STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 29, 2014)

WILLIAM ANDRADE,	:	
MEGHAN SULLIVAN,	:	
Medical Marijuana Patients	:	
	:	
v.	:	**C.A. No. PC-2012-4724**
	:	
DR. MICHAEL FINE, in his capacity	:	
as Director of the Rhode Island Department	:	
of Health, RHODE ISLAND DEPARTMENT	:	
OF HEALTH, STATE OF RHODE ISLAND	:	

DECISION

CARNES, J., Before the Court on this declaratory judgment matter is Defendants'—Rhode Island Department of Health and its director Dr. Michael Fine (collectively Defendants or DOH)—Motion for Summary Judgment in regard to Plaintiffs'—William Andrade and Meghan Sullivan (Mr. Andrade and Ms. Sullivan or, collectively, Plaintiffs)—Fifth Amended Complaint seeking a declaration that DOH amended its regulations in regard to the Medical Marijuana Program (MMP) without following the procedures required under Rhode Island law. Defendants seek summary judgment on the grounds that Plaintiffs' Fifth Amended Complaint is moot because both Plaintiffs have received their medical marijuana registry identification cards (MM cards) since the filing of the Fifth Amended Complaint and, therefore, no longer have an outstanding injury. Jurisdiction is pursuant to Super. R. Civ. P. 56(b) and G.L. 1956 §§ 9-30-1, et seq., the Uniform Declaratory Judgments Act (UDJA). For the reasons set forth below, this Court grants Defendants' Motion.

I

Facts and Travel

On or about June 26, 2012, Mr. Andrade and Ms. Sullivan each applied for a MM card under The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, chapter 28.6 of title 21 of the Rhode Island General Laws (MMA). Both applications contained the required written certification and were signed by nurse practitioners (NPs).

Under the MMA, any "qualifying patient"[1] seeking to obtain a MM card—which allows the bearer to possess up to two and one-half ounces of usable marijuana—must submit a written certification[2] to the DOH. Secs. 21-28.6-4(a), 21-28.6-6(a)(1). By its definition, the written certification must be signed by a "practitioner," which the MMA defines as "a person who is licensed with authority to prescribe drugs pursuant to chapter 37 of title 5 or a physician licensed with authority to prescribe drugs in Massachusetts or Connecticut." Sec. 21-28.6-3(8). DOH regulations provide the same definition for "practitioner" as defined in the statute. 14 000 CRIR 035-1.11. When the MMP first began, DOH required the signature of a physician on the written certifications. (Defs.' Ex. 10.) Around 2008, DOH began accepting signatures by licensed NPs or physician assistants; however, no change was made to either the MMA or the relevant DOH regulations. (Defs.' Ex. 10.) The DOH issued a public notice[3] in July 2012 stating that as of

[1] A "qualifying patient" is defined under the MMA as "a person who has been diagnosed by a practitioner as having a debilitating medical condition and is a resident of Rhode Island." Sec. 21-28.6-3(10).

[2] A "written certification" includes "the qualifying patient's medical records, and a statement signed by a practitioner, stating that in the practitioner's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient." Sec. 21-28.6-3(15).

[3] The notice indicated that the change would take place, not that it was proposed. (Defs.' Ex. 10.) No public comment was sought.

August 7, 2012 written certifications must be signed by physicians in order to be valid. (Defs.' Ex. 10.) Again, no change was made to the wording of DOH regulations or the MMA.

The DOH is required to respond to a MM card application within fifteen days of receipt, and an application is to be deemed granted if DOH fails to respond within thirty-five days. Secs. 21-28.6-6(c), 21-28.6-9(b). In this matter, it is undisputed that DOH did not act upon either of Plaintiffs' applications for over thirty-five days.

On August 13, 2012, Ms. Sullivan was arrested and charged with possession of marijuana in violation of §§ 21-28-2.08 and 21-28-4.01(a)(4)(i). On or about August 17, 2012, Mr. Andrade was arrested and charged with possession of marijuana in violation of §§ 21-28-2.08 and 21-28-4.01(a)(4)(i). Mr. Andrade was allegedly[4] in possession of 33.16 ounces of usable marijuana. (Defs.' Exs. 3, 4.) Under the MMA, a holder of a MM card may legally possess only up to 2.5 ounces of usable marijuana. Sec. 21-28.6-4(a).

