

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020-2021

JOSE TEJADA,  
Petitioner,

-v.-

COMMONWEALTH OF MASSACHUSETTS  
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME JUDICIAL COURT FOR  
THE COMMONWEALTH OF MASSACHUSETTS

**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

Pursuant to the provisions of Rule 39, the petitioner, Jose Tejada, moves to file the attached Petition for Writ of Certiorari to the Supreme Judicial Court of Massachusetts without prepayment of costs and to proceed *in forma pauperis*. The petitioner is being represented by the undersigned counsel by appointment of the Massachusetts Committee for Public Counsel Services (CPCS) pursuant to *Mass. Gen. L. c. 211D, §§ 5 and 6(b)*, based on a determination of the petitioner's indigence, and based on further CPCS authorization to file a petition for a writ of certiorari in the U.S. Supreme Court based on counsel's recommendation as to the viability of such a petition.

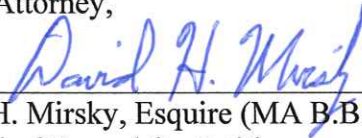
As the petitioner is Spanish speaking and requires an interpreter-translator to communicate with counsel, and due to COVID-19 concerns, counsel provided the petitioner, by mail, with a Spanish translation of the financial affidavit; it is counsel's understanding that the petitioner has completed and mailed this affidavit to counsel, however it has not been received.

Attached hereto are copies of (1) the undersigned counsel's appointment by CPCS to represent Mr. Tejada as his Post-Conviction Panel, Murder Subpanel, attorney in this matter; (2) email correspondence between the undersigned counsel and Elizabeth Dembitzer, Director of Criminal Appeals of the Private Counsel Division of CPCS, 44 Bromfield Street, Boston MA 02108, indicating CPCS authorization to file this petition; and (3) *Mass. Gen. L. c. 211D*, §§ 5 and 6(b).

Respectfully submitted,

Jose Tejada

By his Attorney,



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David H. Mirsky, Esquire (MA B.B.O. # 559367)  
Counsel of Record for Petitioner  
Mirsky & Petito, Attorneys at Law  
P.O. Box 1063  
Exeter, NH 03833  
Tel.: 603-580-2132  
[dmirsky@comcast.net](mailto:dmirsky@comcast.net)

<b>NOTICE OF ASSIGNMENT OF COUNSEL</b>		<b>Assignment Number</b> C47494101		<b>COMMONWEALTH OF MASSACHUSETTS</b>	
<b>Date of Assignment</b> 11/20/2014	<b>Judge</b> CPCS	<b>Court</b> Essex Superior Court - Salem	473	<b>JurySession</b> <input type="checkbox"/>	

<b>Name of Person for whom counsel assigned</b> Jose Tejada, W105101		The court has found the above-named person:	
<b>Juv/Adult</b>		<b>Indigent</b>	<input checked="" type="checkbox"/>
<b>Docket No.</b> ESCR2011-01390		<b>Contribution</b>	
		<b>Incarceration Status</b> Souza-Baranowski Correctional Center	

<b>Post-Trial Criminal Case Purpose Of Assignment</b> Direct
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<b>Offense / Charge</b> 601 Murder	<b>TrialCourt</b> Essex Superior Court - Salem
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<b>Attorney Assigned</b>	
<b>BBO</b>	559367
<b>Name</b>	David Mirsky
<b>Address</b>	P.O. Box 1063
	Exeter, NH 03833
<b>Phone</b>	(603) 580-2132

<b>Authorized Signature:</b>  _____ Dorothy A. Mele
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Friday, November 21, 2014

Elizabeth Dembitzer <edembitzer@publiccounsel.net>

7/16/2020 1:14 PM

**RE: Jose Tejada; Privileged; Request for CPCS Authorization to File  
and Litigate US Supreme Court Petition for Writ of Certiorari ;  
URGENT**

To DAVID MIRSKY <dmirsky@comcast.net>

Hi David,  
You're authorized to go forward with this petition.  
Good luck!  
Liz

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**From:** DAVID MIRSKY [mailto:[dmirsky@comcast.net](mailto:dmirsky@comcast.net)]

**Sent:** Monday, July 13, 2020 12:50 PM

**To:** Elizabeth Dembitzer

**Subject:** Jose Tejada; Privileged; Request for CPCS Authorization to File and Litigate US Supreme Court Petition for Writ of Certiorari ; URGENT

Hi Liz,

Attached are the following: (1) my memorandum requesting authorization to file a cert. petition in the US Supreme Court on behalf of my client, Jose Tejada, who was convicted on three first degree murder charges; and (2) a PDF copy of the SJC's decision in Com. v. Tejada which is the subject of this request.

