

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

Commented [A1]: Change the name of the court based on location and other information in the caption

TRIAL DIVISION—CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
:
:
v. : No. CP-51-CR-
:
:
JOHN DOE :
:
:
_____ :

MOTION TO WAIVE FINES AND COSTS

Commented [A2]: Customize throughout based on whether you are seeking waiver of *both* fines and costs or just one of them

Pursuant to 42 Pa.C.S. § 9730(b)(3), Defendant **John Doe**, through counsel, respectfully requests that this Court waive **his** outstanding fines and costs due to indigence and inability to pay. In support thereof, **Mr. Doe** avers as follows:

A. Background

1. Background on the defendant’s case, how much is owed, what if any has been paid, and whether the defendant is on a court-ordered payment plan (where a judge actually signed an order, as opposed to a payment schedule set by probation or administrative staff).
2. Whether the defendant is represented by the public defender or pro bono counsel. Address the defendant’s financial status is and whether it is likely to change in the near future. Be sure to talk about any public assistance that the defendant receives and whether he, for example, is unable to work due to disabilities. For specific types of financial information to consider including, look at the “Ability to Pay Evaluation Form (income and expense sheet)” on www.aclupa.org/finesandcosts
3. If applicable, explain hardship that the defendant has suffered because of court’s

Commented [A3]: The distinction between whether the judge signed an order or admin staff set a payment plan without ever having it in an order matters in terms of whether you are proceeding under 42 Pa.C.S. § 9730(b)(3)(i) (no existing payment plan order) or (ii) (existing payment plan order).

It somewhat changes the burdens and court’s options. You will see below that you have to choose one of two paragraphs based on this.

collection efforts, including difficulty making past payment plans. Also note any ongoing harm to the defendant because he owes these fines and costs, like issues with expungements, pardons, job searches, housing, etc.

4. If applicable, explain why waiver is needed. Specifically mention any plans to seek an expungement or a pardon. Explain to the court why it should *want* to help by waiving the debt.

B. This Court must consider whether to reduce or waive Mr. Doe’s fines and costs in light of his inability to pay.

5. When a defendant is unable to afford to pay all fines and costs in a single remittance, the legislature has authorized this Court to “reduce or waive the costs or fines” because they are unaffordable. 42 Pa.C.S. § 9730(b)(i).

Commented [A4]: Use this paragraph if the defendant has never been on a court-ordered payment plan.

6. When a defendant is unable to pay in accordance with an existing court-ordered payment plan, the legislature has authorized this Court to “reduce or waive the costs or fines” because they are unaffordable. 42 Pa.C.S. § 9730(b)(ii).

Commented [A5]: Use this paragraph if the defendant is on a court ordered payment plan and has defaulted or default is imminent

7. The Supreme Court of Pennsylvania has further explained that the Court has a “duty” to determine the “amount” of fines and costs “post-sentence upon the defendant’s default and a finding of his inability to pay.” *Commonwealth v. Lopez*, 280 A.3d 887, 903 (Pa. 2022) (addressing Pa.R.Crim.P. 706(C)). Thus, although courts are not required to consider a defendant’s ability to pay certain fines and costs at *sentencing*, Rule 706(C) requires that the Court consider the defendant’s financial resources and whether to “modif[y] or waive[.]” that debt in light of the inability to pay. *Id.* at 901.
8. Following *Lopez*, the legislature codified the Court’s substantive power to waive fines and costs in Act 163 of 2022. *See* 42 Pa.C.S. § 9730(b)(3)(i) and (ii).

9. This waiver authority applies to all fines and costs when a defendant is unable to pay, with one exception, regardless of whether the fines and costs were considered discretionary or mandatory at the time of sentencing. The only exception to the Court’s broad waiver authority is the costs imposed under Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.¹ See 42 Pa.C.S. § 9730(b)(3)(i) and (ii). As the Supreme Court explained in *Lopez*, although only “mandatory court costs” were imposed on a defendant, “modification or waiver of costs upon a proper showing of insufficient financial means” is nevertheless permissible. See *Lopez*, 280 A.3d at 901.

C. Due to his poverty, Mr. Doe lacks the ability to pay fines and costs.

10. Whether a defendant can afford to pay court fines and costs is defined by whether that person is able to afford to meet basic life needs. See *Stein Enterprises, Inc. v. Golla*, 426 A.2d 1129, 1132 (Pa. 1981) (“[I]f the individual can afford to pay court costs only by sacrificing some of the items and services which are necessary for his day-to-day existence, he may not be forced to prepay costs in order to gain access to the courts, despite the fact that he may have some ‘excess’ income or unencumbered assets.”)² See also *Commonwealth v. Gaskin*, 472 A.2d 1154, 1157-58 (Pa. Super. Ct. 1984) (when a defendant has no “financial assets [or] liabilities” and has been “living from hand to mouth,” a court lacks evidence supporting a finding of ability to pay a fine).

¹ Those costs are the Crime Victim Compensation Fund and the Victim Witness Service costs.

² These standards come from the civil *in forma pauperis* case law, which the Superior Court has repeatedly incorporated into the criminal case law as the “established processes for assessing indigency,” *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008), 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). 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.

11. Individuals like **Mr. Doe**, who are indigent and impoverished, are by definition unable to pay: 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.”).
12. Those *in forma pauperis* indigence standards dovetail with standards set forth in criminal cases. As that court has explained, the Constitution requires that there be 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.”
13. When considering whether a defendant is able to pay, this Court can consider only the defendant’s finances, not those of friends or family, as the obligation to pay is the defendant’s alone. See *Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. Ct. June 21, 2018) (“Although Appellant indicated that he could potentially borrow money from a sibling, the court failed to find—as our law requires—that he alone had the financial ability to pay the outstanding fines and costs such that imprisonment was warranted.”).

14. Given Mr. Doe's lack of financial resources, he cannot afford to pay without significant hardship. [brief summary of financial hardship] See *Commonwealth v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999) (receiving public assistance (such as food stamps or Medicaid) and the service of the public defender “invite the presumption of indigence” since these are clear indicia that the defendant cannot afford to pay). The unaffordable fines and costs should be waived in this matter.

WHEREFORE, for the reasons stated above, Mr. Doe respectfully requests that this Court grant the motion and waive all outstanding fines and costs.

Respectfully submitted,

[Signature block]

VERIFICATION

I verify that the statements made in the foregoing Motion are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

Commented [A6]: Update the name of the court

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ORDER WAIVING FINES AND COSTS

Upon consideration of the Defendant’s Motion in the above-captioned case, and upon consideration of the record, it is on this ____ day of _____, 2023 ORDERED that:

1. All outstanding fines and court costs in this matter, other than the Crime Victim Compensation Fund and the Victim Witness Service costs, are WAIVED, and the Clerk of Courts is hereby ORDERED to adjust the accounting in the case accordingly.

BY THE COURT:

Judge, Court of Common Pleas