

District of Columbia Courts' Shutdown Plan

Updated December 15, 2011

A. BACKGROUND

If there is a lapse in appropriations for the District of Columbia Courts, the Antideficiency Act will limit the D.C. Courts during the lapse of funding to those operations that are financed from a source other than annual appropriations, or are authorized by law, emergencies involving the safety of human life or the protection of property, or necessary to an orderly shutdown of the Courts' functions. 31 U.S.C. §§ 1341, 1342. All employees not falling under those Antideficiency Act exceptions ("non-excepted" employees) will be furloughed; that is, placed on temporary non-pay status and non-duty status because of lack of funds.

The District of Columbia Courts' Plan of operation in the event of the absence of appropriations is set out below. This plan reflects operations in the event of a lapse in appropriations not exceeding five business days, and operations in the event of a lapse in appropriations of a longer period.

In general, the plan provides that the operations of the District of Columbia Courts will be limited to those functions necessary and essential to continue the resolution of cases without interruption. This includes cases from all divisions and the Family Court of the Superior Court, and appeals to the Court of Appeals. Thus, all essential case supporting services from magistrate judges, clerks, court reporters, and others will be continued. Juvenile probation services provided by the Family Court's Social Services Division will continue to ensure public safety and the protection of property. Contracts for other services and supplies that must be obligated from current annual appropriations and which support case resolution activity or are necessary to ensure the safety of persons or the protection of property will also continue to be obligated. Opinion of the Department of Justice Office of Legal Counsel on Government Operations in the Event of a Lapse in Appropriations, 1995 O.L.C. LEXIS 57, August 16, 1995. This includes contract obligations for court security officers and cleaning services.

The authority for the continuance of these operations in the absence of appropriations is based on statutory provisions enacted by Congress. Judges of the Court of Appeals and the Superior Court are appointed by the President and their compensation is set at the rate prescribed for judges of the United States courts of appeal and district courts, respectively. D.C. Code §§ 1-204.33(a), 11-703(b) and -904(b) (chief judges are entitled to an additional \$500 per year); 19 Op. O.L.C. 301 (1995). The judges have been vested with the judicial power of the District of Columbia established pursuant to Article I of the United States Constitution. D.C. Code § 11-101(2). This authority to exercise judicial power implicitly requires that it continue to be exercised notwithstanding a lapse in appropriations. See 5 Op. O.L.C. 1, 7-8 (1981). With this authority to continue to exercise the judicial power of the District of Columbia, the authority to provide the necessary and essential support functions must also be inferred. 5 Op. O.L.C. at 22-23.

Furthermore, the Constitution guarantees the rights to presentment or indictment by a grand jury, a speedy trial, effective assistance of counsel, and confrontation of witnesses in criminal cases, and trial of criminal and civil cases by jury. *Marcus v. United States*, 476 A.2d 1134 (D.C. 1984); *Ferguson v. United States*, 977 A.2d 993, 999 (D.C. 2009); *Day v. United States*, 682 A.2d 1125, 1129 (D.C. 1996); *King v. Berindoague*, 928 A.2d 693 (D.C. 2007); see *Armster v. United States District Court*, 792 F.2d 1423 (9th Cir. 1986) (holding that the suspension of the civil jury trial system for any significant period of time for lack of funds was unconstitutional); Principles of Federal Appropriations Law, at 6-152 (3rd Ed. 2004). Grand and petit jurors and witnesses are entitled to compensation pursuant to Congressional enactments. D.C. Code § 11-1912, 15-714. These constitutional and statutory mandates require the uninterrupted administration of judicial power and case resolution activity.

In providing appointed counsel pursuant to an indigent defendant's right to representation, the Court is authorized to pay such appointed counsel notwithstanding a lack of appropriated funds. The Comptroller General of the United States has recognized that these mandatory obligations, like those for representation in neglect and guardianship cases, must continue to be incurred, with payment to be subject to the availability of a funding source to liquidate them. Decisions of the Comptroller General, B-283599, September 15, 1999; B-284566, April 3, 2000.

