

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
23-SO-4

FILED

SEP 29 2023

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY DEP CLK

IN RE:)
PLAN FOR LAPSE IN APPROPRIATIONS)
UNITED STATES DISTRICT COURT FOR)
THE EASTERN DISTRICT OF NORTH)
CAROLINA)

STANDING ORDER

Pursuant to Volume 13, Chapter 2, § 230.50 of the *Guide to Judiciary Policy*, this Court adopts the following plan for operating during a lapse in appropriations.

I. Lapse in Appropriations Phases

A lapse in appropriations occurs when (a) neither an annual appropriation act nor a continuing resolution (“CR”) is enacted before the beginning of a fiscal year or (b) a CR expires during the fiscal year with no follow-on appropriation.

A lapse in appropriations encompasses two possible phases, for purposes of judiciary operations. Phase 1 is the period when balances from fee collections and no-year appropriations are used to fund judiciary operations. Phase 2 occurs when balances from fees and no-year appropriations are exhausted before Congress acts to fund judiciary operations, and the judiciary has no available funds to continue operations.

II. Phase 1 Plan

During Phase 1, this Court will defer costs that are not mission-critical until the lapse is resolved, in accordance with the *Guide*, Vol. 13, Chapter, § 230.50.10. This includes following the recommended guidelines set forth in the *Guide* and as specified below:

A. Human Resources

All employees of the Court will continue to report to work, or continued with scheduled leave plans, until instructed otherwise. All employees of the Court will remain in full-pay status.

The Court's Human Resources staff will continue to process personnel actions submitted under the established biweekly processing schedule.

While some actions may be delayed or deferred (e.g., new hires and promotions) as not necessary to the performance of mission-critical responsibilities, any previously-made offers of employment will be honored. For vacancies in the recruitment stage, the Court will delay making employment offers until appropriations are in place, unless a position is determined to be mission-critical by the Chief Judge or Clerk of Court.

B. Criminal Justice Act ("CJA") Panel Attorneys and Service Providers

CJA court-appointed counsel and service providers will continue to provide defense services as needed, and panel attorneys and service providers will continue to be paid according to established procedures. CJA vouchers will not be reduced or delayed based on the status of the judiciary's appropriations.

C. Travel

Non-essential travel will be postponed. Essential travel includes: (a) case-related travel; (b) travel related to authorized judicial meetings; and other mission-critical activities, including travel between divisional offices.

Travel for previously scheduled training may continue if the class registration is non-refundable, as well as travel for Defender Services training programs that have not been canceled. Travelers will book fully-refundable tickets whenever possible. Funds that have been obligated for travel that is canceled or postponed, including individual and blanket travel authorizations, will be deobligated.

D. Procurement

Performance of procurement actions that were awarded and fully funded before Phase 1 will continue under the provisions of the procurement action. Performance under incrementally-funded contracts awarded before the lapse in appropriations also will continue until a new obligation of fund is required.

New procurement actions only will be awarded for mission-critical requirements.

E. Facilities and Security

The Clerk of Court will notify the General Services Administration (“GSA”) that the Court will continue to operate during Phase 1. The Clerk or the Clerk’s designee will contact local building managers for information about the impact on building services and building projects.

The Clerk of Court will work closely with the United States Marshal Service and Federal Protective Service (“FPS”) staff on security issues. Deputy U.S. Marshals, Court Security Officers, and the FPS will continue to provide the Court with the requisite level of security based on the level of activity at a particular facility.

F. Financial Matters

The Clerk’s Office will review unliquidated obligations (e.g., contracts, reimbursable work authorizations (“RWAs”), travel authorizations) and deobligate balances where appropriate. Clerk’s Office staff will accept and deposit funds collected for filing fees daily. The Clerk’s Office will continue to submit a monthly status-of-funds report.

G. Court Operations

All court hearings, jury trials and grand jury hearings will continue as necessary. The Clerk’s Office will continue to certify payments to grand and petit jurors (i.e., attendance fees, travel and subsistence allowances) and continue to pay all jurors.

III. Phase 2 Plan

A. Policy

The United States District Court for the Eastern District of North Carolina is constitutionally and statutorily required to continue to exercise judicial power regardless of the status of appropriations. The Court, however, is bound by the strictures of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1342, in the event of a lapse in appropriations.

In accordance with the Act, in Phase 2 the Court is required to limit its operations and only incur obligations and expenditures to perform “excepted activities,” which the *Guide* defines to include:

- (1) activities necessary to the exercise of the judiciary’s constitutional functions, i.e., the resolution of cases in which there is a constitutional or statutory grant of jurisdiction;
- (2) activities addressing emergency circumstances, such that the suspense of the function would threaten the safety of human life or the protection of property; and
- (3) activities otherwise authorized by law, either expressly or by necessary implication, including:
 - (A) Constitutional guarantees (e.g., the right to counsel under the Sixth Amendment to the United States Constitution);
 - (B) operating entitlement programs; and
 - (C) executing activities needed for an orderly shutdown of other official functions.

