

October 19, 2011 1:53PM

Court deals setback to Christie administration's COAH plan

By [Melinda Caliendo](#)

The back-and-forth between affordable-housing advocates and the **Chris Christie** administration continued in the courts Tuesday, when the Appellate Division of Superior Court blocked the "interim procedures" set forth by the Department of Community Affairs.

The ruling stops the "streamlined" procedures for municipalities listed on the DCA's website under Transitional Information. DCA Commissioner **Lori Grifa** instituted the new procedures after Gov. **Chris Christie** reorganized the Council on Affordable Housing under the DCA's umbrella.

Fair Share Housing Center filed the case to stop the interim procedures from being enforced, because they were not created through the formal rule-making procedure. This is the second time in 2011 that a COAH-related directive was denied because of rule making.

"Fair Share Housing said, 'Wait a second, stop — you're affecting the rights of a lot of people ... you can't change the rules of a game that affect the stakeholders without rule making,'" said **Jeffrey Kantowitz**, attorney with **Day Pitney LLP**. "You have to tell the people, 'These are the rules.'"

Grifa's office issued a response to the ruling, "The court determined a procedural issue on the proposed regulations. The more critical and positive ruling from our perspective is that the court refused to block the governor's COAH reorganization plan."

In addition to striking down the interim rules, the court also put into motion an accelerated hearing on whether Christie's reorganization plan in itself is valid.

"If the reorganization plan is determined to not be a valid exercise of the law, then the activities and regulations that follow from it are obviously not valid, so you never have to reach that question," Kantowitz said.

Kantowitz said what puts the reorganization plan into question is the language of the legislation creating COAH, which established the agency as "in, but not of" the DCA, and more independent than other agencies.

"They also cite the fact that the composition of the council itself ... is drawn from different and diverse constituencies, such that to then change it and put it all under a cabinet-level office — and essentially make the cabinet-level officer the decision maker in place of this diversely constituted COAH body — is invalid," Kantowitz said of the Fair Share appeal.

The court ordered all briefings and arguments about the reorganization to be completed within the next four months. Kantowitz said for now, developers and municipalities will continue to apply the existing affordable-housing rules.