

### The Structure of the California Coastal Commission

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On April 24, 2001, Judge Charles Kobayashi of the Sacramento County Superior Court ruled that the California Coastal Commission's structure violates the California Constitution in *Marine Forests Society v. California Coastal Commission*, 00AS00567.

Plaintiffs in the case alleged that the California Coastal Commission's structure violates the California Constitution's separation of powers clause. The court sided with plaintiffs, holding that the California Coastal Commission's structure violates both Article III, section 3 and Article V, section 1 of the California Constitution, which divides California governmental power into three branches, and vests supreme executive power in the governor.

The basis for the court's holding was that the Coastal Act authorizes the legislature to appoint two-thirds of the California Coastal Commission's voting members (eight out of twelve appointees) and that those members serve at the pleasure of the legislature. Therefore, the California Coastal Commission is a legislative agency, yet the Commissioners promulgate rules and regulations, issue permits and cease and desist orders—powers traditionally left to the executive and judicial branches. Vesting executive and judicial powers and duties in a legislative agency violates the separation of powers clause.

Judge Kobayashi stated: "Purportedly an executive agency, the Commission is answerable to no one in the Executive. The members are not directly answerable to the voters. The legislature has retained for itself the power of appointment and dismissal at its pleasure. The Coastal Commission is effectively a legislative agency . . .the judicial and executive powers that it exercises are not incidental to the law making power. They are not properly under the jurisdiction of the legislature."

The court was unpersuaded by the California Coastal Commission's argument that the separation of powers was not violated because the Senate Rules Committee, the Assembly Speaker and the Governor each appoint four members. The court concluded that despite that fact that the appointment power was dispersed among both legislative branches, eight of the twelve Commissioners are appointed and subject to dismissal by the legislative branch of the government and "a separation of powers violation occurs when the exercise of the power of one branch of government defeats or materially impairs another branch."

The impact of the court's decision in *Marine Forests Society v. California Coastal Commission* may be far reaching as it clearly calls into question the California Coastal Commission's fundamental powers, including the power to issue Coastal Development Permits. It is expected that the California Coastal Commission will appeal the decision to the Court of Appeal, Third Appellate District, in Sacramento.

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