

# \$456,000 Fine for FECA Violation? Federal Court Says OK.

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Former Florida Congressman David Rivera's legal troubles continued to mount last month after a federal judge approved a \$456,000 fine for his "knowing and willful" campaign finance violations. This long-running case is a reminder that the Federal Election Commission (FEC) has continued to pursue legal violations through the court system even though it lacked a quorum to conduct most other business during 2020.

The case stems from an effort by Rep. Rivera, a Republican, to gain an edge over his Democratic opponent in the 2012 general election. Rivera's plan was to boost the efforts of a lesser-known primary candidate, Justin Lemar Sternad, to weaken the front-runner for the Democratic nomination, Joe Garcia. Through an intermediary, Rivera offered to provide financial support and other assistance to Sternad's campaign, including use of a cell phone, payment of his filing fee, and help with campaign mailers. Many of these items simply went unreported by Sternad's campaign, even though they were clearly in-kind contributions from Rivera. Through intermediaries, Rivera also repeatedly provided cash to Sternad's campaign and told the candidate to simply report the money as loans from his own personal funds rather than from Rivera. The total value of the cash and in-kind items exceeded \$70,000.

The federal campaign finance laws empower the Commission to seek a civil penalty of up to 1,000% of the amount in violation for a knowing and willful violation of the law. In finding the FEC's proposed \$456,000 penalty here justified, U.S. District Judge Marcia G. Cooke considered four factors, including the defendant's bad faith, the injury to the public, and the defendant's ability to pay the proposed fine.

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As a then-Congressman, the court found, Rivera was well aware of the requirement that campaign contributions needed to be accurately reported. Moreover, other steps that Rivera took – such as using a middleman to effect the transactions and advising another candidate how to complete the FEC reports – reflected bad faith. Rivera’s legal problems were further compounded by his interaction with a key witness against him. Rivera gave her a ticket to Nicaragua the day before she was to testify before a grand jury concerning these matters. After the witness returned to the United States (upon advice of her counsel), Rivera then flew with the witness to Texas, accompanied her across the Mexican border, and then provided her with a new passport to replace the one she previously surrendered. The witness then returned to Nicaragua.

Given Rivera’s “brazen” and “egregious” conduct, and his unwillingness to accept responsibility for his actions, the court also took the rare step of enjoining Rivera from violating the law again. While acknowledging the step “seems unnecessary,” Judge Cooke hoped that such an action will “do the trick” in convincing Rivera to stop violating the law.