

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.* FRANK C. FOY
AND SUZANNE B. FOY,

Qui tam Plaintiffs,

v.

No. D-101-CV-2008-1895

VANDERBILT CAPITAL ADVISORS, LLC, *et al.*,

Defendants.

**MOTION FOR CONTEMPT AND ENFORCEMENT OF
SUBPOENA DEUCES TECUM**

Pursuant to Rule 1-045(E), NMRA 2009, the plaintiffs move the Court to hold Amanda Cooper and Moving America Forward Foundation, Inc. (“MAFF”) in contempt for failure to comply or otherwise respond to a subpoena *deuces tecum*. Plaintiffs also move for an order directing Cooper, MAFF, and MAFF’s accountants (Meyners + Co., a defendant in this case) to produce the records sought by the subpoena.

The grounds for this motion are as follows:

1. Moving America Forward Foundation is or was a purported charitable foundation with its principal place of business in New Mexico. Amanda Cooper is or was the executive director of MAFF. Anthony Correra is or was a director of the foundation. Anthony Correra is the father of Marc Correra, who has received at least \$16 million in finder’s fees on investment business placed by the New Mexico Educational Retirement Board or the New Mexico State Investment Council. These finder’s fees or third-party placement fees are actually thinly disguised kickbacks. The Vanderbilt defendants in this

case paid Marc Correra a \$2 million kickback on the \$90 million which the SIC and the ERB invested, and lost, with Vanderbilt.

2. Meyners + Co., another defendant in this case, is or was the accounting firm for MAFF. Meyners + Co. has possession or control of many of the documents sought by the subpoena.

3. Upon information and belief, MAFF was used as a conduit or vehicle for making kickbacks. Upon information and belief, donors used MAFF to launder kickbacks and other illegal inducements in exchange for investment business or other valuable consideration from the Richardson administration, while perhaps making the kickbacks tax deductible in the process. Upon information and belief, MAFF collected approximately \$1.7 million in purported “charitable donations.” Upon information and belief these “donations” included money from persons who were engaged in pay-to-play schemes involving the State of New Mexico.

4. On February 2, 2009 Amanda Cooper and MAFF were served with a subpoena *duces tecum* by plaintiffs. Exhibit 1 attached. Amanda Cooper and MAFF have never complied with or objected to the subpoena. Accordingly, they have waived any objections to the subpoena, and should be held in contempt for deliberately failing to comply with it.

5. Instead of complying with the subpoena, or filing an objection with this Court, Cooper and MAFF sent plaintiffs’ counsel an evasive, obfuscatory, and dilatory letter dated February 17, 2009. Exhibit 2, attached.

6. In response to Exhibit 2, plaintiffs' counsel responded with a letter which was faxed and e-mailed the same day, February 17. Exhibit 3. *Inter alia*, the letter pointed out that if Cooper or MAFF had objections to the subpoena, they were required to file those objections with the court.

7. In reply, Cooper and MAFF sent another obfuscatory, evasive and dilatory letter dated February 20, 2009. Exhibit 4. MAFF and Cooper deliberately refuse to file objections with the Court, as required by the rules, perhaps for fear of acknowledging that the Court has jurisdiction over them.

8. The points raised by MAFF and Cooper, even if they had been properly filed with the Court, do not constitute valid grounds for refusing to produce subpoenaed documents. The subpoenaed documents are clearly within the scope of discovery in this case, and MAFF and Cooper have cited no legal privilege which prevents these documents from being produced.

9. Even if they had any merit, these objections have been waived by the failure of Cooper and MAFF to present their objections to the Court. MAFF and Cooper have made a conscious decision to ignore the subpoena.

10. Whether or not MAFF is legally "in existence" is irrelevant, because most, if not all, of these documents are required to be kept for tax purposes. Furthermore, MAFF's accountants, Meyners + Co., have possession or control of these documents.

