

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
D. YELLOTT
IN AND FOR THE COUNTY OF MOHAVE

2003 JAN 28 PM 4:19

IN THE MATTER OF:

WILLIAM D. GIBBELL
SUPERIOR COURT CLERK

REVISIONS TO JUDICIAL)
MERIT SYSTEM RULES)
506 AND 507)
_____)

ADMINISTRATIVE ORDER
2003-10

WHEREAS, the Mohave County Superior Court conducts pre-employment medical evaluations and drug screens for successful applicants selected for judicial positions in accordance with the Judicial Merit System Rules;

WHEREAS, as a result of funding limitations experienced by the Mohave County Superior Court System in the current Fiscal Year 2002 - 2003, it is necessary for the court to discontinue conducting pre-employment medical evaluations at this time.

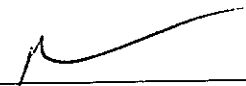
WHEREAS, so as to continue to maintain a safe, healthy, productive and drug-free work environment, the Mohave County Superior Court System will continue to require selected applicants to successfully pass a drug screen prior to appointment.

WHEREAS, it is the desire of the Mohave County Superior Court System to revise the Judicial Merit System Rules to remove the mandatory requirement for pre-placement medical evaluations, and pursuant to Judicial Merit System Rule 102(P), such rules may only be revised upon written order of the Presiding Judge.

IT IS ORDERED that the revisions to subsection C of Judicial Merit System Rule 506 'Medical Evaluation Program' and subsection D of Judicial Merit System Rule 507 'Substance Abuse Program' as specified in Attachment #1 be adopted this date.

IT IS FURTHER ORDERED that Superior Court staff take whatever action necessary to inform judicial employees of the above revisions to the Judicial Employee Merit System Rules of the Superior Court of Mohave County and to make the revised Judicial Merit System Rules accessible and available to judicial employees electronically via computer networks in each of the Court divisions.

DATED this 28th day of January, 2003.



Honorable Robert R. Moon, Presiding Judge
Mohave County Superior Court

ARTICLE 5. CONDITIONS OF EMPLOYMENT
RULE 506. MEDICAL EVALUATION
PROGRAM

EFFECTIVE DATE: 05/04/98
REVISED DATE:

- A. **PURPOSE:** The medical evaluation program is established to reasonably ensure that a compatibility exists between the physical/mental capability of the individual and the demands of the position being offered or held.
- B. **OBJECTIVES:** The objectives of the medical evaluation program are:
1. Compliance with all applicable State and Federal laws governing employee selection, promotion and retention;
 2. Employment of candidates who are physically and mentally able to perform safely the duties of the position;
 3. Provision of general guidelines to a designated Physician (the "Physician") to determine the physical/mental ability of a person for Judicial employment.
- C. **PRE-PLACEMENT MEDICAL EVALUATIONS:**
1. **A PRE-EMPLOYMENT MEDICAL EXAMINATION MAY BE REQUIRED BY THE DIVISION HEAD AFTER AN OFFER OF EMPLOYMENT HAS BEEN MADE AS A CONDITION OF EMPLOYMENT ONLY IF IT IS RELEVANT TO THE JOB AND REQUIRED FOR ALL CANDIDATES IN A GIVEN CLASSIFICATION. THE SUPERIOR COURT PERSONNEL OFFICE WILL COORDINATE SUCH MEDICAL EXAMINATIONS WITH THE DIVISION HEAD.**
 2. Each individual selected to be appointed as a probationary employee or promotional employee shall be required to submit to ~~a medical evaluation, that will include drug screening, given or authorized by the Physician. The individual shall not be employed or, in the case of an employee, shall not be assigned to work in the promotional position~~ **APPOINTED** unless the Physician advises the Court that the individual selected ~~possesses satisfactory qualifications.~~ **SUCCESSFULLY COMPLETED THE DRUG SCREEN.**
 - a. ~~If an applicant has a medical condition which can be corrected or accommodated, the applicant will be given a reasonable accommodation and/or a reasonable opportunity to correct the condition and may be appointed depending on medical condition and advice of the Physician. The applicant shall comply with the Physician's recommendations to correct physical conditions considered to limit his/her capabilities or to~~

