

Procedural Regulations of the False Claims Act

FALSE CLAIMS ACT: RULES & REGULATIONS

Statutory Authority: N.Y. State Fin. Law § 194

CHAPTER IX. FALSE OR FRAUDULENT CLAIMS INVOLVING GOVERNMENT FUNDS OR PROPERTY

PART 400. PROCEDURAL REGULATIONS OF THE FALSE CLAIMS ACT

Section 400.1 General Provisions

(a) The State Finance Law, sections 187-194, shall be referred to herein as the “False Claims Act”.

(b) Definition of Person: The term “person” as used herein shall mean any natural person, partnership, corporation, association or any other legal entity or individual, other than the state or a local government.

(c) Definition of Attorney General: The term “Attorney General” as used herein shall mean the Attorney General or his or her deputies, designees, assistants or special assistants.

(d) Severability: If any provision herein or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of the provisions and/or the applicability of such provisions to other persons or circumstances shall not be affected thereby.

Section 400.2 Civil Enforcement by the Attorney General

(a) Whenever it shall appear to the Attorney General that any person has engaged or is engaging in conduct that might amount to a violation of the False Claims Act, the Attorney General is authorized to investigate such violations by taking proof and making a determination of the relevant facts and issuing subpoenas in accordance with the Civil Practice Law and Rules. Such authorization shall not abate or terminate by reason of any action or proceeding brought under the False Claims Act by the Attorney General, a local government, or any person, including a qui tam plaintiff.

(b) If a person subpoenaed to attend an inquiry related to a violation of the False Claims Act fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a book or paper or data when ordered so to do by the officer conducting such inquiry, or if a person fails to perform any act required to be performed, the Attorney General may institute civil contempt proceedings under section 2308(b) of the Civil Practice Law and Rules or make a motion to compel pursuant to that section or take any other action authorized by law.

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Section 400.3 Civil Enforcement by Local Governments

(a) A local government shall consult with the Attorney General prior to filing any action under section 190(1) of the False Claims Act related to the Medicaid program.

(b) A local government filing an action under section 190(1) of the False Claims Act shall provide the Attorney General with a copy of the complaint on or about the date such complaint is filed.

(c) Under no circumstances shall the state be bound by the act of a local government that files an action involving damages to the state.

Section 400.4 Qui Tam Actions

(a) All qui tam actions shall be served on the Attorney General by the personal delivery of the qui tam complaint and accompanying evidence to a person designated to receive service at the Managing Clerk's Office on the 16th Floor at the Office of the Attorney General at 28 Liberty Street, New York, New York 10005, unless otherwise authorized by the Attorney General.

(b) A local government, having been authorized by the Attorney General to supersede or intervene in a qui tam action on its own behalf pursuant to section 190(2) of the False Claims Act, shall cooperate with the Attorney General in any subsequent investigation related to the action.

(c) If the state or a local government does not intervene or supersede after the 60 day time period or any extensions obtained under section 190(2)(b) of the False Claims Act, then the qui tam plaintiff has 30 days after such time period or extensions expire to decide whether to proceed with the action.

(1) If the qui tam plaintiff elects to proceed with the action, the qui tam plaintiff shall so advise the court, the state, and applicable local governments, and cause the complaint to be unsealed. After the complaint is unsealed, the qui tam plaintiff shall serve the complaint on any defendant pursuant to the provisions of the Civil Practice Law and Rules and other applicable law.

(2) If the qui tam plaintiff elects not to proceed with the action, the qui tam plaintiff shall either: (i) voluntarily discontinue the action, without an order and without unsealing the action, by filing with the court a notice of discontinuance and serving a copy of this notice on the Attorney General, who may in the Attorney General's discretion make an in camera motion to unseal the complaint; or (ii) seek to voluntarily discontinue the action by order of court by making an in camera motion to unseal the complaint and dismiss the action.

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(d) If the state or a local government decides not to intervene or supersede in a qui tam action, the qui tam plaintiff may not pursue the qui tam action on a pro se basis unless the qui tam plaintiff is an attorney eligible to represent a party before the court in which the qui tam action is proceeding.

400.5 Public disclosure bar motions

The state shall not seek to dismiss, and shall oppose the dismissal, of a qui tam action pursuant to paragraph (b) of subdivision nine of section one hundred ninety of the New York False Claims Act in the event that:

(a) any cause of action in the qui tam plaintiff's complaint would be dismissed other than a cause of action alleging substantially the same allegations or transactions that have been publicly disclosed in a manner set forth in such paragraph (b); or

(b) any cause of action in the qui tam plaintiff's complaint would be dismissed pursuant to subparagraph (ii) of such paragraph (b) solely because of an alleged public disclosure in a federal report, hearing, audit, or investigation.

400.6 Application of the damage multiplier

The state or a local government's damages shall be trebled or doubled pursuant to section one hundred eighty-nine of the New York False Claims Act before any subtractions are made for compensatory payments received by the government from any source, including but not limited to the defendant, or before any subtractions are otherwise made because of any offset or credit received by the government from any source, including but not limited to the defendant.

400.7 Obligations

(a) For purposes of paragraph (g) of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly makes, uses, or causes to be made or used, a false record or statement material to such obligation to pay or transmit money or property to the state or a local government.

(b) For purposes of paragraph (h) of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly conceals or who knowingly and improperly avoids or decreases such obligation to pay or transmit money or property to the state or a local government, or who conspires to do the same.

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400.8 Payment of costs and attorneys' fees

A person who violates section one hundred eighty-nine of the New York False Claims Act shall be liable for the costs, including attorneys' fees, of a civil action brought to recover penalties or damages. Such person shall pay all costs borne by the state, a local government, a qui tam plaintiff, or counsel, as may be applicable. All such costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the state, local government or a qui tam plaintiff prevails in the action.