

Plaintiff Lacked Standing to Sue Coastal Commissioners for Failing to Disclose Ex Parte Communications



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public interest standing to sue Coastal Commissioners for ex parte communications because the lawsuit was not brought as a matter of public right. *Spotlight v. Kinsey*, No. D074673 (4th Dist., Nov. 24, 2020).

The California Coastal Act allows members of the Coastal

Commission to have ex parte communications with persons interested in Commission matters but requires Commissioners to publicly disclose such communications prior to or at the next Commission meeting. Violation of the disclosure requirement is punishable by a civil fine of up to \$7,500, and a court may award attorneys' fees to a plaintiff who successfully prosecutes a violation proceeding. Plaintiff, a lawyer-created entity whose stated mission was to require Commissioners to "follow the Coastal Act with regard to ex parte communications" filed suit against five Commissioners alleging hundreds of violations of the disclosure requirements and seeking over \$20 million in fines. Following a trial, the court found that approximately 10% of the alleged violations had occurred and imposed fines totaling \$56,800. The trial court also found that Spotlight was the prevailing party in the litigation and awarded a base attorneys' fee of \$529,046 plus a multiplier, for a total attorneys' fee award of \$929,046. The principal issue on appeal concerned plaintiff's standing to assert its claims. Plaintiff contended that it had "public interest" standing, which allows a party lacking conventional standing to pursue a claim where the question is one of public right and the object of the mandamus action is to procure the enforcement of a public duty. The court rejected this argument on the ground that public interest standing is allowed only in the context of mandamus proceedings and plaintiff's complaint did not contain a mandamus claim. Although plaintiff's complaint purported to seek a writ of mandate, the only places the word "mandate" or "mandamus" appeared were in the caption (or title) and the prayer for relief. The court pointed out that neither the caption nor the prayer determined the nature or legal effect of the claims. The body of plaintiff's complaint lacked essential allegations for a writ of mandate, including factual allegations showing that plaintiff lacked any plain, speedy, and adequate remedy at law. "This case" the court said, "has always been all about money—civil fines and attorneys' fees" and plaintiff lacked standing to seek those penalties and fees. The court of appeal ordered the

trial court to enter judgment in favor of the defendants and "to conduct further proceedings consistent with this opinion, including but not necessarily limited to a motion by Defendants for prevailing party attorneys' fees and costs."

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