ARTICLE 5. CONDITIONS OF EMPLOYMENT
RULE 506. MEDICAL EVALUATION
PROGRAM

EFFECTIVE DATE: 05/04/98
REVISED DATE:

~~constitute a safety hazard to him/herself or others. Treatment shall be at no expense to the Court or Mohave County and shall be done as soon as possible. Depending upon the ability to reasonably accommodate the applicant, if the applicant does not correct the medical condition within a reasonable time, the Court may withdraw the offer of appointment or terminate the employee pursuant to Rule 801(F)(1).~~

~~b. If the Physician determines that the applicant is medically disabled, the Division Head, shall analyze the position applied for to determine whether the work environment and/or the essential job duties can be altered, via reasonable accommodation, to accommodate the applicant's condition. If reasonable accommodation (without causing an undue hardship) cannot be attained, the Division Head shall not employ the applicant.~~

32. Individuals selected for other than regular employment may be required to **SUCCESSFULLY** complete a **DRUG SCREENING**. ~~"Medical History Questionnaire" and/or a pre-placement medical evaluation.~~ Referrals to the Physician may be made at the discretion of the Division Head.

D. SPECIAL MEDICAL EVALUATIONS: A special medical evaluation consists of tests essential to determine the employee's physical or mental condition and capability to perform safely the duties of his/her current position.

1. An employee may be required to undergo a special medical evaluation, which may include drug screening, by the Physician if one or more of the reasons listed below exists:
 - a. Demonstrated or apparent inability to do a safe or satisfactory job because a change in the physical or mental condition of the employee;
 - b. Return from an absence because of a serious illness or an off-the-job injury when time lost has exceeded thirty (30) working days or for a medical emergency;
 - c. Return from a leave for any duration when the leave is for medical reasons or health status of the employee is questionable;
 - d. Assignment to a new position that requires greater physical capability;

ARTICLE 5. CONDITIONS OF EMPLOYMENT
RULE 506. MEDICAL EVALUATION
PROGRAM

EFFECTIVE DATE: 05/04/98
REVISED DATE:

- e. Appearance of an employee to be unsteady or working while groggy or incoherent or other unusual or out of the ordinary behavior or performance;
- f. Unusually frequent use of sick related leave as evidenced by failure of an employee to accumulate leave;
- g. Unusual number of industrial injuries or repeated recurrences of disability from previous injuries hindering performance.

It generally is the responsibility of the employee's Division Head to request an appointment for each evaluation through the Physician as soon as a need is determined. Such request shall be in writing and shall be coordinated through the Court Administrator's Office.

- 2. The Division Head may require a Medical Evaluation of an employee suspected of being under the influence of drugs and/or alcohol while on the job. In this case, the employee is immediately transported to the Physician or, in the absence of the Physician, to another medical facility designated by the Court. The Physician shall require the employee to sign a medical evaluation consent form. The employee's written consent to the examination is necessary, and the employee shall be advised of his/her options and the consequences of his/her decision. An employee who refuses to give written consent for the evaluation may be subject to disciplinary action up to and including dismissal.
- 3. For all reasons, except Rule 506(D)(1)(g) above, the employee shall not be returned to work until his/her condition has been determined to be satisfactory by the Physician or alternate. It is the responsibility of the Division Head to ensure that an employee who has been given a Medical Evaluation does not return to work without authorization by the Physician.
- 4. If the employee has a medical condition which can be corrected, the employee shall comply with the Physician's recommendation to correct conditions considered to limit his/her capabilities or to constitute a safety hazard to him/herself or others. Treatment shall be at no expense to the Court or Mohave County except as normally provided through the health benefit plans and shall be done as soon as possible or by the time established by the Physician in conjunction with the Division Head.
- 5. If an employee fails to comply with the Physician's recommendations within a

ARTICLE 5. CONDITIONS OF EMPLOYMENT
RULE 506. MEDICAL EVALUATION
PROGRAM

EFFECTIVE DATE: 05/04/98
REVISED DATE:

reasonable time, the employee may be subject to disciplinary action up to and including dismissal. However, no such employee shall be separated until the Division Head has made an effort to place the employee in an existing vacancy elsewhere in the Judicial service for which the employee is qualified and which is compatible with the capabilities of the employee as defined by the Physician.