On August 30, 2012, Mr. Andrade received a letter from DOH stating that his application was denied because signatures from NPs were no longer sufficient for the written certification. (Fifth Am. Compl. ¶ 13.) After September 5, 2012, Ms. Sullivan also received a letter from DOH indicating that her application was denied for the same reason. (Fifth Am. Compl. ¶ 32.)

In response to DOH's denial and Ms. Sullivan's arrest, she filed a Complaint with this Court on September 11, 2012. Mr. Andrade was added as a co-Plaintiff in the Fourth Amended Complaint, filed with this Court on February 21, 2013, a date subsequent to his arrest. Ms. Sullivan's criminal charges have since been dismissed, and her record has been sealed. Mr. Andrade's criminal charges remain pending. Meanwhile, both Plaintiffs reapplied for MM cards

[4] The presumption of innocence contained in article 1, section 10 of the Rhode Island Constitution prevents this Court from finding this to be undisputed prior to Mr. Andrade's criminal trial.

with written certifications signed by physicians, and both received MM cards in October or November of 2012. (Defs.' Ex. 8.)

On October 4, 2013, DOH issued a public notice indicating that its decision to require physician signatures was made to correct a prior error in allowing signatures by NPs or physician assistants. (Defs.' Ex. 10.) The notice indicated that DOH did not believe that the change in procedure constituted a rule change requiring notice and comment under the Administrative Procedures Act, G.L. 1956 § 42-35-3 (APA). (Defs.' Ex. 10.) However, for the purposes of "maximum transparency and the opportunity for public comment," DOH invited the opportunity for public comment for the following thirty days on both the initial change and its "ongoing effect." (Defs.' Ex. 10.)

The instant Fifth Amended Complaint alleges that DOH's August 7, 2012 change to no longer accepting an NP signature deprived Plaintiffs of a liberty interest in their health care and denied them due process. They assert that the rule change was a violation of the APA, specifically because DOH did not provide notice prior to the change or allow a period for public comments. In their Fifth Amended Complaint, Plaintiffs seek eleven enumerated declarations by this Court, including that DOH violated the APA when it stopped accepting NP signatures under the MMA and that Plaintiffs were entitled to MM cards based on their initial applications. Defendants have moved for summary judgment on the grounds that the Fifth Amended Complaint has become moot since (1) DOH subsequently provided a notice and comment period and (2) both Plaintiffs now hold valid MM cards under the MMP.

II

Standard of Review

Summary judgment[5] is appropriate when—viewing the pleadings and supplemental admissible evidence in a light most favorable to the nonmoving party—there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Super. R. Civ. P. 56(c); Santana v. Rainbow Cleaners, 969 A.2d 653, 657 (R.I. 2009) (citing Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006)). The purpose of summary judgment is issue finding, not a determination of factual issues. Estate of Giuliano v. Giuliano, 949 A.2d 386, 391 (R.I. 2008) (citing Indus. Nat'l Bank v. Peloso, 121 R.I. 305, 307, 397 A.2d 1312, 1313 (1979)). The moving party must "establish that there exists no genuine dispute with respect to the material facts," and the nonmoving party then has the burden to prove by competent evidence that a factual dispute does exist. Id. (citations omitted).

III

Analysis

Plaintiffs seek relief solely in the form of declaratory judgment. Under the UDJA, the decision to grant declaratory relief is purely discretionary. See Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (citing Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997)). Although the availability of alternative methods of relief does not necessarily preclude declaratory relief, "a necessary predicate to a court's exercise of its jurisdiction under the Uniform Declaratory Judgments Act is an actual justiciable

[5] Although Plaintiffs' objection is titled "Objection to Defendants Motion for Summary Judgment," Plaintiffs cite Super. R. Civ. P. 12(b)(6) (Rule 12(b)(6)) in espousing the standard of review. Rule 12(b)(6) relates to a motion to dismiss. The standard for a motion for summary judgment is found in Super. R. Civ. P. 56. Since this Court has considered materials beyond the pleadings, this is the standard that this Court will apply.

