**STATE OF RHODE ISLAND**
**DEPARTMENT OF CORRECTIONS**
**40 HOWARD AVENUE**
**CRANSTON, RHODE ISLAND**

In the Matter if the Petition of
Richard Paiva for a Declaratory
Ruling

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**RIDOC2024PDR005**

## DECISION

## Introduction

On March 22, 2024, the Department of Corrections ("Department") received Petitioner's *Petition for Declaratory Ruling* ("Petition," attached hereto as Exhibit A.) In the Petition, the Petitioner requests that the Department issue a "declaratory order which states whether the 129 policies currently in effect at the RIDOC are legislative rules or interpretive rules." The Petition does not identify the policies and is devoid of any factual allegations.

## Issue

Whether the Department shall issue a declaratory order, decline to issue an order, or schedule the matter for further consideration.

## Discussion

The applicable law regarding petitions for declaratory orders in the administrative law context begins with R.I. Gen. Laws § 42-35-8(a), which states: "[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner." Additionally, R.I. Gen. Laws § 42-35-8(c) provides: "[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration." If an agency declines to issue a declaratory order, the decision must be in a record and must include a brief statement of the reasons for declining. An agency decision to decline to issue a declaratory order is subject to judicial review for abuse of discretion.

Petitioner seeks the Department to engage in an extensive and laborious legal analysis of 129 unnamed policies to identify whether each individual policy is a legislative or interpretive rule. The Rhode Island Supreme Court has explained that:

> "[a]dministrative rules are divided into two classifications: legislative rules and interpretive rules." *Great American Nursing Centers, Inc. v. Norberg*, 567 A.2d 354, 356 (R.I. 1989) (citing *Lerner v. Gill*, 463 A.2d 1352, 1358 (R.I. 1983)). "Legislative rules are promulgated pursuant to the specific statutory authority provided by the Legislature." *Id.* (citing *Lerner*, 463 A.2d at 1358). Interpretive rules, on the other hand, are "not specifically authorized by a legislative enactment; rather, [they are] promulgated by an administrative agency for the purposes of guidance and definition." Id. (citing *General Electric Co. v. Gilbert*, 429 U.S. 125, 141-42, 97 S. Ct. 401, 50 L. Ed. 2d 343 (1976)). "The distinction is

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important because an administrative regulation that is characterized as a legislative rule has the force and effect of law." *Id.* at 357 (citing *Batterton v. Francis*, 432 U.S. 416, 425, 97 S. Ct. 2399, 53 L. Ed. 2d 448 (1977)). On the other hand, "a court considering enforcement of * * * a[n interpretive] rule may substitute its own judgment for that of the administrative agency's judgment." *Id.* (citing *Lerner*, 463 A.2d at 1358).

*Town of Warren v. Bristol Warren Regional School District*, 159 A.3d 1029, 1039 (R.I. 2017). The Department has more than one hundred twenty-nine (129) policies currently in effect; however, not all Department policies are public as many pertain to internal employment topics, safety and security procedures, etc. The public policies are far ranging in topic from Inmate Education Services (22.01-5 DOC) to Work Release Eligibility (5.07 DOC) to Medical Co-Pay (2.28-3 DOC) to Smoking and Tobacco Regulation (8.08-3 DOC) to Customer Complaints (21.17-4) and so on. The Petitioner has not established that the Petition requests the interpretation of a statute or rule as it applies to him consistent with the letter and spirit of R.I. Gen. Laws § 42-35-8(a). Rather, he asks the Department to shoulder a significant burden and render a legal advisory opinion. Neither R.I. Gen. Laws § 42-35-8 nor controlling case law requires this herculean exercise.

The Petitioner's request for a declaratory ruling is not justiciable. The Rhode Island Supreme Court has stated that R.I. Gen. Laws § 42-35-8 is "an administrative counterpart of the Declaratory Judgments Act." *Liguori v. Aetna Casualty & Surety Company*, 384 A.2d 308, 312 (R.I. 1978). It is well-settled rule that "the Superior Court is without jurisdiction under the Uniform Declaratory Judgments Act unless it is confronted with an actual justiciable controversy." *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005). This principal applies equally
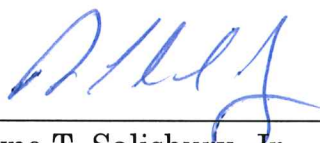
to declaratory rulings under § 42-35-8. *See City of Providence Board of Licenses v. Department of Business Regulation of R.I.*, 2013 R.I. Super. LEXIS 195, *9 (November 18, 2013).

"It is fundamental that, to be entitled to a declaratory judgment, a plaintiff must both demonstrate a personal stake in the outcome of the controversy and advance allegations claiming an entitlement to actual and articulable relief." *McKenna*, 874 A.2d at 227. The Declaratory Judgments Act was "not intended to serve as a forum for the determination of abstract questions or the rendering of advisory opinions." *Lamb v. Perry*, 225 A.2d 521, 523 (1967). The Petitioner's request for a declaratory ruling would require the Department to issue an advisory opinion as there is no present case or controversy. The Petitioner has not set forth any factual allegations to demonstrate that he is requesting a declaratory order on actual case or controversy on even one policy, let alone the 129 policies upon which he seeks a declaratory order.

Not only is the issue not justiciable, but also Petitioner lacks standing. The Rhode Island Supreme Court has had the opportunity to consider the initial inquiry when dealing with a request for declaratory relief. In *Bowen v Mallis*, 945 A.2d 314, 317 (R.I. 2008), the Court stated that "[w]hen confronted with a request for declaratory relief the first order of business for the trial justice is to determine whether a party has standing to sue. A standing inquiry focuses on the party who is advancing the claim rather than on the issue the party seeks to have adjudicated." The Rhode Island Supreme Court has also held that the test to

determine whether a party has the requisite standing, he/she must allege to the court's satisfaction that the challenged action has caused him injury in fact, economic or otherwise. *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 22, 317 A.2d 124, 128-129 (1974). This has been characterized as a legally cognizable and protected interest that is "concrete and particularized *** and *** actual or imminent, not 'conjectural' or 'hypothetical.'" *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997)(quoting *Luian v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). These principles apply to actions in law, equity or claims seeking declaratory relief. *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005).

Accordingly, the Petitioner does not have standing and has failed to articulate a justiciable basis for a declaratory ruling. Given the foregoing, the Department declines to issue a declaratory order.

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Wayne T. Salisbury, Jr.
Acting Director
Department of Corrections

May 17, 2024

## NOTICE OF APPELLATE RIGHTS

This decision constitutes a denial to issue a declaratory order requested under R.I. Gen. Laws § 42-35-8(a).  Pursuant to R.I. Gen. Laws § 42-35-8(d), this order may be subject to judicial review.

## Certification

I hereby certify that on this 17th day of May 2024, that a copy of the within Decision was sent by inter-department mail to:

Richard Paiva (#86429)
Maximum Security
P.O. Box 8273
Cranston RI 02929

# Exhibit A

Richard Paiva
ID# 86429
MAX H1-41

March 19, 2024

RE: Petition For Declaratory Order

TO: RIDOC

Pursuant to R.I.G.L-42-35-8 (a),
I request a declaratory order
which states whether the 129
policies currently in effect at
the RIDOC are legislative
rules or interpretive rules.

Sincerely,

Richard Paiva