



**NEW MEXICO JUDICIAL BRANCH
GENERAL PERSONNEL POLICY AND PROCEDURE:
DRUG AND ALCOHOL TESTING POLICY**

Policy No. 2021.NMJB.82

Inquiries: AOC HRD 505/827-4810
Dev.: 01/24/2007; Rev: 02/13/2012, 09/25/2021

DRUG AND ALCOHOL TESTING POLICY

1. PURPOSE

The New Mexico Judicial Branch is committed to protecting the safety, health and well-being of all employees and other individuals in our workplaces. The New Mexico Judicial Branch expects all employees to be productive during work hours and the use of intoxicants, controlled substances, illegal drugs, and alcohol use impairs productivity and creates a safety issue for the judicial officer, judicial employee and the judiciary. The New Mexico Judicial Branch shall require judicial officers and judicial employees to undergo drug and/or alcohol testing if the judicial entity has a reasonable suspicion that the judicial officer or judicial employee is impaired to any degree by an intoxicant, controlled substance or alcohol.

No Judicial Entity shall waiver from this judicial policy, unless a specific internal standard operating policy regarding the specifics (i.e., job titles, pre or postemployment) of the drug/alcohol testing is approved by the Director.

2. REFERENCES (Added 09/25/21)

NMJBPR Part I, Section 12
NMJBPR Part II, Section 23
Supreme Court Order 07-8500
NMJBPR Drug-free and Alcohol-free Workplace Policy

3. DEFINITIONS

A. Administrative Authority - Individual or designee with the primary responsibility to supervise and coordinate the administration of Judicial Entity, or as designated by the Chief Judge and approved by the Supreme Court order.

B. Alcohol - Consumable non-prescription substances, which contain alcohol such as, without limitation, spirits, wine, malt beverages and intoxicating liquors. (Amended 02/13/12)

C. Controlled Substance - Any drug or other substance listed in schedules of the Controlled



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Substances Act, Chapter 30, Article 31 NMSA 1978 that are not prescribed by or taken under the supervision of a practitioner, as defined by that Act. (Amended 08/26/21)

- D. Conviction** - A finding of guilt (including a plea of *nolo contendere*) or imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- E. Criminal Drug Statute** - A federal or non-federal criminal statute involving the manufacture, distribution, dispensation, use or possession of a controlled substance or alcohol.
- F. Director** – The Director of the New Mexico Administrative Office of the Courts or designee. (Added 9/25/21)
- G. Disciplinary Action** – A constructive action designed to correct an employee’s performance and/or behavior that is below acceptable standards.
- H. Drug Testing Coordinator** - An employee appointed by the Administrative Authority for the respective Judicial Entity to coordinate drug testing.
- I. Intoxicant** - Any alcoholic beverage or distilled spirit, cannabis, drug or other substance summarized as opiates, opium derivatives, hallucinogenic substances, depressants of the nervous system such as phenobarbital and amphetamines, a controlled substance, controlled substance analog, or other drug, or any combination thereof, capable of causing a disturbance of mental or physical capacities resulting from the introduction of such substance into the body. (Added 09/25/21)
- J. Judicial Branch Property** - Any court, office, training facility, vehicle, land, or other real property owned, leased, rented, occupied or operated by the State of New Mexico and/or the Judicial Branch.
- K. Just Cause** (examples) – Performance and/or behavior relating to the employee’s work that is inconsistent with the employee’s obligation to the employer and forms the basis for discipline. (17) Using, selling or possessing intoxicants or controlled substances. (18) Being under the influence of intoxicants or controlled substances while on duty. (Added 02/13/12)
- L. NMJBPRawe** – New Mexico Judicial Branch Personnel Rules – Part II for at-will



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employees. (Added 02/13/12)

M. NMJBPR – New Mexico Judicial Branch Personnel Rules – Part I for employees. (Added 02/13/12)

N. Reasonable Suspicion – articulable belief that an employee is impaired, to any degree, by the use of an intoxicant, controlled substance, illegal substance, cannabis, or alcohol while on duty. (Amended 09/25/21)

O. Supreme Court Order 07-8500 – orders state judges, county, magistrate, metropolitan, municipal, and probate judges to abide by the New Mexico Judicial Branch Drug and Alcohol Testing and Drug-free and Alcohol-free Workplace Policies. (Added 09/25/21)

P. Work Place - A site for the performance of work. This includes buildings and grounds for such sites, as well as the employee or judicial officer's home if approved for telework or remote work. It also includes the location of any work-related travel between work sites or work-related travel in the course and scope of employment. (Amended 09/25/21)

4. DRUG TESTING COORDINATOR

- A.** The Director of the Administrative Office of the Courts (AOC) shall appoint a member of the AOC Human Resources Division as a Drug Testing Coordinator for the Supreme Court, Court of Appeals, and AOC.
- B.** The Administrative Authority of District and Bernalillo Metropolitan Courts shall appoint a member of their staff as the Drug Testing Coordinator for their judicial entity.
- C.** All drug and/or alcohol testing shall be first approved by the Administrative Authority, to be coordinated by the Drug Testing Coordinator for that assigned judicial entity.
- D.** It is the responsibility of management and the Drug Testing Coordinator to ensure that the guidelines of the New Mexico Judicial Branch Drug Testing policy are applied in a fair and consistent manner to avoid discrimination.



