

FILED

JAN 11 2019

Clerk, U.S. Courts  
District Of Montana  
Missoula Division

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

In re: Court Operations During a Lapse  
in Appropriations

ORDER

During the ongoing partial lapse in federal appropriations, the federal Judiciary has been maintaining paid operations by relying on existing balances from fees and “no-year” appropriations. Those balances will soon be exhausted, at which point this Court will be required to operate under the terms of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342. This Court adopts the following plan to continue to carry out its constitutional responsibilities under the Anti-Deficiency Act. This plan adheres to Judicial Conference policy as expressed in the *Guide to Judiciary Policy*, Vol. 13, Ch. 2, § 220.30.10. That policy interprets the Anti-Deficiency Act as limiting the work of the judiciary to the performance of “essential” functions during a lapse in appropriations. The policy further instructs that the term “essential” must be interpreted “very narrowly.” *Guide*, Vol. 13, Ch. 2, § 220.30.10(a).

Essential work is limited to the following functions:

- (1) activities necessary to support the exercise of the Article III judicial power, i.e., the resolution of cases in which there is a constitutional or statutory grant of jurisdiction;
- (2) emergency activities necessary for the safety of human life and the protection of property; and
- (3) activities otherwise authorized by law, either expressly or by necessary implication, including:
  - (A) items guaranteed by the Constitution (e.g., Article III judges' salaries);
  - (B) activities funded with available no-year appropriations (e.g., jury system and federal defender program);
  - (C) entitlement programs (e.g., Judicial Survivors Annuities System, which is partly funded by judges' salaries); and
  - (D) minimal activities needed for an orderly shutdown of other official functions.

*Guide*, Vol. 13, Ch. 2, § 220.30.10(a).

It is left to the discretion of each court to determine whether an activity is “sufficiently related” to an essential function that staff should continue to perform the activity during a lapse in appropriations. *Guide*, Vol. 13, Ch. 2, § 220.30.10(c). Once a court has identified all essential functions, it must then determine which staff members must be called in to work in a non-pay status to perform those functions. In making that determination for the District of Montana, the Court has taken into account the totality of circumstances surrounding court functions, including its constitutional and statutory duty to continue to exercise Article III judicial power; the vital role of the Judiciary as the third branch of our federal

government; and the critical contributions of chambers, clerk's office, and probation/pretrial staff in supporting the work of the judges of this district.

The United States Judiciary is not a government agency but a co-equal branch of the federal government under our Constitution. Notwithstanding the government shutdown, the Judiciary remains fully functional, as it must, since federal courts have an unyielding duty to administer justice consistent with the founders' vision. This duty imposes a daily responsibility to conduct jury trials,<sup>1</sup> safeguard constitutional rights, dispense criminal justice, protect people and property, and resolve disputes.

The work of the judges of the District of Montana is supported by dedicated chambers staff, deputy clerks of court, court reporters, and probation and pretrial services officers. These individuals support the Court and serve the public in five courthouse locations, plus three satellite probation and pretrial service offices, across the largest geographical district in the continental United States. In accordance with the Judiciary's ongoing emphasis on cost containment, and in light the relatively limited resources with which this district operates in a formula-driven funding environment, court staff are spread thinly and strategically across

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<sup>1</sup>The judges of the District of Montana will continue to conduct criminal and civil jury trials. In the event funds are not available to pay jurors for their service, the courts will continue to call jurors with the assurance that they will be paid, although payment may be delayed.

these locations to provide the minimum judicial and staff presence necessary to serve all citizens in Montana. The orderly exercise of judicial power across such vast territory simply cannot occur without the ongoing work of these professionals. As a result, the Court hereby declares that all employees of the District of Montana perform essential functions, and are to continue to report to work on a full-time basis.

Based on the foregoing, IT IS ORDERED that during the pendency of the current lapse in appropriations:


1. All judges, chambers staff, employees of the consolidated clerk's office of the United States District Court and the United States Bankruptcy Court, and employees of the United States Probation and Pretrial Services Office shall continue to report to work on a full-time basis until directed otherwise by this Court.
2. Travel should be restricted to court-related travel only, i.e., travel by judges and chambers support staff for the purpose of conducting hearings and resolving cases. All other travel is prohibited unless approved in advance by the chief judge.
3. All activities that are not related to the essential functions of the court are suspended.
4. The court shall incur no new obligations beyond those authorized by Vol. 13, Ch. 2, § 220.30.10 of the *Guide* and the memorandum issued by the Director of the Administrative Office of the United States Courts dated January 11, 2019, and any subsequent memoranda issued by the Director during the pendency of the current lapse in appropriations.
5. The General Services Administration, the United States Marshals Service, and all court security services shall continue to provide all services


necessary to ensure the safety and security of courthouses and personnel in the District of Montana.

IT IS FURTHER ORDERED that upon the enactment into law of an appropriation to fund the federal Judiciary, this order shall be vacated and have no further force or effect.

The clerk of court is directed to notify the judicial officers of this district, the staff of this district, the United States Marshals Service, the Federal Defender, the United States Attorney, and the General Services Administration of the entry of this order.

DATED this 11<sup>th</sup> day of January, 2019.

  
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Dana L. Christensen, Chief Judge  
United States District Court

  
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Benjamin P. Hursh, Chief Judge  
United States Bankruptcy Court