For the foregoing reasons, movants ask the Court:

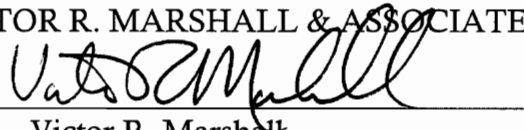
A. To enter an order holding Cooper and MAFF in contempt of Court;

- B. To enter an order requiring Cooper and MAFF to turn over the subpoenaed documents to plaintiffs within three days;
- C. To enter an order requiring Meyners + Co. to turn over the subpoenaed documents to plaintiffs within three days; and
- D. To award costs and attorneys fees in connection with this motion.

Respectfully submitted,

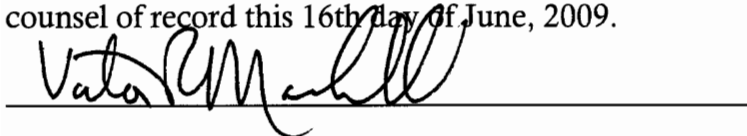
VICTOR R. MARSHALL & ASSOCIATES, P.C.

By



Victor R. Marshall
Attorneys for *Qui tam* Plaintiffs
12509 Oakland NE
Albuquerque, New Mexico
505/332-9400 505/332-3793 FAX

I hereby certify that a true and correct copy of the foregoing was emailed to all counsel of record this 16th day of June, 2009.



RETURN FOR COMPLETION BY OTHER PERSON
MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the 2 day of February, 2009, in Bernalillo County, I served this subpoena on Amanda Cooper by delivering to the person named a copy of the subpoena a fee \$ _____.

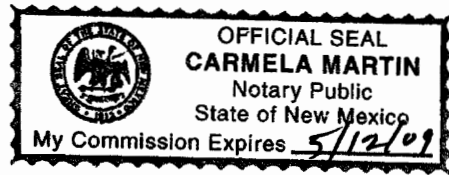
Authorized Agent to accept service
Willut - David Martin
Person making service

2009 SUBSCRIBED AND SWORN to before me this 3rd day of February,

Carmela Martin
Judge, notary or other officer authorized to Administer oaths

THIS SUBPOENA issued by or at request of:

Victor R. Marshall & Associates, P.C.
Victor R. Marshall
12509 Oakland NE
Albuquerque, NM 87122
(505) 332-9400



CERTIFICATE OF SERVICE BY ATTORNEY

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (delivery) (mail) on this _____ day of _____, _____.

(1) _____
(Name of party)

(Address)

(2) _____
(Name of party)

(Address)

Victor R. Marshall
Attorney

Signature

Date of signature

TO BE PRINTED ON EACH SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
2. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
3. If a person's attendance is commanded one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. *See* Section 38-6-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

Subject to Subparagraph (2) of Paragraph D below, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file a motion to quash the subpoena and serve the motion on all parties to the action. If an objection is served or a motion to quash is filed and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (3) requires disclosure of privileged or other protected matter and not exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

ATTACHMENT TO MAFF SUBPOENA

Any and all documents or records relating to:

1. The Board of Directors of the foundation, including minutes or notes of any board meetings.
2. The management of the foundation, including minutes or notes of any management meetings.
3. Contributions and expenditures, receipts and disbursements, including contributions which were discussed but never made.
4. All records relating to any employee, officer, or director of the foundation.
5. Any contracts in excess of \$1000.
6. Financial or tax records.

Note: This request includes records in any form, including electronic records like emails, cell phone messages, recordings, computer data, etc.

SANDLER, REIFF & YOUNG, P.C.