To the extent that funds are available in the D.C. Courts' Defender Service appropriation account, Pub. L. 111-117 (2009), they are no-year funds that may be expended regardless of a lapse in annual appropriations. 5 Op. O.L.C. 1 (1981); OMB Memorandum, *Agency Operations in the Absence of Appropriations*, November 17, 1981. Activities funded by the capital improvements appropriation in the Courts' Federal Payment, which does not expire until September 30, 2012, may continue until those funds are expended. The continuation of operations necessary and essential to the resolution of cases is also authorized under the Antideficiency Act exception for the acceptance of voluntary services or employment of personal services for emergencies involving the safety of human life or the protection of property. 31 U.S.C. § 1342. Aside from the constitutional requirements, the suspension of criminal, juvenile and neglect operations of the Court would imminently threaten the safety of human life, and the suspension of all civil proceedings would pose an imminent threat to the protection of property under the "emergency" exception.

B. SHUTDOWN PLAN POINT OF CONTACT

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C. SHUTDOWN TIME PERIOD

For a lapse in appropriations not exceeding five business days, it is estimated that the shutdown of non-essential operations and staffing can be completed in 4 hours.

D. SHUTDOWN PLANS

The operations of the District of Columbia Courts will be limited to those functions necessary and essential to continue the resolution of cases without interruption. The Courts will continue case resolution activities in all divisions and Family Court of the Superior Court, and appeals from the Court of Appeals. All essential case supporting services from magistrate judges, clerks, court reporters, and others will be continued. Juvenile probation services provided by the Social Services Division will continue to ensure public safety and the protection of property.

Designation of Excepted Personnel. The following positions are designated excepted:

Judges & Staff (286 FTEs excepted, 311 Total FTEs)

All D.C. Court chief judges, associate judges, and magistrate judges, as well as all judicial secretaries and law clerks, are considered excepted personnel. Five senior judges are essential to case resolution in such matters as criminal misdemeanors and judge-in-chambers.

Court of Appeals Staff (36 FTEs excepted, 49 Total FTEs)

- 1 Clerk of the Court
- 1 Deputy Clerk of the Court
- 1 Calendar Clerk
- 2 Clerk's Office Administrative Staff
- 1 Supervisory Legal Counsel
- 5 Central Legal Staff Attorneys
- 1 Case Manager
- 1 Supervisory Case Manager
- 3 Case Managers
- 1 Opinion Clerk (Case Manager)
- 1 Deputy Case Manager
- 1 Admissions Director
- 1 Admissions Staff Assistant
- 1 Director of Court Administration
- 2 Court Administration IT Specialists
- 1 Public Office Director
- 1 Public Office Deputy Director
- 1 Pro Se Inmate Coordinator
- 1 Records & Courtroom Support Supervisor
- 3 Public Office Deputy Clerk Case Administrators
- 4 Courtroom Clerks
- 1 Mail Clerk
- 1 Telecom/AV Specialist

Executive Office (4.5 FTEs excepted, 17 Total FTEs)

- 1 Executive Officer
- 1 Deputy Executive Officer
- 1 Administrative Assistant

- 1 Chief Security Officer
- 1 Director of Legislative, Intergovernmental & Public Affairs (1/2 time)

Clerk of Superior Court (4 FTEs excepted, 12 Total FTEs)

- 1 Clerk of the Court
- 2 Senior Court Managers
- 1 Administrative Assistant

Administrative Services Division (10 FTEs excepted, 44 Total FTEs)

- 1 Director or Deputy
- 1 Contract Specialist
- 1 Help Desk Staff
- 3 Mail Center Staff
- 3 Information Center Staff – to notify public of the location of court proceedings and offices
- 1 Telecom Staff

Budget and Finance Division (7 FTEs excepted, 38 Total FTEs)