controversy." Sullivan, 703 A.2d at 751; Berberian v. Travisono, 114 R.I. 269, 272, 332 A.2d 121, 123 (1975). Declaratory judgment is not appropriate to determine abstract questions or to issue advisory opinions. Sullivan, 703 A.2d at 751 (citing Lamb v. Perry, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967)). To be entitled to declaratory relief, a plaintiff must have both "a personal stake in the outcome of the controversy and . . . an entitlement to actual and articulable relief." McKenna v. Williams, 874 A.2d 217, 227 (R.I. 2005).

A

Mootness

The Defendants argue that they are entitled to summary judgment because Plaintiffs' Fifth Amended Complaint is moot. Specifically, they contend that the relief sought—declarations that Plaintiffs suffered harm from an allegedly illegal rule change—is moot because both Plaintiffs now possess valid MM cards under the MMP. They additionally note that Ms. Sullivan's criminal charges have been dismissed and her record sealed. Therefore, they argue, Ms. Sullivan has no outstanding harm that can be addressed through declaratory judgment. The issue of the alleged continuing harm to Mr. Andrade from his pending criminal prosecution is addressed in Section III B below.

The Plaintiffs counter that, although they both now hold MM cards and Ms. Sullivan's criminal charge is dismissed, they are still subject to harm and, therefore, are entitled to a resolution of the underlying issues of this case. The Plaintiffs further assert that they "have a right to know" whether DOH's actions were permissible or that their rights were infringed when they were denied MM cards and subsequently prosecuted for possession of marijuana. In the alternative, Plaintiffs argue that, even if the matter has become moot, they are still entitled to a

decision in this case because the harm suffered is of extreme public importance and is capable of repetition, yet evading review.

If a court's decision in a proceeding "would fail to have a practical effect on the existing controversy, the question is moot," and the court should not entertain the matter further. State v. Gaylor, 971 A.2d 611, 614 (R.I. 2009) (citing City of Cranston v. R.I. Laborers' Dist. Council, Local 1033, 960 A.2d 529, 533 (R.I. 2008)). It is well established that a "necessary predicate" of a court's rendering of a declaratory judgment is "an actual justiciable controversy." Sullivan, 703 A.2d at 751. Even assuming that a complaint raised an actual controversy at the time of its filing, if events occurring since that time have "deprived the litigant of an ongoing stake" or otherwise nullified the potential impact of the relief sought—especially if the relief sought has already been obtained through other means—the court should dismiss the matter as moot. Gaylor, 971 A.2d at 614 (citing Seibert v. Clark, 619 A.2d 1108, 1110 (R.I. 1993)); see also Boyer v. Bedrosian, 57 A.3d 259, 272 (R.I. 2012); Sullivan, 703 A.2d at 753.

The proceedings in this matter closely mirror those in Boyer, where the Rhode Island Supreme Court ultimately held that a case had become moot when subsequent changes corrected any potential problems. 57 A.3d at 283. In Boyer, the Family Court had previously created a Diversion Program that allowed magistrates to hold court sessions for truancy issues at the applicable public schools. Id. at 263. A group of affected children and their parents filed an action in this Court alleging that the procedures for the Diversion Program violated several constitutional protections. Id. at 264. However, between the time of the filing of the plaintiffs' complaint and the Supreme Court's decision, the Family Court Chief Judge issued an administrative order that laid down certain procedural rules that cured the errors claimed in plaintiffs' action. Id. at 269. Additionally, all of the plaintiffs' underlying truancy matters either

had been resolved or were transferred to the regular Family Court calendar. Id. The Supreme Court held that the plaintiffs' claims were moot because the claims had been resolved by a subsequent administrative order and all of the plaintiffs' truancy matters were no longer pending before the Diversion Program. Id. at 282, 283.