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4. TESTING

- A. Drug and/or alcohol testing shall be performed at a laboratory certified to perform such tests and the judicial entity ordering the test shall pay all costs associated with testing. (Amended 09/25/21)
- B. In accordance with this policy, testing shall be performed only based upon reasonable suspicion. (Added 02/13/12)
- C. If there is reasonable suspicion that any of the following circumstances have occurred, a judicial officer or judicial employee may be tested: (Amended 09/25/2021)
 - (1) The employee is impaired to any degree by use of an intoxicant, controlled substance, illegal substance, cannabis, or alcohol while on duty; or (Amended 09/25/21)
 - (2) The employee has been observed using or possessing an intoxicant, controlled substance, illegal substance, cannabis, drug paraphernalia, or alcohol while on duty; or (Amended 09/25/21)
 - (3) The employee is operating a state vehicle and at any time while in possession of the state vehicle is involved in a vehicle accident occurring on duty or any time; or
 - (4) The employee is operating a private vehicle while on duty or state business and is involved in a vehicle accident; or
 - (5) The employee returns after being referred to treatment, counseling, a substance abuse or alcohol rehabilitation program at the discretion of the Administrative Authority, within 30 to 180 calendar days from the date of referral; or
 - (6) The employee has entered into a contract to abide by the Drug Testing Policy and, as a condition of the contract, has agreed to be tested at random; or
 - (7) The employee is arrested for a conviction of a drug related offense, or the identification of the individual as the focus of a criminal investigation into illegal drug possession use, or trafficking; (Added 09/25/21)
 - (8) Information that is either provides by a reliable and credible source and is independently corroborated; or (Added 09/25/21)



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- (9) Evidence that a judicial officer or judicial employee has tampered with a previous drug test. (Added 09/25/21)

- D. Refusal to submit to a drug or alcohol test will be deemed a positive test and the employee will be subject to disciplinary action.

- E. Drug and/or alcohol test results shall be reported to the Administrative Authority who ordered the testing be conducted.

- F. A judicial officer or judicial employee may appeal the test results at their own expense and the re-test will be performed by the same laboratory and on the same sample. (Amended 09/25/21)

- G. Records concerning drug and alcohol test results shall be maintained in a confidential medical file and shall not be placed in the general confidential personnel file unless the information is included or attached to a formal disciplinary action. Such records may be inspected only with the written permission of the employee, pursuant to lawful court order or as otherwise required by law. (Amended 09/25/21)

- H. A judicial officer or a judicial employee may be placed on administrative leave with pay pending the results of any test administered under this policy. (Amended 09/25/21)

- I. A judicial officer or judicial employee who, while on duty, illegally sells, purchases or transfers drugs, intoxicants, or any substance in schedules of the Controlled Substances Act NMSA 1978, §§30-31-1 to 30-31-41, may be subject to disciplinary action up to and including termination and shall be reported to the local law enforcement agency. (Amended 09/25/21)

- J. A judicial officer or judicial employee who, while on duty, possesses drugs or any substance in schedules of the Controlled Substances Act 1978, §§30-31-1 to 30-31-41 without a valid prescription or as otherwise authorized by law, may be subject to disciplinary action up to and including termination and shall be reported to the local law enforcement agency. (Amended 09/25/21)

- K. Voluntary Self-Identification



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Disciplinary action may not be initiated if the judicial officer or judicial employee, prior to being arrested for or reasonably suspected of drug or alcohol abuse or notification of a required drug or alcohol test, voluntarily contacts the Administrative Authority or Drug Testing Coordinator for assistance. (Amended 09/25/21)

- (1) An employee who voluntarily identifies themselves as a user or abuser of an intoxicant, illegal drug, controlled substance and/or alcohol will be referred to the Drug Testing Coordinator for referral and information regarding rehabilitation. (Amended 09/25/21)
- (2) The judicial officer or judicial employee may be afforded appropriate leave benefits under the NMJBPR and NMJBPRAWA, and must participate in a treatment program, fully cooperate with the Administrative Authority and the Drug Testing Coordinator and successfully complete the treatment program. (Amended 09/25/21)

Approved By Supreme Court Order #: 07-8500

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Arthur W. Pepin, Director
Administrative Office of the Courts

11/23/2021