- 1 Director or Deputy
- 2 Accountants to process victims of crime, jurors, mediators and interpreter payment
- 2 Banking & Finance Staff to process witness payments and court-ordered disbursements
- 2 Defender Services Staff to process payments to attorneys and other service providers as required under the mandatory Criminal Justice Act (CJA), Counsel for Child Abuse and Neglect (CCAN) and Guardianship Programs

Capital Projects & Facilities Management Division (6 FTEs excepted, 26 Total FTEs)

- 1 Director
- 5 Building Engineering Staff

Center for Education and Training (0 FTEs excepted, 7 Total FTEs)

Civil Division (48 FTEs excepted, 104 Total FTEs)

- 1 Director or Deputy
- 1 Administrative Assistant
- 4 Branch Chiefs
- 2 Attorney Advisors
- 2 Branch Supervisors
- 2 Case Processing Supervisors
- 1 Landlord Tenant Judgment Officer
- 1 Accounting Technician
- 14 Deputy Clerks
- 20 Courtroom Clerks

Court Reporting and Recording Division (49 FTEs excepted, 55 Total FTEs)

- 2 Supervisors (Director or designee)
- All Court Reporters, Case Managers and Transcribers are considered excepted personnel.

Crime Victims Compensation Program (6 FTEs excepted, 12 Total FTEs)

- 1 Director
- 5 Staff persons (compensation is drawn from grant funds or administrative monies in the Crime Victims Compensation Fund)

Criminal Division (68 FTEs excepted, 114 Total FTEs)

- 1 Director or Deputy
- 38 Courtroom Support Staff
- 6 Special Proceedings Staff
- 6 Case Management Staff
- 7 Quality Assurance Staff
- 9 Intake/Arraignment Court Staff
- 1 Administrative Assistant

Domestic Violence Unit (27 FTEs excepted, 27 Total FTEs)

All domestic violence staff are considered excepted personnel.

Family Court Operations Division (95 FTEs excepted, 173 Total FTEs)

- 1 Director or Deputy
- 18 Central Intake Center Staff
- 2 New Referrals Staff
- 10 Juvenile/Neglect Staff
- 3 Counsel for Child Abuse and Neglect Program
- 10 Domestic Relations Branch Staff
- 10 Paternity and Support Staff
- 3 Mental Health and Habilitation Staff
- 33 Courtroom Support Staff
- 1 Administrative Assistant
- 4 Self Help Center Staff

Family Court Social Services Division (128 FTEs excepted, 128 Total FTEs)

All probation staff considered excepted to supervise juveniles on probation and provide services to juveniles under the Court's jurisdiction

Human Resources Division (3 FTEs excepted, 25 Total FTEs)

- 1 Director
- 1 Deputy
- 2 Benefits Specialist to process furlough actions and respond to inquiries

Information Technology Division (16 FTEs excepted, 61 Total FTEs)

- 3 Help Desk staff to provide computer support for courtrooms and chambers
- 1 System Administrator to back-up the mission critical file systems that support case processing
- 1 Senior Database Administrator to back-up the case management system
- 3 Central Recording Technicians to monitor the courtroom recording system to ensure that the court proceedings are recorded
- 2 IJIS Facilitators to support the case management system

2 Courtroom Technology Technicians – to support the audio-visual equipment in the courtrooms
1 Security Administrator - to trouble shoot all security issues
1 Network Administrator – to troubleshoot all network issues
1 – Chief Technology Officer – to ensure all applications are up and running and to post web announcements
1 Director

Multi-Door Dispute Resolution Division (12 FTEs excepted, 21 Total FTEs)

1 Director
2 Branch Chiefs
1 Program Officer for Civil Mediations
1 Program Officer for Landlord Tenant mediations.
1 Program Officer for Small Claims Mediations
2 Program Officers for Family Mediations
1 Program Officer for Child Protection Mediations
1 Administrative Assistant
2 Family Staff Mediators

Office of the Auditor-Master (4 FTEs excepted, 4 Total FTEs)

All Auditor-Master staff are considered excepted personnel.

