

Official and Personal Liability for Political Committee Treasurers

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At its December 16, 2004, meeting, the Federal Election Commission (FEC) adopted a Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings. The policy formalizes the circumstances in which political committee treasurers are legally liable in their official or personal capacities in the course of FEC enforcement proceedings.

When FEC enforcement proceedings are initiated against a political committee, the treasurer is named as a party to those proceedings. The treasurer is typically named in an official capacity as the person responsible for representing the political committee. However, FEC regulations explain that the treasurer of a political committee is "personally responsible" for carrying out treasurer-specific duties under the campaign finance laws. Federal courts have also addressed the personal liability of treasurers for their failure to fulfill their statutory and regulatory responsibilities. *See, e.g., FEC v. Toledano*, 317 F.3d 939, 947 (5th Cir. 2002) (stating in dicta that "the law makes the treasurer... personally liable if he fails to fulfill his responsibilities"); *FEC v. Cal. Democratic Party*, 13 F. Supp. 2d 1031, 1037 (E.D. Cal. 1998) (dismissing claims against treasurer in his personal capacity due to lack of allegation that the treasurer violated "any personal obligation"); FEC Advisory Opinion 1995-10 ("treasurer's liability distinct from liability of committee for FECA violations, and since Congress chose to hold an individual, the treasurer, responsible for compliance with FECA it follows that 'an individual will also stand responsible for his indiscretions as a treasurer'" (citing and quoting *FEC v. Dramesi for Congress Comm.*, No. 85-4039 (MHC) (D.N.J. Sept. 5, 1990) (unpublished opinion)).

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The FEC's recently issued Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings formally adopts and clarifies this precedent. The Policy explains that the treasurer will continue to be a named party in his or her official capacity when the FEC is seeking relief against the treasurer's political committee. However, the treasurer will be named in his or her personal capacity, and will be held personally liable, if the treasurer:

- Knowingly and willfully violated the campaign finance laws and regulations,
- Intentionally deprived himself or herself of operative facts giving rise to a violation.
- Recklessly failed to fulfill the duties that apply specifically to treasurers.

These duties include:

- Keeping an account of committee records.
- Preserving records for three years.
- Engaging in "best efforts" to obtain, maintain and submit information.
- Filing and signing FEC disclosure reports.
- Examining and investigating contributions for evidence of illegality and taking appropriate action.
- Depositing contributions to the committee.
- Authorizing agents to make expenditures on behalf of the committee.

Finally, the treasurer can be personally liable, as may any other individual associated with a political committee, for violations of the campaign finance laws that apply to persons generally. Examples of such violations include receiving contributions from foreign nationals and making or knowingly accepting contributions in the name of another.