

IN THE COURT OF COMMON PLEAS  
FOR COUNTY NAME

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA )

v. )

JOHN DOE )

Case No. #####

MOTION TO SUSPEND PAYMENTS OF COURT  
FINES AND COSTS

Defendant JOHN DOE, through counsel, hereby moves this Honorable Court to temporarily suspend his obligation to pay court fines and costs in this matter for a period of six months pursuant to Pa.R.Crim.P. 706, and as grounds therefor avers as follows:

**I. Background**

1. As a result of his criminal conviction in this matter, Mr. DOE owes TOTAL #AMOUNT DUE# in fines and costs. PAYMENT AND EMPLOYMENT HISTORY.
2. Mr. DOE is in dire financial circumstances and currently unable to pay any amount toward his court fines and costs, let alone #AMOUNT# per month. Since his release from jail in this matter on DATE RELEASED, he has been RESIDENCE/HOUSING.
3. EMPLOYMENT HISTORY
4. DISABILITY
5. SOCIAL SECURITY
6. FINANCIAL ASSETS AND SOCIAL ASSISTANCE

**II. Argument**

7. When the Court sets a payment plan for a defendant who is unable to pay the full amount

of fines and costs in one remittance, it must set a payment plan that it “deems to be just and practicable, taking into account the financial resources of the defendant and the nature of the burden its payments will impose.” Pa.R.Crim.P. 706(B). Such a payment plan must permit the defendant to “make payments in reasonable installments.”

*Commonwealth ex rel. Parrish v. Cliff*, 304 A.2d 158, 161 (1973).

8. Because Mr. DOE is now requesting a change to his payment plan, he bears the burden of showing that his “financial condition has deteriorated to the extent that the defendant is without the means to meet the payment schedule.” Pa.R.Crim.P. 706(D). As described above, Mr. DOE is EXPLANATION OF NEED. See *Commonwealth v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999) (receiving public assistance (e.g., food stamps or Medicaid) and the services of the public defender’s office “invite the presumption of indigence.”). No evidence rebuts these presumptions, and Mr. DOE satisfies the requirements of Rule 706 to have his payment plan modified.

9. Mr. DOE respectfully requests that the Court suspend any requirement that he make payments toward his fines and costs for a period of six months. The Superior Court has held that Rule 706 enforces the constitutional requirement that there is a “duty of paying costs ‘only against those who actually become able to meet it without hardship.’”

*Commonwealth v. Hernandez*, 917 A.2d 332, 337 (Pa. Super. Ct. 2007) (quoting *Fuller v. Oregon*, 417 U.S. 40, 54 (1974)). In making this ruling, the *Hernandez* court cited with approval *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984), which held that a court must consider “the other demands on [the defendant’s] own and family’s finances, and the hardships he or his family will endure if repayment is required. The purpose of this inquiry is to assure repayment is not required as long as he remains indigent.”

10. That Mr. **DOE** has some money **SOURCE OF MONEY** does not, as a matter of law, confer on him the financial ability to pay his LFOs if he lacks the ability to meet his basic life needs. If a defendant has no “financial assets [or] liabilities” and has been “living from hand to mouth,” a court imposing a fine lacks any evidence supporting a finding of ability to pay the fine. *Commonwealth v. Gaskin*, 472 A.2d 1154, 1157-58 (Pa. Super. Ct. 1984); *see also Eggers*, 742 A.2d at 176 n.1 (defendant receiving means-based public assistance is presumed unable to pay). In the in forma pauperis context,<sup>1</sup> the Superior Court has explained that the dispositive question is not whether a defendant is “unable to pay the costs but whether they are in poverty. If they are in poverty, it follows that they are unable to pay the costs, and their petition should be granted.” *Gerlitzki v. Feldser*, 307 A.2d 307, 308 (Pa. Super. Ct. 1973) (en banc). In other words, an indigent individual is—as a matter of law—*unable* to pay. *See Schoepple v. Schoepple*, 361 A.2d 665, 667 (Pa. Super Ct. 1976) (en banc) (“[O]ne in poverty will not be able to pay costs.”).
11. The Supreme Court of Pennsylvania has adopted this approach to evaluating indigence, explaining that a person is unable to pay if he could afford to do so “only by sacrificing some of the items and services which are necessary for his day-to-day existence . . .