6. If the Physician determines that an employee is medically disabled, and therefore no longer able to perform safely the duties of his/her position, the Division Head shall analyze the position to determine whether the work environment and/or the essential job duties can be altered to accommodate the employee's condition. If reasonable accommodation cannot be attained, the Division Head may place the employee in another job of the same range compatible with his/her capabilities if a vacancy exists.
7. If the employee is not placed in a position with the division, the Division Head may lay the employee off pursuant to Merit System Rule 801(E).

A. PURPOSE:

The Substance Abuse Program is established to assist in maintaining a safe, healthy and productive work environment for all employees and further provides guidelines for the detection and deterrence of alcohol and drug abuse. The Superior Court will work to eliminate any substance abuse (alcohol, illegal drugs, misuse and/or abuse of prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular position in which employed) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the administration of justice. All persons covered by this Rule should be aware that violations of this Rule may result in discipline for existing employees, up to and including dismissal, or for applicants, in not being hired.

B. EMPLOYEE RESPONSIBILITIES:

An employee must:

1. Not report to work or be subject to duty while his/her ability to perform job duties is impaired due to alcohol or drug use, on or off duty;
2. Not possess, manufacture or use, or have the odor of alcohol or drugs on his/her breath during working hours, on breaks, during meal periods, while on Court property in an official capacity or while operating any Court vehicle. Exceptions to this Rule may exist in certain public safety assignments;
3. Not directly or through a third party dispense or distribute drugs or alcohol to any person or to any other employee while either employee or both employees are on duty or "on-call";
4. Submit immediately to reasonable requests for alcohol and/or drug analysis when requested by a Division Head or other supervisory personnel;
5. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of assigned equipment;
6. Provide, within twenty-four (24) hours of request, a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name;
7. Notify his/her immediate supervisor in writing of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction.

C. MANAGEMENT RESPONSIBILITIES AND GUIDELINES:

1. Division Heads and supervisors are responsible for consistent enforcement of this Rule. Any supervisor who knowingly permits a violation of this Rule by employees under his/her direct supervision shall be subject to disciplinary action.
2. Division Heads and supervisors may request that an employee submit to a drug and/or alcohol analysis when a Division Head or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulated facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.
3. Any of the following, alone or in combination, may constitute reasonable suspicion:
 - a. Slurred speech, dilated pupils, and/or other physical signs;
 - b. Alcohol on breath;
 - c. Inability to walk a straight line;
 - d. An accident involving Court property;
 - e. Physical altercation;
 - f. Verbal altercation;
 - g. Behavior which is so unusual that it warrants summoning a supervisor or anyone else with authority;
 - h. Possession of alcohol or drugs;
 - i. Information obtained from a reliable person with personal knowledge.
4. Any Division Head or supervisor requesting an employee to submit to a drug and/or alcohol analysis should immediately notify the Court Administrator or his/her designee(s) to meet him/her to observe the employee's behavior. Should the Court Administrator or his/her designee(s) concur that there may be a reasonable suspicion, the following procedure shall immediately be applied:

- a. The Division Head or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
 - b. Any Division Head or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the designated medical services provider where a drug and/ or alcohol test shall be required.
 - c. Any Division Head or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and consequences of this Rule. Any employee refusing to submit to a drug and/or alcohol test shall not be forced to submit to such testing. The Division Head or supervisor should ask the employee to wait a reasonable time until an authorized Court representative can transport the employee home.
 - d. Division Heads and supervisors shall not physically search employees.
 - e. Division Heads and supervisors shall notify the Presiding Judge or if not immediately available, the County Sheriff's Department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the Court.
 - f. Division Heads and supervisors shall not confiscate, without written consent, prescription drugs or medications from an employee who has a prescription.
- 5 Results of Drug and/or Alcohol Analysis for Employees:
- a. Upon a negative result, the employee shall return to work and job performance shall continue to be monitored.
 - b. If the test is positive, the following shall apply:
 - 1) An employee, may, at his/her own expense, obtain another set of test results, using the same sample or a duplicate sample obtained at the same time, from an independent lab, and if these results differ from the ones obtained in the tests conducted at the Court's request, the Court may require further testing.
 - 2) If, from test results, an employee in a public safety position is determined to be abusing drugs or alcohol, such employee may be immediately dismissed.
 - 3) If, from test results or other information, an employee is determined

