

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEQUINCY BRASS,)	Electronically Filed
)	Feb 22 2021 05:00 p.m.
Appellant,)	Elizabeth A. Brown
)	Clerk of Supreme Court
vs.)	Case No. 81142
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	

**APPELLANT’S MOTION TO SUPPLEMENT OPENING BRIEF TO
REFERENCE A NEWLY DISCOVERED BAR COMPLAINT
AGAINST MITCHELL L. POSIN THAT WAS PENDING DURING
BOTH *YOUNG* HEARINGS**

Comes Now Appellant DEQUINCY BRASS, by and through Chief Deputy Public Defender DEBORAH L. WESTBROOK, and moves this Honorable Court for leave to supplement the Opening Brief to address newly discovered evidence that Mitchell L. Posin was subject to a pending Bar Complaint during both Young hearings in this case. This motion is based on the attached Declaration of Counsel.

DATED this 22nd day of February, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Chief Deputy Public Defender

DECLARATION OF DEBORAH L. WESTBROOK

1. I am an attorney licensed to practice law in the State of Nevada; I am the Chief Deputy Public Defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. On January 26, 2021, I filed the Opening Brief in the instant case. A central issue in this appeal is the district court's erroneous denial of Mr. Brass's repeated requests to remove Mitchell L. Posin as counsel due to an irreconcilable conflict of interest and his failure to adequately prepare for trial or perform at a reasonable level of competence. See Young v. State, 120 Nev. 963, 102 P.3d 572 (2004).

3. Two Young hearings were held in this case: one on February 20, 2020, and another on February 24, 2020. At the second Young hearing, when the district court suggested it might need to refer him to the State Bar, Mr. Posin repeatedly asked the court *not* to refer him to the State Bar and claimed he was prepared for trial. (III:656-658). In his Opening Brief, Mr. Brass argued that Mr. Posin had a conflict of interest at this Young hearing and a duty to disclose to the Court that he had *prior* bar discipline. See Opening Brief at pp. 33-34. But I have since discovered that Mr. Posin was, in fact, *facing a live bar complaint* at the time of this Young hearing, and this fact is highly relevant to the conflict of interest at issue.

4. This afternoon, I was reviewing recent Unpublished Orders on the Nevada Supreme Court website and found a February 19, 2021 Order in Case No. 82339, In re: Discipline of Mitchell L. Posin, wherein this Court approved a conditional guilty plea agreement and suspended Mr. Posin from the practice of law in Nevada for 18 months for knowingly violating his duties to his clients and to the profession.

5. After reading the Order, I also reviewed the Record of Bar Proceedings (Doc. Nos. 21-01198 and 21-01199) in Case No. 82339 and learned that the underlying Bar Complaint was filed against Mr. Posin on December 4, 2019, *just 3 months before the trial in Mr. Brass's case*. See ROA Volume I – Pages 001-008. Mr. Posin filed an Answer to the Bar Complaint on January 30, 2020. ROA Volume I – Pages 021-023. And on February 4, 2020, Mr. Posin received an Order Appointing Hearing Panel Chair. ROA Volume I – Pages 024-025. Plainly, Mr. Posin was aware that he had a pending Bar Complaint at the time he begged the district court not to refer him to the State Bar on February 24, 2020.

6. Based on the foregoing, I am requesting permission to supplement the Opening Brief at page 34, right after the sentence that reads, “Yet, Posin never disclosed his disciplinary history to the court *or* to Brass.”

7. The supplement would contain just 44 words:

Posin also failed to inform the court that he was *currently* facing a live Bar Complaint that had been filed just three months earlier, on December 4, 2019. See In re: Discipline of Mitchell L. Posin, Case No. 82339, ROA Volume I – Pages 001-008.

8. Had I been aware of Mr. Posin’s pending Bar Complaint at the time I filed the Opening Brief, I would have included that key fact therein because it is directly relevant to the conflict of interest that existed at the Young hearings.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

EXECUTED on the 22nd day of February, 2021.

/s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 22nd day of February, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
STEVEN B. WOLFSON

DEBORAH L. WESTBROOK

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

DEQUINCY BRASS
NDOC No. 1233421
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office