Office of the General Counsel (1 FTE excepted, 4 Total FTEs)

1 attorney to address legal issues with respect to the shutdown of operations

Probate Division/Register of Wills (25 FTEs excepted, 48 Total FTEs)

1 Register of Wills
1 Deputy Register of Wills/Legal Branch Manager
1 Administrative Assistant
2 Assistant Deputy Registers
2 Small Estate Specialist
1 Supervisor, Probate Clerk's Office
8 Deputy Clerks, Probate Clerk's Office
1 Supervisor, Quality Assurance Branch
2 Case Managers
3 Courtroom Clerks, Quality Assurance Office
1 Supervisor, Auditing and Appraisals Branch
2 Auditors

Research and Development Division (0 FTEs excepted, 8 Total FTEs)

Special Operations Division (13 FTEs excepted, 29 Total FTEs)

1 Director
1 Administrative Assistant
5 Jurors' Office staff to continue grand and petit jurors operations
2 Staff to support Judge in Chambers

3 Staff to operate the Office of Court Interpreting Services
1 Staff to operate the Appeals Coordinator's Office

Tax Division (FTEs included above in Special Operations Division)

All tax proceedings will be postponed; there are no personnel considered excepted personnel.

E. NUMBER OF PERSONNEL PRIOR TO THE APPROPRIATION LAPSE

In FY 2012, the District of Columbia Courts had 1,382 funded FTEs. One thousand three hundred and seventeen (1,317) personnel are currently on board.

F. PERSONNEL RETAINED UNDER THE SHUTDOWN PLAN

Eight hundred forty-seven and a half (847.5) personnel are to be retained under the plan because their compensation is financed from a source other than annual appropriations (5 from the Crime Victims Compensation Program), they are authorized by law, they must be retained to protect life and property, or they are necessary to implement a shutdown of Court functions.

G. PERSONNEL FURLOUGHED

The District of Columbia Courts plan to initially furlough 469.5 FTEs after the appropriation lapse (1,317 Total - 847.5 Excepted = 469.5).

H. APPROVAL OF RETAINED STAFF

Prior to the appropriate lapse, the Executive Officer shall approve the retained staff. The information will be communicated to the division directors who will provide this information to the affected personnel.

I. NOTIFICATION TO PERSONNEL/CONTRACTORS

I. Notice of change in level of court operations.

(a) In the event of a lapse in appropriations, the Executive Officer, or a designee of the Executive Officer, will provide notice of and information regarding the implementation of the D.C. Courts Plan for Operations in Absence of Appropriations (Plan) as follows:

(1) Notice of implementation of the Plan will be provided to employees, contractors, local media, and the public through use of the D.C. Courts internet web site, intranet site, telephone information line, and local media contacts.

(2) A written furlough notice will be delivered to each employee who is not listed as excepted as indicated in Section D above. The notice will be in the format set out in Appendix 1.

(3) Written notice will be sent to contractors advising them of the termination or suspension of specific contract activity not authorized in the absence of appropriations.

(4) Notice of implementation of the Plan will be provided to partner agencies, including the Pretrial Services Agency, the United States Attorneys Office, and Public Defender Service, the Court Services and Offender Supervisor Agency, and the United States Marshals Service, by e-mail or the automated notification system.

(b) Notice of a change in the level of operations or of the resumption of full operations will be given by the methods provided in (a)(1) – (4) of this section.

II. Termination of non-essential operations.

(a) Upon implementation of the Plan, employees who have been sent a written furlough notice will be placed on non-pay, non-duty status.

(b) Contract actions and payments not authorized in the absence of appropriations will be stopped.

(c) Designated staff in affected divisions will take other actions necessary to postpone or terminate non-essential operations.

