

PORT AUTHORITY OF GUAM

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NEWS RELEASE

Respicio to Nelson: Random Drug Testing must meet 'Constitutional Muster'

Piti, Guam, February 5, 2021: Port Authority of Guam General Manager Rory J. Respicio told Port Oversight Chair Telena Nelson that he will continue to follow the Port's Drug-Free Workplace Policy and will do so within the boundaries of the United States Constitution. Respicio cautioned Nelson to refrain from ill-advising him and the public regarding this matter.

The Port was the focus of Nelson's two days of hearings focusing on the Port's Drug-Free Workplace Program and hiring. During the hearing, Respicio told lawmakers that the Port, under its Drug-Free Workplace Program (DFWPP) and Personnel Rules and Regulations, may conduct random drug testing on its employees only when a degree of reasonable suspicion arises. This also included employees in test designated positions. Despite this, Nelson suggested that the Port implement more frequent random drug testing instead of waiting for accidents to happen.

"It is your opinion that the Port's DFWPP and Personnel Rules and Regulations give the Port the authority to conduct random drug testing on all of its employees without reasonable suspicion," Respicio wrote. "Respectfully, I disagree."

"As employers, both in the public and private sectors, we are limited by constitutional considerations," Respicio wrote. "According to the well-established case law, even those employees holding 'test designated positions' or safety sensitive positions are still afforded reasonable expectations of privacy. Accordingly, courts have only upheld suspicionless drug testing in limited circumstances: employees who carry firearms; motor vehicle operators carrying passengers; aviation flight crew members and air traffic controllers; and railroad operating crews. Thus, subjecting those public employees whose job performance does not necessarily jeopardize public safety to suspicionless, random drug testing would likely be problematic as it infringes on employees' privacy rights."

A copy of the letter to Senator Telena Cruz Nelson is attached.

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