

§ 108A-70.14. Civil investigative demand.

(a) If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 108A-70.12, the Attorney General may serve upon the person, before bringing an action under G.S. 108A-70.12 or other false claims law, a civil investigative demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall:

- (1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice;
- (2) Describe the nature of the conduct constituting the violation under investigation;
- (3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified;
- (4) Contain a copy of any written interrogatories to be answered;
- (5) Prescribe a reasonable date and time at which the person shall appear to testify, answer any written interrogatories, or produce any document or object;
- (6) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time;
- (7) Specify a place for the taking of testimony;
- (8) Designate a person to whom answers to written interrogatories shall be submitted and to whom any document or object shall be produced; and
- (9) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which to answer any written interrogatories and within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person. The date within which a person must appear to testify shall be more than 15 days after the demand has been served upon a person who resides out-of-state or more than 10 days after the demand has been served upon a person who resides in-state.

(d) The person before whom the oral examination is to be taken shall put the person to be examined on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the person to be examined. The Attorney General may exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the Attorney General conducting the examination, the investigator assisting the Attorney General, the stenographer, and any other person agreed upon by the Attorney General and the person giving the testimony. When the testimony is transcribed, the person shall have a reasonable opportunity to examine and read the transcript, unless an examination and reading are waived by the person. Any changes in form or substance which the person desires to make shall be entered and identified upon the transcript by the person. The transcript shall then be signed by the person, unless the person in writing waives the signing, is ill, cannot be found, or refuses to sign.

(e) Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under sworn certificate by the person to whom the demand is directed, or in the case of a person other than a

natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. If a person objects to any interrogatory, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(f) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(g) No person shall be excused from testifying, answering interrogatories, or producing documents or objects in response to a civil investigative demand on the ground that the testimony, answers, documents, or objects required of the person may tend to incriminate the person. However, no testimony, answers, documents, or objects compelled pursuant to G.S. 108A-70.14 may be used against the person in a criminal action, except a prosecution for perjury or for contempt arising from a failure to comply with an order of the court.

(h) Any person appearing for oral testimony under a civil investigative demand issued pursuant to this section shall be entitled to the same fees and allowances paid to witnesses in the General Court of Justice of the State of North Carolina.

(i) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules for Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 108A-70.12, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(j) If the person fails to comply with an order entered pursuant to subsection (i) of this section, the court may:

- (1) Adjudge the person to be in contempt of court;
- (2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or
- (3) Grant any other relief as the court may deem proper.

(k) Any transcript of oral testimony, answers to written interrogatories, and documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 108A-70.12.

(l) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section. (1997-338, s. 1.)