

**27.000 TRIAL COURT POLICY ON SUBSTANCE ABUSE AND THE
WORKPLACE**

27.100 POLICY

It is the policy of the Trial Court that the workplace shall be free from the illegal use of drugs, the abuse of alcohol and other forms of substance abuse, and from employees whose performance may be impaired by such use or abuse.

Employees shall not unlawfully manufacture, distribute, dispense, possess or use a controlled substance while on the job or in the workplace, or be under the influence of a controlled substance or alcohol while on the job or in the workplace.

The term “substance”, when used in the term “substance abuse”, includes both controlled substances under state and federal law and alcohol. The term “workplace” includes all Trial Court premises including court rooms, offices, work areas, parking lots, lounges, lavatories, smoking areas, storage areas, and all premises an employee may visit while acting in the scope of employment.

**27.200 IDENTIFYING SUBSTANCE ABUSE: OBSERVATION OF BEHAVIOR
AND PERFORMANCE**

The Trial Court considers a substance abuse problem to exist when the performance and dependability of the employee are impaired because of drug or alcohol use.

One, several, or all of the following signs frequently are seen and, when present in combination, may indicate a high probability that the employee has a substance abuse problem or may be symptomatic of some other underlying problem that requires immediate attention.

1. Development of employee attendance problems: frequent Monday, post-holiday, and post payday absences. The drug/alcohol-dependent employee usually will have from six to eight times as many absences per year as the non-dependent employee.
2. Frequent tardiness or prolonged absence from the work area.
3. Change in employee job performance: decreased reliability, erratic performance, tendency to put things off, neglect of details, blaming other workers, desire for job changes, or unexplained absence from an assignment.

4. Frequent on and off-the-job accidents: These may be mostly minor, such as cuts, scrapes, bruises or bumps.
5. Personality changes: moodiness, irritability, chronic complaints and gripes, giddiness, slurred speech, disinterest in work, reports of family or financial difficulty, and memory gaps.
6. Frequent non-work related visits from other employees or strangers.
7. Deterioration in personal appearance (grooming and hygiene, bloodshot eyes, running nose, drastic weight loss).

These indicators may be helpful to the supervisor in identifying employees who have significant problems. However, this does not mean that all individuals having substance abuse or other personal problems will exhibit these traits. Nor does it mean that all individuals exhibiting these traits have substance abuse or personal problems.

27.300 SUPERVISOR ACTION

A supervisor faced with an employee who displays declining or erratic performance, attendance problems or inappropriate behavior due to suspected substance abuse, should take the following steps.

1. **Documentation:** As soon as the supervisor recognizes that an employee's attendance, job performance or conduct is becoming unsatisfactory, he/she should begin to document observable, verifiable facts. Complete, accurate documentation is essential when dealing with an employee with performance problems. Good documentation helps the supervisor 1) to focus on those aspects of performance that need to be corrected and avoid the temptation to counsel the employee on personal problems, 2) to show the employee that he/she is serious about the situation, and 3) to support the corrective action process.
2. **Discussion:** Once the problems have been observed and documented, there should be a discussion of the matter between the supervisor and the employee. The supervisor should permit a union representative to attend this meeting if the employee so requests. The points to be covered in the meeting will include the aspects of work performance, attendance, and conduct that are not meeting expectations. The supervisor's goal should be to get an agreement on the method to obtain improved future performance. It should be made clear that if performance does not improve within a stated period of time, disciplinary action will be taken.

If there is reason to believe that the deficiencies are caused in whole or in part by a personal or substance abuse problem, the supervisor should remind the employee of the availability of the Employee Assistance Program (EAP). **The supervisor should not accuse the employee of being an abuser of drugs or alcohol or attempt to diagnose the problem as one of substance abuse.**

If the employee accepts the suggestion of assistance, or if the employee seeks the assistance of the EAP, the supervisor should be supportive and accommodating. If the employee's reaction to the suggestion is one of disagreement and denial that a problem exists, the supervisor should keep the discussion focused on the fact that a performance or behavioral problem does exist which must be remedied.

By the end of the discussion, the employee must understand that if the performance or behavioral problem is not corrected within a set period of time, further action will be taken. The employee should clearly understand that continuing unsatisfactory job performance will not be tolerated. The points made in the meeting should be confirmed in writing to the employee. A copy should be retained by the supervisor for future reference.

27.400 FOLLOW UP BY THE SUPERVISOR

Once the initial discussion has taken place, the situation must be closely monitored.

If the employee agrees to be evaluated by the EAP, to get other professional assistance or to participate in a rehabilitation program, arrangements should be made for a letter and regular reports from the professional treatment resource confirming that the employee is participating in a program. Arrangements should also require immediate notification when the program is successfully completed or participation is terminated for any reason.

The supervisor must monitor the situation through observation and documentation. Hopefully, the employee can remedy the performance problem and fully meet the expectations set forth by the supervisor. If the situation is not remedied, the supervisor should take disciplinary action in accordance with Section 16.000 of the Trial Court Personnel Policies and Procedures Manual or appropriate Appellate Court personnel policy.

27.500 DEFERRAL OF DISCIPLINARY ACTION

The supervisor may consider deferral of disciplinary action in exchange for an agreement by the employee to get professional assistance or to participate in a rehabilitation program. If deferral is appropriate, then disciplinary action

may be suspended during the treatment.

In considering whether or not deferral is appropriate, the supervisor should consider such factors as the nature of the employee's job, the relationship between the offense and the job, and the employee's record. Deferral is not always appropriate, for example where the employee has been found to be selling drugs while on work time or on work premises. Action should be taken to discharge such an employee.

If deferral is not appropriate, or the employee does not agree to get professional assistance or to participate in a rehabilitation program, or the rehabilitation effort is unsuccessful for any reason, the performance or behavior problems should be treated as a disciplinary matter.

27.600 SUBSTANCE ABUSE AMONG ATTORNEYS

Substance abuse among attorneys is addressed by Standard XX of the Standards on Substance Abuse approved by the Justices of the Supreme Judicial Court on April 28, 1998, which provides for referral of the attorney to a lawyers' assistance program, such as Lawyers Concerned for Lawyers, or for a report of misconduct to the Board of Bar Overseers, if appropriate.

27.700 SUBSTANCE ABUSE AMONG JUDGES

There is an informal committee of judges available at 1-800-525-4344 to facilitate assistance to judges with substance abuse issues.