to be abusing drugs or alcohol and job performance is affected, the Court shall require that the employee undergo an evaluation and join a recognized treatment program (if deemed appropriate by the evaluation). The Court and the employee may enter into an Agreement detailing the conditions of the employee's return to work. Said Agreements shall include additional testing for up to two years. During treatment, periodic reports shall be submitted to the Court on the employee's progress. Such employee will be granted PTO leave or allowable EIB credits to attend any required meetings. The Court will cover the cost of the testing but will not provide for the cost of the program other than that provided under the health insurance program. Failure to submit to rehabilitation testing when required, or complete any treatment program as prescribed, may be grounds for dismissal or other disciplinary action.

- 4) The Court reserves the right to require an employee to take a leave of absence from employment pending evaluation and treatment at any time when the employee's ability to perform his/her job appears to be affected by a drug or alcohol abuse program. Prior to an employee's return to work after such an absence, the Court and the employee may enter into an Agreement detailing the conditions of the employee's return to work. Said Agreement shall include additional testing at any time for up to two (2) years.
- 5) The above policy (Rule 507(C)(5)(b)(1-4)) applies only to classified employees who have completed the original probationary period. Probationary employees can be terminated at any time they are suspected to be abusing drugs or alcohol, as demonstrated through impaired job performance or are found to be using drugs (other than those prescribed by a physician and being legally used) or alcohol on duty. Under such circumstances, testing may be required, at the discretion of the Court, of probationary employees suspected of substance abuse.

D. PHYSICAL EXAMINATION AND PROCEDURE FOR APPLICANTS:

1. ~~Pre-placement physical examinations are required for all initial appointments and any subsequent appointment by an employee to another position which requires a greater degree of physical activity than the employee's current position. As part of these examinations, a drug screening shall be given.~~
12. The drug analysis COMPLETED IN ACCORDANCE WITH RULE 506(C) may test for any substance which could impair an employee's ability to effectively and

safely perform the functions of his/her job, including, but not limited to prescription medications, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, methaqualone, marijuana and other cannabinoids. The analysis shall be conducted in accordance with established clinical procedures.

23. After the drug analysis is completed, the sample shall be processed in accordance with established clinical procedures.
34. A confirmatory analysis after an initial positive result shall be conducted in accordance with established clinical procedures.

E. RESULTS OF DRUG ANALYSIS FOR APPLICANTS:

1. Pre-placement physicals:
 - a. A positive result from a drug analysis may result in the applicant not being hired.
 - b. If an analysis is positive for drugs, the Presiding Judge shall decide whether the applicant may be hired after considering all relevant information (discussion with the designated physician, medical history, position applied for).
2. Promotional physicals:
 - a. A positive result from a drug analysis shall result in the individual not receiving the promotional position sought and may result in counsel and/or disciplinary action, up to and including dismissal. Employees employed in positions involving public safety may be dismissed with the first offense. Prior to any disciplinary action being taken, the Division Head shall consult with the Presiding Judge and the decision to discipline or discharge shall be carried out in conformance with the Court's disciplinary procedures.
 - b. If a drug analysis is positive, the Division Head shall conduct an investigation to gather all facts. Division Heads may seek the assistance of the Court Administrator in conducting an investigation. At the conclusion of the investigation, the Division Head shall prepare a report detailing the results of the investigation and provide the Court Administrator with a copy of the report for filing of record in the master personnel file.
 - c. The provisions of Rule 507(C)(5) above, shall also be applicable if a positive result occurs during the promotional physical.

F. CONFIDENTIALITY:

1. Laboratory reports or test results shall appear in an employee's confidential medical file. The reports or test results may be disclosed to Court management staff on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by laws or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee; (3) the information is to be used in administering an employee benefit plan; and (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.
2. All exceptions to this Rule must be approved by the Presiding Judge.

G. SEVERABILITY:

The provisions of this Rule are severable; and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provision.

H. AWARENESS INFORMATION:

Periodically, the Court Administrator shall provide information to Judicial service personnel regarding drugs and alcohol and their effects. In compliance with the Drug-Free Workplace Act of 1988, a drug/alcohol awareness program will be ongoing. All personnel are expected to participate in the program.