February 17, 2009

Via Facsimile and First Class Mail

Victor R. Marshall, Esq.
Victor R. Marshall & Associates, P.C.
12509 Oakland NE
Albuquerque, NM 87122

**Re: *State of New Mexico ex rel. Foy v. Vanderbilt Capital Advisors, LLC, et al.*
No. D-101-CV-1008-1895 (1st Judicial Dist. Ct., Santa Fe County)
Subpoena Duces Tecum to Moving America Forward Foundation, Inc.**

Dear Mr. Marshall:

The undersigned served as counsel for Moving America Forward Foundation, Inc. ("MAFF") and represents Ms. Amanda Cooper in connection with this matter. A subpoena *duces tecum*, dated January 28, 2009, directed to MAFF was served on Ms. Cooper on February 3, 2009 (the "Subpoena"). Pursuant to Rule 1-045(C)(2)(b), Ms. Cooper objects to the Subpoena on the following grounds:

(1) MAFF no longer exists. The corporation was dissolved through filing of a Certificate of Dissolution with the Secretary of State of New Mexico on December 17, 2008.

(2) To the extent that the Subpoena seeks production of records of MAFF that may still be in the custody or control of Ms. Cooper, it would subject here to an undue burden. On the one hand, the documents sought have no conceivable relevance whatsoever to the claims asserted in this case and are not calculated to lead to the discovery of relevant evidence. MAFF was a New Mexico non-profit organization engaged in non-profit voter registration and mobilization. The organization is nowhere referenced in the Complaint, nor are any of its officers, directors or employees. There is no indication of how the organization could conceivably have had any records or documents in any way relevant to the claims asserted in this case.

At the same time, compliance with the Subpoena would clearly be burdensome. The Subpoena is vastly overbroad, seeking all documents relating to the "management of the foundation," all personnel records without limitation in time or subject matter, all documents relating to all of the organization's contracts and all of its financial or tax records. Searching for and compiling such a vast array of records would impose a significant burden on Ms. Cooper, who is no longer an employee or consultant to this organization.



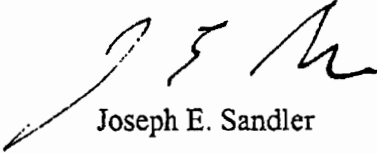
Victor R. Marshall, Esq.
February 17, 2009
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Further, the subpoena seeks all records relating to contributions to the organization, information which is not normally made public. Indeed, such information is required to be disclosed to the IRS in a tax-exempt organization's annual information return, but is specifically protected from public disclosure, under the Internal Revenue Code. *See* 26 U.S.C. §6104(b). Thus, compliance with the Subpoena would also violate the reasonable expectations of donors to the organization that their contributions would not be publicly disclosed.

For these reasons, Ms. Cooper objects to the Subpoena.

If you have any questions or need any further information, please contact the undersigned.

Sincerely yours,



Joseph E. Sandler

cc: Amanda Cooper

VICTOR R. MARSHALL & ASSOCIATES, P.C.

Attorneys at Law
12509 Oakland NE
Albuquerque, NM 87122
(505) 332-9400 / Fax (505) 332-3793

February 17, 2009

Via Facsimile, Email, and First Class Mail

Mr. Joseph E. Sandler, Esq.
Sandler, Reiff & Young, P.C.
300 M Street SE, Suite 1102
Washington, D.C. 20003

Re: *State ex rel. Foy v. Vanderbilt Capital Advisors, et al.*

Dear Mr. Sandler:

I have received your letter dated today.

First, the plaintiff State of New Mexico *ex rel.* Frank Foy takes issue with the factual and legal sufficiency of each of the purported grounds for objection asserted in your letter.

Second, your objections are late. The deadline for filing objections was yesterday, February 16, 14 days after February 2, when the subpoena was served. The New Mexico courts were open yesterday.

Third, a letter from you to me (or anyone else) is not a sufficient response under the New Mexico Rules of Civil Procedure. Moving America Forward Foundation, Inc. (MAFF) and Ms. Cooper must respond by filing a written objection or a motion to quash with the District Court in Santa Fe County. New Mexico Rules of Civil Procedure 1-045(C)(2)(b)(i). Failure to respond in court on time constitutes a waiver of any objections.

