintiffs' Exhibit 4. I'm handing a copy 11 to Mr. Roth and his counsel. 12 (Exhibit 4 marked.) 13 Q. (By Ms. Chapman) And this is -- it is 14 double-sided but, you know, the side that says "HSD 15 and TRD's discovery responses" can be discarded. 16 The part that I'm concerned about is the part that 17 says "address change report." It's written in both 18 English and Spanish. Mr. Roth, have you seen this 19 before? 20 A. Yes. 21 Q. Is this the -- what is it? 22 A. This is a change of address report card 23 that is provided to recipients to be able to easily 24 report a change of address back to the agency. 25 Q. And is this the address change report</p>	<p>1 <u>address change report, does not include a</u> 2 <u>declination question, right?</u> 3 <u>A. Correct.</u> 4 <u>Q. Earlier you said all applications,</u> 5 <u>recertification, change of address forms included</u> 6 <u>the declination question, correct?</u> 7 <u>A. Correct.</u> 8 <u>Q. But this one doesn't, correct?</u> 9 <u>A. Correct.</u> 10 Q. Are there other forms out there that the 11 agency is using that does not include a declination 12 form? 13 A. That's where I was talking about that 14 there have been forms that we did not have that on. 15 In the last few months this form does have that 16 language on it now. 17 Q. So this has been revised? 18 A. Yes. 19 MS. CHAPMAN: Can we get copies of all the 20 application forms, recertification forms, and change 21 of address forms that are currently being used by 22 HSD? 23 MR. TERRY: Yes. 24 Q. (By Ms. Chapman) Okay. Thank you. <u>So are</u> 25 <u>any of these floating around offices anymore?</u></p>
Page 122	Page 124
<p>1 that's currently being used by the agency? 2 A. Yes. There is two different forms that a 3 client can report a change of address on, and this 4 is one of them. 5 Q. What's the other one? 6 A. The other one is a -- and we just changed 7 them January 1 -- no, that one would have the same 8 title. Proof of receipt. I think it's a proof of 9 receipt slash change report on it. 10 Q. And what does that form look like? 11 A. It is a full-page form, and it's used for 12 a client to report any change in their 13 circumstances, income, address, whatever it might 14 be, and then it also is used that if a person brings 15 in any kind of verification proof, check stubs or 16 whatever, this form is then filled out and given to 17 them as a receipt. So it's basically a receipt for 18 reporting a change or for providing proof. 19 Q. Okay. Is this the only address change 20 report that HSD offices use, the one that we're 21 looking at now, Plaintiffs' 4? 22 A. This is the only one that is specific to 23 address change only, but they can report on that 24 other form as well. 25 Q. Okay. You'll note that this report, <u>this</u></p>	<p>1 <u>A. I can't say that they are or they aren't,</u> 2 <u>but there was a new form issued and expected to be</u> 3 <u>used, implemented, right away.</u> 4 Q. Was there a policy or instruction to all 5 offices saying here's the new address change report, 6 start using this and discard previous versions of 7 this address change report? 8 A. I can't remember if that memorandum said 9 about discarding, but there was a memorandum that 10 went out that said this is the new form to begin 11 using immediately, and it does indicate about the 12 old version is deleted. But I can't remember if 13 there were specific instructions to destroy your 14 stock. 15 Q. Okay. So some offices may have these 16 old -- may be using these address change reports in 17 addition to using the new ones? 18 A. That easily could be the case. A lot of 19 our forms get in the hands of a lot of advocate 20 agencies that work with our clients and we have no 21 control about what stockpiles they don't want to 22 use. But if a client brings it in, we're certainly 23 going to accept an old form. 24 Q. Was there a policy or instruction issued 25 to HSD offices saying that, you know, they should no</p>

EXHIBIT C

On Mon, Mar 8, 2010 at 3:46 PM, Mark Posner <mposner@lawyerscommittee.org> wrote:

Thanks for your efforts, Adrian. We'll get back to you with regard to which office in Albuquerque, and whether we have a preference as to the Las Cruces office tomorrow.