Similarly, the relief sought by Plaintiffs in this case is no longer applicable, and the matter has become moot. The Plaintiffs primarily seek declarations that they were denied MM cards in error and they were subsequently harmed by the resultant institution of criminal prosecutions. However, since the start of this case, Plaintiffs have both received their MM cards and no longer suffer harm from the initial denials. Additionally, the criminal charges against Ms. Sullivan have been dismissed, and the charges against Mr. Andrade—which will be addressed below—would not be resolved through the requested declaratory relief. Finally, just as the alleged errors in procedure in Boyer had been rectified by the subsequent administrative order, the alleged procedural errors in DOH's actions have been cured by the subsequent notice and comment period. See id. at 281. Therefore, even viewing the facts in a light most favorable to Plaintiffs, there are no disputed facts that would indicate a continuing harm. With no continuing harm that can be resolved through the requested relief, this Court concludes that the Fifth Amended Complaint is moot. See id. at 283; Gaylor, 971 A.2d at 614.

Finally, on the issue of mootness, Plaintiffs contend that a recognized exception to the mootness doctrine applies: that the issues raised are capable of repetition, yet evading review. Our Supreme Court has recognized this exception to the mootness doctrine when the issue presents "'questions of extreme public importance, which are capable of repetition but which evade review.'" Arnold v. Lebel, 941 A.2d 813, 819 (R.I. 2007) (quoting Morris v. D'Amario, 416 A.2d 137, 139 (R.I. 1980)).

The issues raised in Plaintiffs' Fifth Amended Complaint do not rise to the level of sufficient public importance to justify application of this exception. The issues relate to agency procedure and access to medical marijuana. Generally, issues of sufficient public importance include "matters that relate to important constitutional rights, matters concerning a person's livelihood, or matters concerning citizen voting rights." Cicilline v. Almond, 809 A.2d 1101, 1106 (R.I. 2002). Such issues have included whether a juvenile held pending a Family Court adjudication of a delinquency petition is entitled to prehearing bail, Morris, 416 A.2d at 139, and a dispute over funding for an affordable housing program, Cicilline, 809 A.2d at 1106. By contrast, cases raising issues of alleged procedural violations that did not implicate basic constitutional or other important freedoms have been rejected under this mootness exception. H.V. Collins v. Williams, 990 A.2d 845, 848 (R.I. 2010) (refusing to consider the state's rejection of a low bid for a development project as untimely even though the state had extended the deadline); Hallsmith-Sysco Food Servs., LLC v. Marques, 970 A.2d 1211, 1214 (R.I. 2009) (refusing to consider a creditor's attempt to place an objection to the transfer of a debtor's liquor license).

Here, Plaintiffs' alleged harm came in the form of a delay in their MM cards because of alleged procedural violations of a state agency. This harm is more closely analogous to loss of a bid based on a city's procedural error than to a juvenile's loss of prehearing bail. See H.V. Collins, 990 A.2d at 848; Morris, 416 A.2d at 139. Plaintiffs are not entitled to invoke the exception to the mootness doctrine because the issues raised in their Fifth Amended Complaint do not rise to a sufficient level of public importance.[6]

[6] Whether the issues raised are capable of repetition also may be called into question. Although Defendants maintain that they were not required to undergo notice and comment for this change because it was not a regulation change, they chose to do so in the interests of transparency. The

Although the harms to Plaintiffs—the initial denial of the MM cards and the criminal prosecutions—are moot, Plaintiffs claim that they are still entitled to declaratory relief because they "have a right to know" whether their rights were violated by the initial DOH action. However, because there is no live controversy, Plaintiffs are in essence requesting an advisory opinion. See Sullivan, 703 A.2d at 751. Although the Rhode Island Constitution does not restrict the court's judicial power to actual cases and controversies, the Supreme Court has recognized such a "functional limitation to judicial review as a logical underpinning of judicial power." State v. Lead Indus. Ass'n, 898 A.2d 1234, 1238 (R.I. 2006) (citations omitted).

In Sullivan, the Supreme Court held that the plaintiffs were seeking an advisory opinion, an improper request. 703 A.2d at 753. In that case, a dispute had arisen between the mayor and city council for the City of Warwick regarding the budget for fiscal year 1997. Id. at 750. The city council brought suit against the mayor seeking a declaration that the mayor had improperly implemented his own budget in contravention to the budget the council had devised. Id. However, by the time the matter came for review, fiscal year 1997 had ended. Id. As the year was over and the plaintiffs were seeking only a declaratory judgment on proper budgetary process rather than a direct review of a specific budget, the Court refused to rule on the matter as an impermissible request for an advisory opinion of an issue that was moot. Id. at 753.