This matter is urgent as the deadline for filing of a cert. petition is now August 13 (extended due to COVID-19), and Mr. Tejada requires communication by English-Spanish interpreter, and I will need to communicate with him to obtain his affidavit of indigency which is required for the US Supreme Court motion to proceed in forma pauperis.

Thank you for your consideration.

David  
(Cell Phone: 603-303-2421)

David H. Mirsky, Esquire  
Mirsky & Petito, Attorneys at Law  
P.O. Box 1063  
Exeter, NH 03833  
Office Telephone: 603-580-2132  
Cell Phone: 603-303-2421

## **ALM GL ch. 211D, § 5**

Current through Chapters 1-120 of the 2020 Legislative Session of the 191st General Court.

***Annotated Laws of Massachusetts > PART III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES (Chs. 211 - 262) > TITLE I COURTS AND JUDICIAL OFFICERS (Chs. 211 - 222) > TITLE I COURTS AND JUDICIAL OFFICERS (Chs. 211 — 222) > Chapter 211D Committee for Public Counsel Services (§§ 1 — 16)***

### **§ 5. Appointment or Assignment of Counsel.**

Said committee shall establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding, either criminal or noncriminal in nature, provided, however, that the laws of the commonwealth or the rules of the supreme judicial court require that a person in such proceeding be represented by counsel; and, provided further, that such person is unable to obtain counsel by reason of his indigency. The committee may also establish a system for the provision of counsel in any pre-arraignment procedure. A justice or associate justice shall assign a case to the committee, as hereafter provided, after receiving from the probation officer a written report containing the probation officer's opinion as to the defendant's ability to pay for counsel, based on the standards and procedures provided for in section two.

### **History**

1983, 673, § 2.

Annotations

### **Notes**

#### **Editorial Note—**

**Acts 1983, 673, § 2**, enacted this section. Section 5 provides:

SECTION 5. In the creation of the public counsel division set forth in section five of chapter two hundred and eleven D of the General Laws, all personnel, title to all real and personal property, all legally valid and enforceable claims and obligations, all facilities, and all other resources of the Massachusetts defenders committee shall be transferred to said division. The committee shall ensure the continued and uninterrupted representation by said division of any indigent client being represented by the Massachusetts defenders committee Roxbury Defenders Committee, Inc. at the time of said transfer.

## **ALM GL ch. 211D, § 6**

Current through Chapters 1-120 of the 2020 Legislative Session of the 191st General Court.

**Annotated Laws of Massachusetts > PART III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES (Chs. 211 - 262) > TITLE I COURTS AND JUDICIAL OFFICERS (Chs. 211 - 222) > TITLE I COURTS AND JUDICIAL OFFICERS (Chs. 211 — 222) > Chapter 211D Committee for Public Counsel Services (§§ 1 — 16)**

### **§ 6. Use of Public Defender Division; Private Counsel Division.**

(a) In carrying out its duties as prescribed in section 5, the committee shall utilize its staff of attorneys, which shall be known hereafter as the public defender division. The division shall include a unit to be known as the Roxbury defenders unit, which shall represent clients as assigned pursuant to this chapter in the Roxbury division of the district court department. The public defender division shall be assigned to represent indigent defendants in all criminal cases, except that: (i) the public defender division shall not be assigned to represent more than 1 defendant in any matter before any court on the same case or arising out of the same incident; (ii) the public defender division shall not be assigned to represent a defendant in any case in which there is a conflict of interest with any of its clients; (iii) notwithstanding any general or special law to the contrary, the public defender division shall be assigned in any civil or criminal matter described in subsection (b) if the chief counsel determines in writing that insufficient numbers of qualified attorneys are available for assignment by the private counsel division.

(b) In carrying out its duties as prescribed in section 5, the committee shall establish, supervise and maintain a system for the appointment of private counsel, hereafter called the private counsel division, which shall include a children and family law program and a mental health unit. The committee shall enter into contractual agreements with any state, county or local bar association or voluntary charitable group, corporation or association, including bar advocate groups, for the purpose of providing such counsel. The committee may also contract with such other organized groups of attorneys as may be formed to afford representation to indigent defendants and may appoint and compensate private attorneys, on a case-by-case basis, as counsel for indigents entitled to representation. No individual, member or participant in a group, corporation or association with whom the committee may contract under this paragraph shall be considered to be or have any rights as a state employee.

The private counsel division shall be assigned for all persons accused of crimes entitled to counsel who, through their inability to pay for counsel, shall have counsel appointed to them, but who, pursuant to subsection (a) shall not be represented by the public counsel division.

The private counsel division shall also be assigned to represent persons in such other proceedings as the chief counsel shall determine to be necessary.

### **History**

1983, 673, § 2; 1990, 150, § 331; 1995, 38, § 178; 1996, 200, §§ 30, 31; 1998, 194, § 213; 2004, 149, § 193; 2011, 68, § 113.