Mark Posner
Senior Counsel
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, NW
Suite 400
Washington, DC 20005
(202) 662-8389 (telephone)
(202) 628-2858 (fax)

On Mon, Mar 8, 2010 at 4:23 PM, Terry, Adrian <aterry@nmag.gov> wrote:
Mark and Allison,

Further HSD Availability:

Cindy Salazar - Regional Manager (Las Cruces Area): Available on all proposed dates, except April 2nd (furlough day); to wit: March 24, 26, 29, 30, 31, and April 1st.

Richard Gil - County Manager (Dona Ana - East/Las Cruces Area): Available on all proposed dates, except April 2nd (furlough day); to wit: March 24, 26, 29, 30, 31, and April 1st.

Dorothy Fisher - County Manager (Dona Ana - West/Las Cruces Area): Available on March 24, 26, 29, 30, 31.

Ms. Salazar recommends deposing Richard Gil (Dona Ana Co. - East) over Dorothy Fisher (Dona Ana Co. - West) for Las Cruces County Manager because of his longer term of service with HSD and corresponding historical knowledge.

The Las Cruces deponents prefer to be deposed in Las Cruces where they work, but are willing to be deposed at the ISD Office in Truth or Consequences, shortening the distance to travel for both parties.

Adrian Terry
Assistant Attorney General
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504

On Mon, Mar 8, 2010 at 5:06 PM, Terry, Adrian <aterry@nmag.gov> wrote:
Mark and Allison,

Further HSD Availability:

Rita Espinosa - Regional Manager (Bernalillo County/Albuquerque Area): Available on March 26, 29, 31 and April 1. Ms. Espinosa can be deposed in Albuquerque.

Adrian Terry
Assistant Attorney General
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505-827-6989 FAX

From: Terry, Adrian [mailto:aterry@nmag.gov]
Sent: Monday, March 08, 2010 5:44 PM
To: Mark Posner; allison.kierman
Cc: Lujan, Elaine, Civil NMAGO
Subject: HSD Deposition Scheduling

Mark and Allison,

I'm sending you HSD deposition availability information as I receive it. For you information, Friday, April 2nd is a state furlough day, so no HSD deponents will be available that day.

Albert Delgado - Regional Manager (Rio Rancho/Gallup/Farmington Area): Available on March 24, 29, 31 and April 1. Mr. Delgado can be deposed in Albuquerque.

Roger Burton - County Manager (Farmington Office): Available on March 24, 26, 29, 31 and April 1. Mr. Burton has epilepsy and does not drive. We will need to coordinate his deposition where he works in Farmington.

I'll continue my coordination efforts.

--

Adrian Terry
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On Wed, Mar 10, 2010 at 8:00 AM, Yolanda Sheffield <ysheffield@projectvote.org> wrote:
Adrian,

I wanted to follow up on the discussion we had yesterday on the phone. These are my notes from the call but please let me know if I misunderstood anything.

First, I will be submitting to you later this week a draft stipulation that will address the practices of the Human Services Divisions prior to 2008 to forward to the appropriate person.

Second, we tentatively agreed on the following deposition schedule which of course may be postponed or cancelled based on the outcome of the settlement discussions. We would conduct depositions in Albuquerque on the 24th (for Rita Espinosa and Rochelle Radloff- although you have to check with Rochelle to confirm) and in Las Cruces on the 26th (for Cindy Salazar and Dorothy Fisher). The following week we discussed deposing Albert Delgado on the 29 (Albuquerque) and Roger Burton (Farmington) on the 1st of April. However, since we need to depose the witness from the Secretary of State's office later that week we would prefer to switch this schedule and conduct the Farmington deposition on the 29th and the Delgado deposition in Albuquerque on the 1st. This schedule is a bit tentative because we are still waiting to hear from Scott on when the SOS deponent will be available.

Third, you mentioned that you would like to pursue stipulations for certain categories of information. I sent an email to co-counsel on this issue. I proposed either meeting on the 16th to discuss the stipulations or obtaining some draft stipulation language that we could submit to you. I am still waiting to hear back but will be in touch on this issue once I do.