Here, Plaintiffs are seeking a review of an agency change in process that may have caused them harm in the past but no longer is causing them harm. Thus, just as the plaintiffs in

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Supreme Court previously found that an issue was capable of repetition when an agency "continually maintained" that its hearing officers had a right to engage in ex parte communications prior to hearings. Arnold, 941 A.2d at 819. By contrast, the Court would not invoke the exception when the defendants had "not signaled any intention to, or made any threat to, reenact a suspect administrative order." Boyer, 57 A.3d at 281. Here, there is no evidence that DOH will implement rule changes in the future without the required notice and comment, so it is questionable whether the issues raised by Plaintiffs will repeat in the future and continue to evade review.

Sullivan sought declaratory relief on budgetary procedures after the applicable fiscal year had ended, the Plaintiffs here seek a declaration that the denial of their applications was improper even though those applications subsequently have been granted. See id. at 750. Consequently, like the improper request for an advisory opinion in Sullivan, Plaintiffs' insistence that they "have a right to know" whether the original denial was illegal is merely a request for an advisory opinion, which this Court will not entertain. See id. at 751.

Therefore, Defendants are entitled to summary judgment given that Plaintiffs' Fifth Amended Complaint is moot and any relief granted would be an improper advisory opinion.

B

Mr. Andrade's Criminal Defense

The Defendants contend that the only benefit Mr. Andrade might gain from declaratory relief would be the ability to present his entitlement to a MM card as evidence in his criminal proceeding. However, Defendants contend that declaratory relief is not proper when the issue can and should be raised in an existing judicial proceeding—here, Mr. Andrade's already pending criminal case. Plaintiffs counter that the facts in the criminal case are sufficiently different—namely, that Mr. Andrade is charged with an amount in excess of the statutorily allowed amount of medical marijuana—and, as a result, Mr. Andrade cannot obtain the relief sought here as part of his criminal prosecution.

At the outset, it is worth noting that even if this Court were to grant Mr. Andrade the declaratory relief he seeks, the declarations would not terminate his criminal prosecution. Mr. Andrade has been charged with possession of an amount of marijuana in excess of the statutorily allowed amount. Therefore, entry of declaratory judgment in this case would not end Mr. Andrade's criminal prosecution. However, this Court additionally will not grant Mr. Andrade

declaratory relief because the issue of his entitlement to a MM card can be raised in his criminal defense.

In determining whether to grant declaratory relief, this Court must consider several factors, including:

> "the existence of another remedy, the availability of other relief, the fact that a question may readily be presented in an actual trial, and the fact that there is pending, at the time of the commencement of the declaratory action, another action or proceeding which involves the same parties and in which may be adjudicated the same identical issues that are involved in the declaratory action." Berberian, 114 R.I. at 273, 332 A.2d at 123-24.

The Rhode Island Supreme Court has indicated—although not expressly held—that it is "difficult to conceive of a situation in which a declaratory judgment should be issued while another proceeding (whether an arbitration or traditional litigation) is in its advanced stages." Cruz v. Wausau Ins., 866 A.2d 1237, 1240 (R.I. 2005).

In Cruz, the Rhode Island Supreme Court upheld this Court's denial of declaratory relief when the plaintiff, injured while driving an employer's vehicle, sought a declaration that the decision of the Workers' Compensation Court should be applied to an arbitration proceeding relating to uninsured motorist coverage. 866 A.2d at 1238-39, 1240. However, this Court reached its holding based partially on the difference in the standards applicable to a worker's compensation case and a traditional liability action. Id. at 1240.