Fourth, it is not clear from your letter whether you are authorized to represent MAFF. Please advise immediately.

Fifth, in the meantime, this firm is prepared to confer with you, MAFF, or Ms. Cooper about any of the issues raised by the subpoena, including but not limited to the claim that the subpoena is overbroad and burdensome. If MAFF or Ms. Cooper are willing to make a reasonable good faith effort to produce some responsive documents, I imagine we could work out a stipulation that such a partial production would be without prejudice to the positions asserted by MAFF or Ms. Cooper.

Please do not hesitate to contact me.

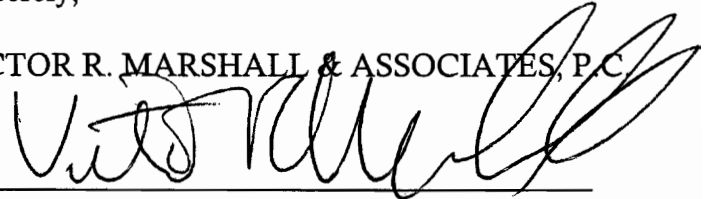


Joseph E. Sandler, Esq.
February 17, 2009
Page 2.

Sincerely,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By

A handwritten signature in black ink, appearing to read "Victor R. Marshall", written over a horizontal line.

Victor R. Marshall

VRM/sch

SANDLER, REIFF & YOUNG, P.C.

February 20, 2009

Via Facsimile and First Class Mail

Victor R. Marshall, Esq.
Victor R. Marshall & Associates, P.C.
12509 Oakland NE
Albuquerque, NM 87122

**Re: *State of New Mexico ex rel. Foy v. Vanderbilt Capital Advisors, LLC, et al.*
No. D-101-CV-1008-1895 (1st Judicial Dist. Ct., Santa Fe County)
Subpoena Duces Tecum to Moving America Forward Foundation, Inc.**

Dear Mr. Marshall:

This will respond to your letter of February 17, 2009, with respect to the objections of Amanda Cooper to the above-referenced Subpoena.

First, the objections served on you were not late. Under the New Mexico Rules of Civil Procedure 1-006(A), the time for moving or serving objections runs until the date due unless it is a legal holiday, "in which event the period runs until the end of the next day." The term "legal holiday" specifically includes Presidents' Day which, this year, fell on February 16. Therefore, the objections were not due until February 17.

Second, Rule 1-045(C)(2)(a)(iii) clearly states that, "if a written objection is *served*, . . . [the person commanded to produce] *shall not respond* to the subpoena until ordered by the court; . . ." Further, Rule 1-045(C)(2)(b)(iii) clearly states, "If *objection is served on the party serving the subpoena*, . . . the party serving the subpoena shall not be entitled to inspect and copy the materials . . . except pursuant to an order of the court by which the subpoena was served" (emphasis added). Accordingly, the proper procedure was followed to lodge objections to the Subpoena.

Third, MAFF no longer exists; accordingly, neither I nor anyone else can represent it. I do represent Ms. Cooper, who does have custody of some of the documents that belonged to MAFF when it did exist.

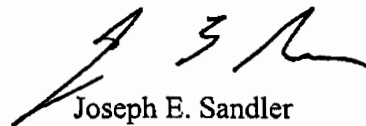


Victor R. Marshall, Esq.
February 20, 2009
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Finally, the overriding problem with the Subpoena is simply that it seeks to impose on a non-party the burden of searching for and producing documents that have no relevance whatsoever to the case. We are prepared to produce an affidavit from Ms. Cooper confirming that none of the defendants in this case, nor any person or entity mentioned in the Complaint, ever made any contribution to MAFF. We trust that such an affidavit would conclusively address the question of relevance and that, upon its receipt, you would withdraw the Subpoena.

Please confirm the foregoing and we will proceed to prepare and submit such an affidavit. If you have any questions or need further information, please contact me.

Sincerely yours,



Joseph E. Sandler