Yolanda Sheffield, Esq.
Director, Election Administration Program
Project Vote
(Cell) 202. 553.5415
(Office) 202.546.4173 ext 302
(Fax) 202.543.3675

From: Terry, Adrian [mailto:aterry@nmag.gov]
Sent: Wednesday, March 10, 2010 10:42 AM
To: Yolanda Sheffield
Cc: Lujan, Elaine, Civil NMAGO; Reynolds, Mark H, HSD
Subject: Re: Valdez v. Herrera

Yolanda,

As to the deposition scheduling: For week 1, I think we have the dates for Las Cruces and Albuquerque swapped. Las Cruces depositions should be held on the 24th and the Albuquerque depositions on the 26th. Rita Espinosa (Abq. deponent) is not available on the 24th. I am still attempting to coordinate with Rochelle Rodloff. The week 2 swap of Burton to the 29th and Delgado to the April 1st, seems to be fine according to my list of their available dates.

As to the discovery issue: It is my hope that the parties can reach certain stipulations to negate the need for some or all of the depositions that we are scheduling. Please tell me what you intend to ask, as well as what you think you'll be able to prove through the responses to the propounded questions. Perhaps HSD will be able to stipulate to some or all of the facts that you think you'll be able to prove after the depositions. In the alternative, perhaps HSD deponents can be examined through written deposition questions in accordance with FRCP 31 considering that the questions for each deponent should be substantially similar given that each deponent holds the same title and is responsible to perform the same duties for two job categories - Regional Manager or County Manager.

I look forward to your response on the discovery issue. If further discussion is necessary, I am available for a conference call on Tuesday, 3/16/10, as I'll be out of the office from Thursday to Monday. Any immediate concerns can be directed to Elaine Lujan at 505-827-6990.

Regards,

Adrian Terry
Assistant Attorney General
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508
505-827-6040
505-827-6989 FAX

From: Terry, Adrian [mailto:aterry@nmag.gov]
Sent: Wednesday, March 10, 2010 12:06 PM
To: Mark Posner; allison.kierman; Yolanda Sheffield
Cc: Lujan, Elaine, Civil NMAGO
Subject: Re: HSD Deposition Scheduling

Mark, Allison, and Yolanda:

Further HSD Availability:

Rochelle Radloff - County Manager (Abq-SW): Available on all of the proposed dates, specifically including Friday, March 26th as presently contemplated. Ms. Radloff can be deposited in Albuquerque.

Adrian Terry
Assistant Attorney General
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508
505-827-6040
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On Tue, Mar 16, 2010 at 9:18 AM, Yolanda Sheffield <ysheffield@projectvote.org> wrote:
Adrian,

We are in receipt of the counter-settlement offer and reviewing it now. My understanding is that Mark has relayed to you that we will have a discussion internally and be in contact in a few days.

To the extent they continue to be necessary, Allison has sent notices of depositions for the week of the 22nd and the week of the 29th. During the week of the 29th, the depositions for the HSD regional manager and office manager are scheduled for Monday (29th) and Thursday (April 1st). If possible, we would like to reschedule Roger Burton's deposition for Wednesday, March 31, 2009 .

I believe you told Mark that Mr. Burton is available on Wednesday. However, I know that you previously mentioned that you would like to have a day between depositions if one was occurring in Farmington. We were wondering if it's possible to have HSD counsel be present on Wednesday for the deposition of Mr. Burton (I believe that is Mark Reynolds) and you attend by teleconference.

Please let me know if this is feasible.

Yolanda Sheffield, Esq.
Director, Election Administration Program
Project Vote
(Cell) 202. 553.5415
(Office) 202.546.4173 ext 302
(Fax) 202.543.3675

From: Terry, Adrian [mailto:aterry@nmag.gov]
Sent: Tuesday, March 16, 2010 1:56 PM
To: Yolanda Sheffield
Cc: Lujan, Elaine
Subject: Re: Finalizing Depositions

Yolanda,

I have no problem with rescheduling the depositions. To confirm, you would like to move Roger Burton from Monday, March 29th to Wednesday, March 31st. Albert Delgado's deposition will remain on Thursday, April 1st.

I will work to coordinate with Mr. Burton to inform him of the change in dates from the Notice of Deposition served yesterday.