Other jurisdictions similarly require that a party maintain the dispute resolution path that it began on rather than seeking declaratory relief in a separate judicial proceeding. See Schaefer v. Koster, 342 S.W.3d 299, 300 (Mo. 2011) (refusing to grant declaratory relief regarding the legality of legislation imposing heightened penalties for repeat intoxication-related driving offenses because the issue could be raised in the criminal actions); Buchman v. Taylor, 196 A.2d

111, 112 (Conn. 1963) (refusing to grant declaratory relief regarding the rules relating to depositions when the issue could be raised in the underlying negligence action); Vargas-Aguila v. State, 32 A.3d 496, 502 (Md. App. 2011) (reversing a trial court grant of declaratory judgment regarding allegedly improper promulgation of toxicology standards because plaintiff could raise the issue in his pending prosecution for driving under the influence). Following with these jurisdictions and the dicta presented by the Rhode Island Supreme Court in Cruz, 866 A.2d 1237, this Court will refrain from addressing Mr. Andrade's claims since Mr. Andrade could raise the issue in his criminal proceeding.

C

Notice and Comment

In addition to claiming harm as a result of their arrests for possession of a controlled substance, Plaintiffs additionally seek a declaration that the DOH procedure change was illegal and must be vacated. Specifically, Plaintiffs allege that they continue to be harmed as a result of having to seek certification from a physician rather than a NP when their MM cards require renewal. However, Defendants argue that—even if the original decision to change signature requirements was improper—that impropriety has been cured by the subsequent notice and comment period.

The APA sets forth procedural requirements for agency promulgation of new rules, including requiring public notice of the intended rule change and an opportunity for public comment. Sec. 42-35-3. When a rule is promulgated without the required notice and comment, a court may enjoin enforcement of the rule. See Roy v. R.I. Dep't of Human Servs., 624 A.2d 1092, 1093 (R.I. 1993) (enjoining enforcement of an "emergency rule" that was promulgated without notice and comment because the court held that the rule did not qualify as an emergency

rule). However, if the rule is repromulgated after proper notice and a period for comment, the defect in the rule is cured. Id. (enjoining enforcement of a rule "unless and until [the agency] promulgated a rule in accordance with" the APA requirements); see also Gulf of Maine Fishermen's Alliance v. Daley, 292 F.3d 84, 88 (1st Cir. 2002) (holding that plaintiffs' complaint regarding a fisheries rule amendment was "defunct" because a subsequent rule had been enacted following proper procedure); Natural Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n, 680 F.2d 810, 813 (1st Cir. 1982) (holding that repromulgation of a rule with proper notice and comment rendered the complaint of the initial defect moot).

Assuming without deciding that the initial decision by DOH to accept only physician signatures on written certifications was a violation of the APA, the subsequent notice and comment period has cured the defect. Just as the Nuclear Regulatory Commission in Natural Resources Defense Council cured its defective rule promulgation by repromulgating after notice and time for comment, here, Defendants cured the defect, if any, by providing public notice regarding the change to requiring physician signatures and allowing thirty days for public comment. (Defs.' Ex. 10.) "The role of the judicial branch is not to make policy . . . ." Chambers v. Ormiston, 935 A.2d 956, 965 (R.I. 2007). Instead, this Court need only ensure that an agency has followed the proper procedures and—giving deference to the agency—that the regulation fits within a reasonable interpretation of the applicable statute. See Labor Ready Ne., Inc. v. McConaghy, 849 A.2d 340, 345-46 (R.I. 2004) (citing Barnhart v. Thomas, 540 U.S. 20, 26 (2003)) (reversing a Superior Court decision because the Superior Court did not provide proper deference to the agency in the agency's interpretation of its operating statute).

Any potential defect that possibly may have existed with the initial change has since been cured and no harm to Plaintiffs remains. Therefore, given that there are no disputed facts

regarding the subsequent notice and comment period, such potential defect has been cured and Defendants are entitled to summary judgment on the matter.

IV

Conclusion

For the reasons set forth above, Defendants' Motion for Summary Judgment is granted on all counts. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**William Andrade and Meghan Sullivan v. Dr. Michael Fine, et al.**
CASE NO:	**PC-2012-4724**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**September 29, 2014**
JUSTICE/MAGISTRATE:	**Carnes, J.**
ATTORNEYS:	
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For Defendant:	**Michael W. Field, Esq.** **Susan E. Urso, Esq.**