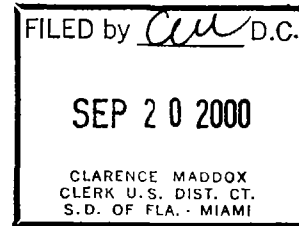


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2000-73

**IN RE:  
IMPLEMENTATION OF INTERIM  
WORKPLACE DRUG TESTING PROGRAM  
FOR PROBATION AND PRETRIAL SERVICES  
OFFICERS AND OFFICER ASSISTANTS**

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Effective October 1, 2000, the Administrative Office of the United States Courts will implement a Workplace Drug Testing Program. All probation and pretrial services officers and officer assistants, including primary and secondary law enforcement positions, with or without hazardous duty retirement status, in the Courts and the Administrative Office, have been designated as workplace drug testing positions. Workplace drug testing positions include the position of Chiefs, Deputy Chiefs, Supervisors, Specialists (e.g., drug and alcohol, mental health, electronic monitoring, special offenders, program or training coordinators and guideline specialists), line officers, officer assistants and law enforcement positions within the Federal Corrections and Supervision Division. All collections and drug testing will be performed by an outside contractor. The program will include applicant, random, reasonable suspicion, follow-up and voluntary testing.

In addition to the testing policy, the Judicial Conference has adopted a zero tolerance policy for controlled substance use by probation and pretrial services officers and officer assistants. Zero tolerance calls upon the individual district courts to take action, up to and including dismissal, in the event an officer or officer assistant tests positive for drug use, refuses to be tested when required, or refuses to obtain counseling or rehabilitation through an Employee Assistance Program or other service provider after having been found to illegally use drugs. This enforces the existing policy on drug use in the workplace and conforms with the practice of other federal law enforcement agencies.

The Southern District of Florida has adopted the Conference policy of "zero tolerance" and attached are promulgated guidelines to be followed in responding to any instance of drug use by a probation or pretrial services officer or officer assistant.

In addition to the interim workplace drug testing program for probation and pretrial services officers and officer assistants, effective October 1, 2000, any candidate the Court is appointing or promoting to a probation or pretrial services officer or officer assistant position will be subject to pre-employment drug screening. Vacancy announcements for these positions will include notification that applicants will be subject to drug testing. The candidate will be directed to a local collection facility for testing. If a candidate tests positive for illegal drugs, further consideration for employment will be denied. No applicant who refuses to be tested shall be extended an offer of employment. The guidelines to be followed for applicant testing are attached.

The Chief Probation and Pretrial Services Officers are hereby directed to provide copies of this Administrative Order and the promulgated guidelines attached herein to all affected staff no later than Friday, September 29, 2000.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this  
19<sup>th</sup> day of September, 2000.



WILLIAM J. ZLOCH  
CHIEF UNITED STATES DISTRICT JUDGE

Administrative Order 2000-73  
In re: Implementation of Interim  
Workplace Drug Testing Program  
Page 3

c: The Honorable R. Lanier Anderson, III, Chief Judge, Eleventh Circuit Court of Appeals  
All Southern District Judges and Magistrate Judges  
Norman Zoller, Circuit Executive  
Chief Probation Officer  
Chief Pretrial Services Officer  
Court Administrator • Clerk of Court

*INTERIM*  
**WORKPLACE DRUG TESTING PROGRAM FOR  
PROBATION AND PRETRIAL SERVICES OFFICERS AND ASSISTANTS  
SOUTHERN DISTRICT OF FLORIDA**

Effective October 1, 2000, the Administrative Office of the United States Courts will implement a Workplace Drug Testing Program. All probation and pretrial service officers and assistants, including primary and secondary law enforcement positions, with or without hazardous duty retirement status, in the Courts and the Administrative Office, have been designated as workplace drug testing positions. In other words, workplace drug testing positions include the position of Chiefs, Deputy Chiefs, Supervisors, Specialists (e.g. drug and alcohol, mental health, electronic monitoring, special offenders, program or training coordinators and guideline specialists), line officers, officer assistants and law enforcement positions within the Federal Corrections and Supervision Division. All collections and drug testing will be performed by an outside contractor. The program will include applicant, random, reasonable suspicion, follow-up and voluntary testing.

In addition to the testing policy, the Judicial Conference has adopted a zero tolerance policy for controlled substance use by probation and pretrial services officers and assistants. Zero tolerance calls upon the individual district courts to take action, up to and including dismissal, in the event an officer or officer assistant tests positive for drug use, refuses to be tested when required, or refuses to obtain counseling or rehabilitation through an Employee Assistance Program or other service provider after having been found to illegally use drugs. This enforces the existing policy on drug use in the workplace and conforms with the practice of other federal law enforcement agencies. The Southern District of Florida has adopted the Conference policy of "zero tolerance" and herein are promulgated guidelines to be followed in responding to any instance of drug use by a probation or pretrial officer or officer assistant.