In accordance with these limitations, the Court specifies (1) the excepted activities that will continue in Phase 2; (2) staff positions necessary to perform the excepted activities; and (3) the types of contractual services necessary for the Court to perform the excepted activities.

B. Excepted Activities

Under this Plan, in Phase 2 the Court will continue to:

- (1) hear and decide cases without interruption;
- (2) timely file and process all filings, motions, orders, emergency applications, warrants, and other litigation documents;
- (3) collect and deposit fees, costs and criminal debt payments into the Treasury;
- (4) disburse restitution or registry funds pursuant to Court order;
- (5) accept and process new civil, criminal, and miscellaneous cases;
- (6) administer and support the jury and grand jury system, including inputting information necessary for payment of jurors through the Jury Management System;¹
- (7) appoint Criminal Justice Act Panel attorneys to represent eligible persons, as authorized by 18 U.S.C. § 3006A, authorize expert and other services as appropriate, accept and review CJA vouchers, and maintain the Court's eVoucher system;²
- (8) admit attorneys to the Bar of this court and regulate the Bar;
- (9) provide substantive legal analysis and guidance to the Court and Clerk's Office;
- (10) maintain the Court's information technology systems, including the Court's systems network, CM/ECF system, courtroom technology, email, internal and external websites; and IT security;
- (11) provide IT support to judges and court staff;
- (12) process incoming and outgoing mail;
- (13) coordinate coverage of court hearings by court reporters and interpreters;
- (14) coordinate records management;

¹ Payment of jurors, however, will be suspended until funding is available. Clerk's Office staff may use government travel cards to charge travel-related expenditures for jurors as authorized by the Clerk of Court or presiding judge.

² Payment of CJA vouchers will be suspended until funding is available.

- (15) travel for case-related reasons;³
- (16) coordinate with local United States Marshal Service, FPS, and GSA staff to adequately protect the safety of human life and property;
- (17) prepare the monthly AO 274, AO 274S, and AO 183 reports; and
- (18) provide services necessary for the Court and Clerk's Office to perform excepted work.

C. Staff Necessary to Perform Excepted Activities

Those employees performing tasks necessary to the constitutional and statutory mission of the Court are deemed to be excepted employees. Employees who are not deemed to be excepted employees will be placed in furlough status for the duration of the lapse in appropriations; employees in furlough status may not report to work. With the exception of employees on extended leave without pay, employees either will be furloughed and not working, or performing excepted activities consistent with this Plan.

Any furloughed employee will not be charged leave, except where an employee is on extended leave without pay before the shutdown furlough. If an employee is on extended leave without pay before the shutdown furlough, the employee will generally remain in that status during the shutdown. If the employee is scheduled to return from leave without pay during the furlough period, the employee will be placed in a furlough status at the end of the leave without pay period, unless the employee is deemed excepted under this Plan.

The Court and the Clerk's Office may situationally furlough employees who are designated to perform excepted activities but who are unable to report to work. If employees cannot be situationally furloughed, under the Government Employee Fair Treatment Act of 2019, *see* 31

³ Travel must be approved by either the Chief Judge or the Clerk of Court.

U.S.C. § 3141(c)(3), employees performing excepted activities have the option of requesting leave. Pursuant to 31 U.S.C. § 1341(c)(2), all employees, whether excepted or in furlough status, shall be paid for the period of the lapse in appropriations at their standard rate of pay when funding is available.

Each district judge will determine the extent to which his or her chambers staff are necessary to the exercise of Article III functions. Each district judge must notify the Clerk of Court if any chambers staff member is to be placed in furlough status. Otherwise, all chambers staff of district judges will be deemed excepted.

For all other staff members, the Chief Judge and Clerk of Court will review a list of onboard staff to determine if employee is not excepted, and the Clerk will create a written record of the review.

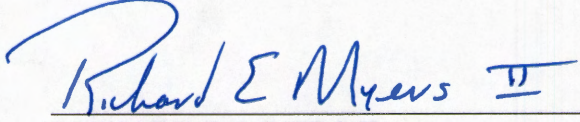
E. Contractual services necessary for performance of excepted activities

The following contractual services will need to continue for the Court and the Clerk's Office to perform the excepted activities specified in the Plan:

- (1) contracts for court reporters;
- (2) contracts for court interpreters; and
- (3) contracts for IT services to maintain operations.

The Court will advise the United States Marshal Service and the General Services Administration of the level of services required to maintain this plan.

SO ORDERED. This the 29th day of September, 2023.


RICHARD E. MYERS II
Chief United States District Judge