

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

CELIA VALDEZ, et al.,

Plaintiffs,

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

MARY HERRERA, et al.,

Defendants.

DEPOSITION OF DON FRANCISCO TRUJILLO, II
May 26, 2010
9:15 a.m.
Office of Secretary of State
325 Don Gaspar, Suite 300
Santa Fe, New Mexico 87501

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: MS. YOLANDA SHEFFIELD
Attorney for Plaintiffs

REPORTED BY: Jan A. Williams, RPR, NM CCR 14
Bean & Associates, Inc.
Professional Court Reporting Service
201 Third Street, Northwest, Suite 1630
Albuquerque, New Mexico 87102

(683H) JAW

1 Q. And so who from the SoS office notifies MVD
2 or HSD that training is available?

3 A. Me.

4 Q. And how is that communication made?

5 A. Verbally.

6 Q. And how often is it made?

7 A. If there's a change in the secretary or a
8 change in a director for MVD.

9 Q. And are you the only one responsible for
10 notifying them?

11 A. I would be the responsible party whether I do
12 it personally or I delegate it to someone on staff.

13 Q. Has anyone else on staff ever notified HSD or
14 TRD that training is available?

15 A. The Secretary of State herself has mentioned
16 it in meetings that we've had.

17 Q. Have you ever provided training for HSD or
18 MVD?

19 A. No.

20 Q. And when was the training developed?

21 A. Sometime in '07 as far as this administration
22 is concerned. I don't have knowledge of what was done
23 prior.

24 Q. And if we wanted to know what happened prior
25 to 2007, we would have to look at those individuals

1 that were -- that you mentioned earlier in the
2 deposition?

3 A. I would assume so, yes.

4 Q. And what person is responsible for conducting
5 trainings from the SoS office?

6 A. Currently it would be Kelli Fulgenzi as the
7 Bureau of Elections administrator.

8 Q. And is there a set of particular materials
9 that you can use or is there a particular set of
10 materials that are written and documented that we
11 could get a copy of?

12 A. No.

13 Q. So what does the training consist of?

14 A. It consists of about -- it depends on whether
15 it's one or two people or 20 people. But it's about
16 15 or 20 minutes of explaining the basic rules and
17 regulations of NVRA and the actual filling out of the
18 forms.

19 Q. And you said to date you're not aware of
20 anyone at the SoS office providing training to HSD or
21 MVD?

22 A. Correct.

23 Q. And is this just from 2007 up or just
24 generally since the --

25 A. I'm speaking from 2007 to present.

1 who has lost their right to vote and reinstate someone
2 once they have regained their right to vote by court
3 order because they have met all of the mandates of
4 their probation.

5 And so that's what I mean by we are a
6 clearinghouse. We disseminate the information to the
7 county clerks when it's within our power to do so.

8 Q. So how does the SoS office ensure that
9 agencies, public assistance agencies and MVD is
10 complying with the NVRA?

11 A. The Secretary of State does not have any
12 enforcement authority over those agencies. We don't
13 have any enforcement authority over MVD, we don't have
14 any enforcement authority over HSD, we can simply
15 offer assistance and hope that they accept our
16 assistance. They are independent agencies that fall
17 under the direct supervision of the governor of the
18 state. We cannot force them to do anything.

19 Q. But does the Secretary of State's office do
20 anything to ensure or check that they are complying
21 with the NVRA?

22 A. We verify with the local county clerks if
23 there are any issues within their local jurisdictions.
24 And if there are, then yes, we will make phone calls
25 to assist, where possible. But we do not check

1 directly with the MVD offices or the HSD offices.

2 Q. Is it fair to say that you rely on the county
3 clerks to check for compliance?

4 A. I would say that we rely on the county clerks
5 to inform us if there are any discrepancies regarding
6 NVRA within their county jurisdictions.

7 Q. I guess my next question is why is this the
8 county clerk's job or responsibility, is this by
9 statute or --

10 A. Again it is the responsibility -- to the best
11 of my knowledge, the way I understand the law, it is
12 the responsibility of those agencies to comply with
13 federal law. The Secretary of State's office as the
14 chief election officer who coordinates throughout New
15 Mexico has certain statutory obligations.

16 Our statutory obligation is to provide forms
17 to the county clerks. Their statutory obligation in a
18 separate statute is to provide forms to the agencies
19 requesting them. But the ultimate responsibility is
20 to those agencies.

21 Q. Okay. So if I understand correctly, the
22 Secretary of State's office is not directly checking
23 with the agencies to ensure compliance; is that a fair
24 statement?

25 A. Yes.

1 each agency has stamps that are used on each voter
2 registration application?