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<sup>1</sup> The Superior Court has instructed that trial courts should look to the “established processes for assessing indigency” through the in forma pauperis (“IFP”) standards when determining whether certain costs should be waived in criminal cases. *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008) (using the IFP standards and the appointment of counsel standards to determine whether to waive the cost of an expert in a criminal case, although the defendant failed to provide evidence of indigency); *see also Commonwealth v. Mead*, 446 A.2d 971, 974 (Pa. Super. Ct. 1982) (reviewing IFP application and petition for appointment of counsel to help determine financial status when setting a fine). This is because of the “dearth of case law” in criminal cases, compared with the “well-established principles governing indigency in civil cases.” *Commonwealth v. Lepre*, 18 A.3d 1225, 1226 (Pa. Super. Ct. 2011) (applying IFP standards to waive appeal costs). These same principles should be used to determine whether a defendant is able to pay under Rule 706, as indigence is indigence.

Pennsylvania courts use “poverty” and “indigent” interchangeably, and there is no legal distinction between the two terms. *See, e.g., Commonwealth v. Hernandez*, 917 A.2d 332 (Pa. Super. Ct. 2007); *Crosby Square Apartments v. Henson*, 666 A.2d 737 (Pa. Super. Ct. 1995); *Commonwealth v. Regan*, 359 A.2d 403 (Pa. Super. Ct. 1976). Accordingly, cases that set forth standards for determining whether an individual is in poverty are equally applicable to the inquiry under Rule 706 of whether a defendant is indigent.

despite the fact that he may have some ‘excess’ income or unencumbered assets.” *Stein Enterprises, Inc. v. Golla*, 426 A.2d 1129, 1132 (Pa. 1981). **EXAMPLES OF HOW THE DEFENDANT CANNOT MEET BASIC LIFE NEEDS.** Moreover, Mr. **DOE** is well below the federal poverty guidelines, which only underscores that he lacks the ability to make any payments to the Court.

12. The suspension of Mr. **DOE**’s payments for six months provides a reasonable time period for Mr. **DOE** to secure employment and get back on his feet financially. According to the U.S. Department of Labor’s Bureau of Labor Statistics, the average length of unemployment is approximately six months, and Mr. **DOE** left jail with a felony conviction only one month ago. *See* Exhibit E, U.S. Dep’t of Labor Bureau of Labor Statistics, Unemployed Persons by Duration of Employment. In addition, Mr. **DOE** should have a decision on his SSI application by that time, which should help better dictate what payment plan, if any, would be appropriate given his circumstances.

WHEREFORE, Mr. **DOE** respectfully requests that this Honorable Court grant his Motion and suspend his payments for six months. This matter is set for a hearing on **HEARING DATE AND TIME**, at which time Mr. **DOE** will be prepared to present testimony and additional evidence.

Respectfully submitted,

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**[signature block]**

Date: #DATE#

### VERIFICATION

I, **JOHN DOE**, the Defendant in this matter, hereby verify that the statements set forth in the foregoing Motion are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. Cons. Stat. § 4904, relating to unsworn falsification to authorities.

Date: #DATE#

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**ORDER GRANTING MOTION TO SUSPEND PAYMENTS OF COURT  
FINES AND COSTS**

Upon consideration of the Defendant's Motion in the above-captioned case, and upon  
consideration of the record and exhibits filed thereof, it is on this \_\_\_\_ day of MONTH, YEAR,

ORDERED that:

1. The Defendant's obligation to make payments on his fines and costs in this matter is  
hereby SUSPENDED for a period of six months.

BY THE COURT:

\_\_\_\_\_  
Judge, Court of Common Pleas