

GOVERNMENT PROSECUTIONS AND QUI TAM ACTIONS

DISTRICT OF COLUMBIA OFFICIAL CODE

DIVISION I. GOVERNMENT OF DISTRICT.

TITLE 2. GOVERNMENT ADMINISTRATION.

CHAPTER 3B. OTHER PROCUREMENT MATTERS.

SUBCHAPTER I. PROCUREMENT RELATED CLAIMS.

D.C. Code § 2-381.03 (2014)

§ 2-381.03. Investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts

(a) The Attorney General for the District of Columbia shall investigate, with such assistance from other District agencies as may be required, violations pursuant to § 2-381.02 involving District funds. If the Attorney General for the District of Columbia finds that a person has violated or is violating the provisions of § 2-381.02, the Attorney General for the District of Columbia may bring a civil action against that person in the Superior Court of the District of Columbia.

(b) (1) A person may bring a civil action for a violation of § 2-381.02 for the person and for the District. The action shall be brought in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. The action may be dismissed only if the court and the Attorney General for the District of Columbia give written consent to the dismissal and their reasons for consenting.

(2) A complaint filed by a qui tam plaintiff pursuant to this subsection shall be filed in the Superior Court in camera and may remain under seal for up to 180 days, unless the seal is extended by the court. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2) of this subsection, the qui tam plaintiff shall serve the Attorney General for the District of Columbia by mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 180 days after receiving a complaint alleging violations involving District funds, the Attorney General for the District of Columbia shall do either of the following:

(A) Notify the court that he or she intends to proceed with the action, in which case the seal may be lifted unless, for good cause shown, the court continues the seal; or

(B) Notify the court that he or she declines to take over the action, in which case the seal

shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(5) Upon a showing of good cause, the Attorney General for the District of Columbia may move the court for extensions of the time during which the complaint remains under seal.

(6) When a qui tam plaintiff brings an action pursuant to this subsection, no person other than the District may intervene or bring a related action based on the facts underlying the pending action.

(7) The District is not liable for expenses which a qui tam plaintiff incurs in bringing an action under this section.

(c) (1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia, a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on evidence or information known to the District when the action was brought.

(2) No person may bring an action under subsection (b) of this section which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the District is already a party.

(c-1) (1) Except as provided in paragraph (2) of this subsection, a court shall dismiss an action or claim under this section if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(A) In a criminal, civil, or administrative hearing in which the District or its agent is a party;

(B) In a report, hearing, audit, or investigation by the Council of the District of Columbia, the Auditor of the District of Columbia, the Inspector General of the District of Columbia, or other District agency; or

(C) By the news media.

(2) A court shall not dismiss an action or claim as provided in paragraph (1) of this subsection if:

(A) The action is brought by the Attorney General for the District of Columbia;

(B) The District is opposed to the dismissal; or

(C) The action is brought by a qui tam plaintiff and the qui tam plaintiff is an original source of the information.

(d) (1) If the District proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the qui tam plaintiff. The qui tam

plaintiff shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2) of this subsection.

(2) (A) The District may dismiss the action notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the District of the filing of the motion to dismiss and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(C) Upon a showing by the District that unrestricted participation during the course of the litigation by the qui tam plaintiff would interfere with or unduly delay the District's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the qui tam plaintiff's participation, such as:

- (i) Limiting the number of witnesses the qui tam plaintiff may call;
- (ii) Limiting the length of the testimony of such witnesses;
- (iii) Limiting the qui tam plaintiff's cross-examination of witnesses; or
- (iv) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the qui tam plaintiff would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may, in its discretion, limit the participation by the qui tam plaintiff.

(e) (1) If the District elects not to proceed and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General for the District of Columbia would have had if he or she had chosen to proceed pursuant to subsection (b) of this section. If the District so requests, the District shall be served with copies of all pleadings filed in the action.

(2) When the qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may nevertheless permit the District to intervene at a later date upon a showing of good cause.

(f) (1) (A) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, the qui tam plaintiff, subject to subparagraph (B) of this paragraph, shall receive at least 15%, but not more than 25%, of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(B) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a report, hearing, audit, or investigation conducted by a District agency, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(C) Any payment to a qui tam plaintiff under this paragraph shall be made from the proceeds of the judgment or the settlement of the claim. Any qui tam plaintiff receiving a payment under this paragraph shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) (A) If the District does not proceed with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages; provided, that the amount shall be not less than 25%, and not more than 30%, of the proceeds of the action or settlement of the claim.

(B) Any payment to a qui tam plaintiff under this paragraph shall be made from the proceeds of the judgment or the settlement of the claim. Any qui tam plaintiff receiving a payment under this paragraph shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) The portion of the recovery not distributed pursuant to paragraphs (1) and (2) of this subsection shall be paid to the District treasury.

(4) (A) Whether or not the District proceeds with the action, if the court finds that the action was brought by a qui tam plaintiff who planned and initiated the violation of § 2-381.02 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(B) If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of § 2-381.02, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the District to continue the action, represented by the Attorney General for the District of Columbia.

(5) If the District does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily

incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment.

(6) (A) Notwithstanding subsection (b) of this section, the District may elect to pursue a violation of § 2-381.02 through any alternate remedy available to the District, including an administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in such proceeding as such person would have had if the qui tam action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section.

(B) For the purposes of this paragraph, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(g) (1) Whether or not the District proceeds with the action, upon a showing by the District that certain actions of discovery by the qui tam plaintiff would interfere with the investigation or prosecution of a criminal or civil matter by the District or a criminal matter in the District of Columbia arising out of the same facts, the court may stay such discovery for a period of not more than 60 days.

(2) Upon a further showing that the District or the United States Attorney's Office for the District of Columbia has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the qui tam action will interfere with the ongoing criminal or civil investigation or proceedings, the court may extend the stay of discovery provided for in paragraph (1) of this subsection.

(3) Any showing provided for under this subsection shall be conducted in camera.

(Feb. 21, 1986, D.C. Law 6-85, § 815, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(b), 46 DCR 2118; Mar. 11, 2010, D.C. Law 18-117, § 4, 57 DCR 896; Sept. 14, 2011, D.C. Law 19-21, § 9004(a), 58; Mar. 19, 2013, D.C. Law 19-232, § 2(c), 59 DCR 13632.)