**APPLICANT TESTING**

Effective October 1, 2000, any candidate the Court is appointing or promoting to a probation or pretrial services officer or officer assistant position will be subject to pre-employment drug screening. Vacancy announcements for these positions will include notification that applicants will be subject to drug testing. The candidate will be directed to a local collection facility for testing. Applicant test results will be made available confidentially in writing to the Chief Probation or Pretrial Services Officer within 36 hours of receipt of the specimen at the laboratory. A drug test result should not be used as a screening device in the selection process, but should be used to assess the suitability of an applicant for the position once the applicant has been selected and before the processing of the Questionnaire for National Security Positions (SF 86). If a candidate tests positive for illegal drugs, further consideration for employment will be denied.

Inquiries and/or appeals received from applicants being denied employment, due to positive drug test results, will be handled by the Chief Probation or Pretrial Services Officer. In the event that the drug detection is a non-scheduled I drug such as a prescription drug and the applicant failed to disclose such drug use prior to testing, the Chief may request the Administrative Office to require further review by a Medical Review Officer. The results of the review will be reported to the Chief Probation or Pretrial Services Officer confidentially in writing.

**No applicant who refuses to be tested shall be extended an offer of employment.**

### **RANDOM TESTING**

Approximately 5% of the testing positions will be randomly and anonymously selected each year for testing using a system that identifies social security numbers by district instead of names. Each month the Administrative Office will receive a list of those social security numbers by districts selected for random testing unless the social security number is that of a designated drug testing position in the Administrative Office. The Court's employees identified will be matched to the social security number and the Chief Probation or Pretrial Services Officer will be contacted to direct the employee to report to a local collection site by 5:00 p.m. of the date of notification. If the Chief Probation or Pretrial Services Officer receives notice after 12:00 noon, the notification to employee will be the next business day. In order to maintain the highest level of confidentiality, random drug testing results will be reported to the Administrative Office within 36 hours of receipt of the specimen at the laboratory. All test results, (positive and negative) will be reported in writing confidentially to the Chief District Judge and Chief Probation or Pretrial Services Officer within 24 hours of receipt.

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal.

### **REASONABLE SUSPICION TESTING**

Reasonable suspicion testing will be implemented by the Chief Probation or Pretrial Services Officer pursuant to the following standards:

1. Observable phenomena, such as direct observation of drug use or possession and/or physical symptoms of being under the influence of a drug
2. A pattern of abnormal conduct or erratic behavior including abnormal leave patterns
3. Arrest or conviction of a drug related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking
4. Information provided either by reliable and credible sources or independently corroborated
5. Evidence that an employee has tampered with a previous drug test
6. Facts or circumstances that developed in the course of an authorized investigation such as an accident or unsafe working practice

## **FOLLOW-UP TESTING**

If requested by the Court as a follow-up to counseling or rehabilitation for drug use through the Employee Assistance Program or other treatment provider, the Administrative Office will coordinate ongoing and unscheduled collection and drug testing. Test results will be reported to the Administrative Office within 36 hours of receipt of the specimen at the laboratory. All test results including positive and negative test results will be reported in writing confidentially to the Chief District Judge and Chief Probation or Pretrial Services Officer within 24 hours of receipt.

## **VOLUNTARY TESTING**

Any staff member in a designated drug testing position will be given an opportunity to volunteer for testing. Voluntary testing allows an individual to come forward to test on their own or at the suggestion of a supervisor. Officers may contact the Chief Probation or Pretrial Services Officer, who in turn will notify the Administrative Office to initiate collection and testing. Test results will be reported to the Administrative Office within 36 hours of receipt of the specimen at the laboratory. All test results, including positive and negative test results, will be reported in writing confidentially to the Chief District Judge and Chief Probation or Pretrial Services Officer within 24 hours.

## **DRUGS TO BE SCREENED**

Consistent with Health and Human Services (HHS) guidelines, the testing process will include the detection of the following category of drugs: (1) Amphetamines, including amphetamines and methamphetamine; (2) cocaine; (3) cannabinoids; (4) opiates, including codeine and morphine; (5) phencyclidine (PCP). The standard method for workplace drug testing is urinalysis, in a two-step screening confirmation process. The specimen will be screened for the five drugs mentioned above and positive test results confirmed using a gas chromatography/mass spectrometry (GC/MS) method. All testing will be conducted by an HHS certified laboratory.

## **COLLECTION PROCEDURES**

Before testing, the collection official at the testing facility will require the individual to be tested to present photo identification. Pre-printed bar coded numbers will be used as specimen identification numbers throughout the collection, shipping and testing phases of the screening to further protect the employee's identification. Chain of custody forms shall be used to account for the integrity of each specimen by tracking its handling from the point of specimen collection to final disposition. Consistent with other workplace drug testing programs, employees will be allowed privacy when providing specimens. However, the testing facility will take reasonable precautions (i.e. temperature/color) to ensure the validity of each urine specimen collected. Each employee will be escorted by a same sex contract collection official to the collection area. An observed urine specimen may be required when collection personnel, in consultation with the Chief Probation or Pretrial Services Officer have reason to believe that the employee may alter or substitute the specimen or otherwise tamper with the drug test. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the test when required. An employee will then be subject to the full range of disciplinary action, including dismissal.