Please give me a call at your convenience to discuss your other issue of having Mark Reynolds attend Mr. Burton's deposition.

Regards,

Adrian Terry
Assistant Attorney General
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508
505-827-6040
505-827-6989 FAX

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CELIA VALDEZ, GRACIELA GRAJEDA,
ROANNA BEGAY, JESSE RODRIGUEZ,
and ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM NOW,

Plaintiffs,

v.

MARY HERRERA, in her official capacity as
New Mexico Secretary of State, PAMELA S.
HYDE in her official capacity as Secretary of
New Mexico Human Services Department,
FRED SANDOVAL in his official capacity as
the Director of the Income Support Division of
the New Mexico Human Services Department,
CAROLYN INGRAM in her capacity as the
Director of the Medical Assistance Division of
the New Mexico Human Services Department,
RICK HOMANS in his capacity as the
Secretary of the New Mexico Taxation and
Revenue Department, and MICHAEL
SANDOVAL, in his capacity as the Director of
the Motor Vehicle Division of the New Mexico
Taxation and Revenue Department,

Defendants.

CIVIL ACTION NO. 09-668 JH/DJS

**DEFENDANT PAMELA HYDE'S ANSWERS TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES**

1. Describe the organizational structure of the HSD showing the direct and indirect reporting responsibilities by position title from office personnel up through and including the position of Secretary of HSD, and describe any changes in the organizational structure since

beyond the scope of the allegations contained in the Complaint. Defendant Hyde further objects to the foregoing interrogatory on the basis that it is neither possible for HSD to “describe in detail” every single action it has taken to ensure compliance with the NVRA, nor does HSD keep records of every single NVRA-related action. For the stated reasons, the requested information is not likely to lead to the discovery of admissible evidence.

Notwithstanding the stated objections, and without waiving such objections, the Defendant Hyde provides the following response.

Response: Every time a voter notice form was distributed, and every time an application that contained the voter notice was distributed, it was done for NVRA compliance.

Without waiving the foregoing objection, HSD states, without limitation, that it has produced and provided to staff instructions on NVRA compliance and has reinforced those instructions during meetings. HSD has included the voter notice within certain applications, has established site coordinators and maintains voter registration posters in its field offices.

9. Identify and describe all reports, reviews, evaluations, audits, studies, other forms of analysis, and data compilations concerning compliance by HSD offices with the NVRA, since January 1, 1995.

Objection: Defendant Hyde objects to the foregoing interrogatory on the basis that some or all of the requested information is not relevant to the issue of whether HSD violated the NVRA by failing to offer voter registration services to Roanna Begay or Shawna Allers as alleged in the Complaint and the proposed Amended Complaint, respectfully. Defendant Hyde objects to the foregoing interrogatory on the basis that the requested information is overbroad and unduly burdensome, particularly because the requested information

requires the production of information for a period of approximately fifteen years, which is beyond the scope of the allegations contained in the Complaint. For the stated reasons, the requested information is not likely to lead to the discovery of admissible evidence.

Notwithstanding the stated objections, and without waiving such objections, the Defendant Hyde provides the following response.

Response: Excel spreadsheets compiled and maintained by NVRA division coordinator Rachel Moskowitz are being provided. Management evaluation reports, parts of which contain NVRA review are being provided.

10. Do you contend each HSD office has, since January 1, 2000, distributed a voter notice form to clients with each application for benefits, recertification/renewal, and change of address, and if so, identify all facts that support your contention. If you do not so contend, identify each HSD office that failed to distribute voter notice forms in this manner and the time period during which each office did not so distribute the forms.

Objection: Defendant Hyde objects to the foregoing interrogatory on the basis that some or all of the requested information is not relevant to the issue of whether HSD violated the NVRA by failing to offer voter registration services to Roanna Begay or Shawna Allers as alleged in the Complaint and the proposed Amended Complaint, respectfully. Defendant Hyde objects to the foregoing interrogatory on the basis that the requested information is overbroad and unduly burdensome, particularly because the requested information requires the production of information for a period of approximately ten years, which is beyond the scope of the allegations contained in the Complaint. For the stated reasons, the requested information is not likely to lead to the discovery of admissible evidence.