**IN THE COURT OF COMMON PLEAS**

**FOR COUNTY NAME**

**CRIMINAL DIVISION**

**COMMONWEALTH OF PENNSYLVANIA )**

 **)**

 **v. ) Case No. #############**

 **)**

**JOHN DOE )**

 **)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO WAIVE SUPERVISION COSTS**

 Defendant John Doe, through counsel, hereby moves this Honorable Court to waive the $X he owes to this court in supervision costs based on his inability to pay, pursuant to 18 P.S. § 11.1102(c) and Pa.R.Crim.P. 706(C), and as grounds thereof avers as follows:

1. Mr. Doe’s supervision fees were imposed pursuant to 18 P.S. § 11.1102, which also provides explicit statutory authority for this Court to waive those fees “based on an offender’s present inability to pay.” 18 P.S. § 11.1102(c). Moreover, the Commonwealth Court has explained that the procedure outlined by Pa.R.Crim.P. 706(C) permits a defendant to petition the court post-sentencing when that defendant lacks the ability to make payments on his costs. *See* *Lepre v. Susquehanna County Clerk of Judicial Records*, 2121 C.D. 2012, 2013 WL 5508784 at \*3 (Pa. Commw. Ct. 2013).
2. At a hearing on this matter, Mr. Doe will provide evidence that he lacks the ability to pay his supervision fees because his current income does not allow him to live on his own and he receives public benefits in the form of food stamps and Medicaid. Accordingly, he is indigent. *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.”).
3. Mr. Doe respectfully requests that the Court exercise the discretion granted under 18 P.S. § 11.1102(c) and Pa.R.Crim.P. 706(C) to waive the $X in supervision costs he owes.
4. That Mr. Doe is employed part-time and makes some money does not, as a matter of law, mean that he has the “ability to pay” his supervision fees. 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). In the in forma pauperis context,[[1]](#footnote-1) 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.”).
5. Pennsylvania’s appellate courts have explained through these IFP cases that an individual who will be unable to pay in the near future does not have the “present” ability to pay. In *Schoepple*, for example, the court found no present ability to pay where it would be “about twenty months” before the petitioner would be able to pay a fee required to appeal. *Schoepple*, 361 A.2d at 668. *See also* *Stein Enterprises v. Golla*, 426 A.2d 1129, 1133 (Pa. 1981) (individual eligible for IFP where even “if appellant were to devote his entire excess income to paying the $250.00 here in issue, it would take him at least two years to fulfill this obligation: the law must not be so hard a taskmaster.”).
6. Mr. Doe is requesting to have his supervision fees waived because he cannot currently afford to pay them, and it is unlikely that his financial circumstances will change in the near future. Mr. Doe is presently on a $X per month payment plan. At that rate, it will take him more than eight years to pay off his other court debt, and nearly seven *additional years* if he must pay all of the supervision fees, as well. That would draw out his obligation far past the timeframes already disfavored in *Stein Enterprises* and *Schoepple.*
7. It has been more than a decade since the supervision fees in this matter were imposed, and they remain unpaid because Mr. Doe has lacked the financial resources to pay them. While he is making an effort to put his life back together and become self-sufficient, he presently lacks the ability to pay—the standard required by 18 P.S. § 11.1102(c)

WHEREFORE, Mr. Doe respectfully requests that this Honorable Court grant his Motion and waive his supervision fees in this matter.

 Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature block]

Date

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 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 \_\_\_\_\_\_\_\_\_\_\_\_, 2017, ORDERED that:

1. The Defendant’s supervision fees in this matter are hereby WAIVED.

 BY THE COURT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge, Court of Common Pleas

1. 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. [↑](#footnote-ref-1)