## **CONFIRMATION PROCESS**

All tests confirmed positive for drug use will be reviewed and interpreted by a contract Medical Review Officer (MRO). The MRO is a licensed physician with knowledge of substance abuse disorders. The review includes the examination of alternative medical explanations for any positive test result, including interviewing the specimen provider, reviewing his or her medical history or reviewing any other relevant biomedical factors. If the MRO determines that there is no alternative medical explanation for the positive test result, the MRO will notify the Administrative Office.

## **CONFIDENTIALITY OF TEST RESULTS**

Drug tests will be reported only to the Chief Judge and Chief Probation or Pretrial Services Officer for the district. All drug testing information, specifically relating to individuals, is confidential and will be treated as such by anyone authorized to review or compile program records. All records and information of the personnel actions taken on employees with confirmed positive test results will be maintained by the local court, in accordance with previously established procedures in regard to maintenance of records of alleged employee misconduct. The results of a drug test will not be disclosed without the prior written consent of the employee tested, unless the disclosure would be to:

- a. The Medical Review Officer
- b. An Employee Assistance counselor or other treatment provider when the employee is receiving counseling or treatment or is otherwise participating in treatment
- c. The Chief Judge for the district
- d. Chief Probation or Pretrial Services Officer
- e. A court of competent jurisdiction pursuant to an order of the Court and where required by the U.S. Government to defend against any challenge against any adverse personnel action

## **MAINTENANCE OF RECORDS**

The Administrative Office has established a record keeping system to maintain drug testing records in compliance with all applicable federal laws, rules and regulations regarding confidentiality of records. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings or at the direction of the Administrative Office. The record keeping system captures sufficient documents to meet the operational and statistical needs of legislation and regulation and includes:

- a. Number of tests performed
- b. Number of confirmed positive test reports by medical review officer
- c. Written material justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen
- d. Anonymous statistical reports
- e. Other documents the Administrative Office Medical Review Officer or Employee Assistance Program deem necessary for efficient compliance with this program and which satisfies the records and confidentiality requirements of law

## **RECORDS MAINTAINED BY GOVERNMENT CONTRACTORS**

Any contractor hired to satisfy any part of this program will comply with the confidentiality requirements of this program and with all applicable federal laws, rules, regulations and guidelines.

## **EMPLOYEE ASSISTANCE PROGRAM**

The Employee Assistance Program (EAP) plays an important role in workplace drug testing program. EAP is a counseling, consultation and referral program available to all judicial employees and their immediately family members. In the event an officer were to test positive for illicit drug use, the Court may refer the officer to the EAP. Counselors at EAP can refer an officer for a formal assessment and treatment. Services are generally paid through the officer's insurance company. With the consent of the officer's referred EAP, staff can share with the Court pertinent information relative to the officer's treatment program attendance, compliance with program rules and prognosis. All employees referred to EAP will sign a release form, so that the EAP will be available to consult with the Chief Probation or Pretrial Services Officer.

## **DISCIPLINARY ACTIONS**

### ***A. Determination***

An employee may be found to use illegal drugs on the basis of appropriate evidence including but not limited to:

- 1) Direct observation
- 2) Evidence obtained from an arrest or criminal conviction
- 3) A verified positive test result
- 4) An employee's voluntary admission

### ***B. Administrative Action***

The U.S. Probation or Pretrial Services Office immediately will refer an employee found to use illegal drugs to the EAP. The Probation/Pretrial Services Office will initiate an action to remove or suspend from service any employee the first time that employee is found to illegally use drugs. However, as part of the EAP rehabilitation program, and at the discretion of the Chief Probation or Pretrial Services Officer, an employee may remain on duty or return to duty if the employee's continued employment would not endanger public health or safety of the individual.



**C. *Consequences***

Disciplinary action may include any of the following measures, but some disciplinary action must be initiated:

- 1) Reprimand the employee in writing
- 2) Place the employee on leave status
- 3) Suspend the employee
- 4) Demotion or reassignment
- 5) Dismiss the employee

**D. *Initiating Mandatory Removal from Service***

The Probation/Pretrial Services Office shall initiate action to dismiss an employee for:

- 1) Refusing to obtain counseling or rehabilitation through the EAP or other private counseling program after having been found to use illegal drugs
- 2) Having been found not to have refrained from illegal drug use after a first finding of illegal drug use

**E. *Refusal to Take Drug Test When Required***

An employee who refuses to be tested when so required will be considered insubordinate and subject to the full range of disciplinary action, up to and including dismissal.