III. Change in level of operations in the event of a lapse in appropriations of more than five days.

In the event that a lapse in appropriations exceeds five days, the Executive Officer with both Chief Judges will reassess the minimum needs for staffing and supplies in support of case resolution activity. Significant case backlogs or other adverse effects on case resolution resulting from reduced operating levels may warrant placing additional employees in excepted status, and resuming essential contracts.

IV. Resumption of full operations.

Upon the availability of appropriations to resume operations, notice thereof will be given by the methods provided in (a)(1) – (4) of Section I above.

J. SHUTDOWN DAY

All Court personnel will be provided written furlough notices either through electronic means or by hand delivery at 9:00 a.m. at their duty station on the first regular business day following notice of an appropriation lapse. Furloughed staff will be requested to perform the necessary shutdown activities and return home. It is estimated that the shutdown activities will take no longer than four hours and furloughed staff will leave as soon as shutdown activities are completed.

K. CONTRACTORS

In accordance with the District of Columbia Courts' Procurement Policies and Procedures, stop-work orders will be issued by the Administrative Services Division's Contract and Procurement Branch to all affected contractors on the first business day following appropriation lapse. The Contracting Officer or designated staff will: 1) compile a list of all current contractors, 2) determine those contractors with funding and purpose necessary to continue work in an appropriation lapse, and 3) determine those contractors who will receive stop-work orders. The Contracting Officer will work closely with the Contracting Officer Technical Representatives during this process. Contractors funded by prior-year appropriations, no-year appropriations, non-appropriated funds, or current year appropriated funds properly incurred prior to appropriation lapse may continue to perform services according to the contract terms and conditions. Payment to these contractors for services/goods provided during the shutdown period may continue throughout the shutdown period. Contractors funded by current year appropriated funds properly incurred post appropriation lapse may work under the contract terms; however, payment will not be provided to the contractors until deemed appropriate by Congress.

L. FY 2012 OBLIGATIONS AND PAYMENTS AFTER APPROPRIATION LAPSE

The Courts will limit new obligations to "excepted services or goods". Excepted services or goods are those needed for: 1) conducting orderly shutdown of agency operations, and 2) the protection of life and property. The Courts will issue payments to employees during the shutdown period for work performed prior to the appropriation lapse. The Courts cannot issue payments to retained employees for work performed after appropriation lapse, including work performed by retained and furloughed employees on the shutdown day. The Courts will continue to issue payments to contractors funded by prior-year, no-year, non-appropriated, or current year appropriated obligations properly incurred prior to appropriation lapse. The Courts cannot issue payments to contractors for obligations incurred post appropriation lapse.

Appendix 1

FURLOUGH NOTIFICATION

To: [Employee]

From: Gloria Trotman, Director, Human Resources Division

Subject: Furlough notice due to lapse of appropriations

In the absence of either a FY 2012 appropriation or a continuing resolution, no further financial obligations may be incurred by the D.C. Courts, except for those related to the orderly suspension of D.C. Courts' operations or performance of excepted activities as defined in guidance provided in Office of Management and Budget Circular A-11, § 124. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective immediately. This furlough, e.g., nonpay, nonwork status, is not expected to exceed 30 days. You should listen to public broadcasts and when you hear that a continuing resolution or a FY 2012 appropriation has been signed by the President, you will be expected to return to work on your next regular duty day. The D. C. Courts will use our emergency notification system (emergency telephone calls; posting on website (www.dccourts.gov); messages on individual employee work telephones) to advise as well.

This action is being taken because of a sudden emergency requiring curtailment of the D.C. Courts' activities; therefore, no advance notification is possible. Employees who are being retained as excepted are required for the orderly suspension of operations or they are performing one of the excepted activities defined in the OMB guidance.

During the furlough period, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, but must remain away from your work place unless and until a continuing resolution or a FY 2012 appropriation has been signed by the President. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Career service employees who have completed a probationary period, excepted service employees, CES appointees and CEMS appointees, may appeal this action by submitting a written appeal to the Executive Officer within 30 calendar days after the effective date of the furlough. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. The filing of an appeal will not stay the imposition of the furlough.