3 A. Yes.

4 Q. How long have you had those stamps for the
5 agencies?

6 A. I don't know the length of time.

7 Q. Do you know who would know the length of
8 time?

9 A. The best person to answer that would probably
10 be Kelli.

11 Q. Once the NVR statistics report is generated,
12 does anyone from your office ever review it?

13 A. Larry would have been the one reviewing it.

14 Q. Do you know what he would have been reviewing
15 it for?

16 A. To verify that the -- to the best of my
17 knowledge, to verify that counties were inputting the
18 information:

19 Q. Would he look at the number of registrations
20 generated at MVD and say if that number -- or evaluate
21 if that number were low or high?

22 A. I don't know.

23 Q. Do you know if any type of investigation was
24 done on those numbers at all?

25 A. I don't know.

1 Q. Are there any plans in the future to do any
2 reviewing or monitoring activities of the voter
3 registration numbers from agencies?

4 A. I have not discussed that.

5 Q. Would it be correct to say that absent a
6 county clerk or a third party bringing an issue
7 regarding NVRA compliance to your office's attention,
8 that there is no internal procedure to investigate
9 currently voter registration compliance at public
10 assistance agencies?

11 A. Yes.

12 Q. Have you made any changes to the NVRA system
13 or the report in the last three years?

14 A. There have been enhancements to the Voter
15 Registration Election Management System. As to the
16 report, to the best of my knowledge, no.

17 Q. What type of enhancements were made to the
18 system?

19 A. I don't recall specifics.

20 Q. You mentioned earlier that you were aware of
21 the report, but you hadn't seen it. How were you
22 aware of the report?

23 A. The fact that it had been mentioned that we
24 were able to generate a report out of the Voter
25 Registration Election Management System with the

1 A. It's a county clerk function. I don't have
2 any knowledge of how that transpires at the local
3 level.

4 Q. Okay. So you don't know what they're doing
5 at the county clerk level such that this report can be
6 generated at the SoS level?

7 A. Correct. I have never entered information
8 into VREMS or taken information out of VREMS or
9 changed information. VREMS, Voter Registration
10 Election Management System.

11 Q. You mentioned that Larry would review the
12 numbers previously. Was that something that was in
13 his job description?

14 A. It was something that was his responsibility.

15 Q. But it wasn't written down in a job
16 description?

17 A. To the best of my knowledge, no.

18 Q. Okay. And what exactly was his
19 responsibility in regards to reviewing the report?

20 A. To forward it to the EAC.

21 Q. And that was his main responsibility?

22 A. Yes.

23 Q. Were there any additional responsibilities in
24 regards to NVRA compliance in particular with this
25 report?

1 A. Not that I'm aware of.

2 Q. And the Secretary of State doesn't currently
3 require agencies to report their number of voter
4 registrations; is that correct?

5 A. Correct.

6 Q. Do you know the timing when this report is
7 typically created, if it's annual or biannual?

8 A. I don't.

9 Q. Do you have sufficient knowledge to walk us
10 through the report and explain the categories?

11 A. No.

12 Q. Would the best person to talk to to figure
13 out what each of the categories is and where it comes
14 from be Patricia or Kelli?

15 A. I would say Kelli.

16 Q. You mentioned that part of Larry's duties
17 were sending this report to the EAC and responding to
18 county clerks who may have raised issues that they
19 saw. Were there any other duties that Larry had
20 regarding NVRA compliance?

21 A. To the best of my knowledge, no.

22 Q. I may actually be done in the next 20 minutes
23 or so.

24 I'm going to talk quickly about complaints
25 that you may have received. Has the Secretary of

1 A. If we were -- if we are asked to provide
2 training, we will provide training.

3 Q. Okay. But you don't place an affirmative
4 responsibility on agencies to conduct trainings?

5 A. No.

6 Q. And earlier we talked about your preparation
7 for this deposition. You mentioned you reviewed a few
8 documents and you spoke to people to get documents to
9 prepare. Did you have any conversations with
10 individuals generally about what the policies and
11 procedures are at the Secretary of State's office?

12 A. No. I simply asked for the documents.

13 Q. Okay. So you didn't speak to anyone
14 specifically about compliance?

15 A. Not other than what I mentioned earlier, that
16 I spoke with my attorney.

17 Q. So have you understood all of the questions
18 that I've asked so far today?

19 A. To the best of my knowledge, yes.

20 Q. And are there any answers that you would like
21 to change?

22 A. No.

23 Q. Okay. Is there anything you need to add to
24 make anything more complete or something that you
25 didn't remember previously?