

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEQUINCY BRASS,)	Electronically Filed
)	Mar 01 2021 03:43 p.m.
Appellant,)	Elizabeth A. Brown
)	Clerk of Supreme Court
vs.)	Case No. 81142
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	

**APPELLANT’S REPLY IN SUPPORT OF 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 files Appellant’s Reply in Support of Motion to Supplement Opening Brief to Reference a Newly Discovered Bar Complaint that was Pending During Both Young Hearings. This Reply is based on the attached Memorandum of Points and Authorities.

DATED this 1st day of March, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

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

MEMORANDUM OF POINTS AND AUTHORITIES

Dequincy Brass has sought the Court's permission to supplement his Opening Brief to reflect newly-discovered evidence that his trial attorney Mitchell L. Posin had an actual conflict of interest when he begged the district court not to report him to the State Bar of Nevada at Mr. Brass's pretrial Young hearing.

The State opposes Mr. Brass's motion. In its Opposition, the State argues that the Court may not consider this evidence because it is not currently contained in the record on appeal and because this Court's review is "generally limited to the exhibits that were considered by the district court prior to entry of the judgment of conviction." Opposition at 2.

However, there are exceptions to that general rule where the Court "will invoke judicial notice to take cognizance of the record in another case." Mack v. Estate of Mack, 125 Nev. 80, 92, 206 P.3d 98, 106 (2009) (applying doctrine of judicial notice and rejecting appellant's argument that "events that occurred after the filing of this appeal are not matters of the record in this appeal"). The Court may take "judicial notice of facts generally known or capable of verification from a reliable source." Id. (citing NRS 47.150(1)). The Court may also take "judicial notice of facts that are '[c]apable of accurate and ready determination by resort to sources

whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.’” Id. (quoting NRS 47.130(2)(b)).

Before taking judicial notice, the Court will “examine the closeness of the relationship between the two cases” and if a “valid reason” presents itself, the Court will take “judicial notice of other state court and administrative proceedings.” Id. In Mack, this Court ruled that it was proper to take judicial notice of the outcome of a murder trial in the related family law case where the murder victim stood to gain financially from her murderer. Id.

As in Mack, this Court should take judicial notice that Mr. Posin had a pending Bar Complaint when he begged the district court not to report him to the State Bar in this case. Like in Mack, the evidence relied on by Mr. Brass comes from another state court proceeding (Case No. 82339) and from a source that cannot reasonably be questioned. Indeed, the information comes from this Court’s inherent power to govern the legal profession, which includes review of all attorney discipline. See, e.g., NRS 2.120; SCR 39; SCR 105(3). This Court is already aware of the timing of Mr. Posin’s Bar Complaint having just reviewed all documents contained in that matter and issuing the Order in Case No. 82339. There is a close relationship between the pending Bar Complaint referenced in Case No. 82339 and Mr.

Posin's pleas to the district court not to report him to the State Bar of Nevada in this case. And there is a valid reason to take judicial notice of Mr. Posin's pending Bar Complaint here: taking judicial notice is necessary to protect the rights of unsuspecting clients who are unaware of the full extent of their attorneys' conflicts of interest.

The State further argues that evidence of the pending Bar Complaint against Mr. Posin is "irrelevant to whether an abuse of discretion occurred." Opposition at 2. Although the district court's decision to deny Mr. Brass's request for substitution of counsel is reviewed for an abuse of discretion, the question of whether an *actual conflict* existed at the time of the Young hearings is reviewed de novo. See Jefferson v. State, 133 Nev. 874, 876–77, 410 P.3d 1000, 1002–03 (Nev. App. 2017) (citing Clark v. State, 108 Nev. 324, 831 P.2d 1374 (1992) and Cuyler v. Sullivan, 446 U.S. 335 (1980)). Mr. Brass also argued in his Opening Brief that Mr. Posin had an actual conflict which required reversal pursuant to Clark and Cuyler. See Opening Brief at 34-35. Evidence that Mr. Posin had a pending Bar Complaint when he claimed to be prepared for trial and he begged the district court not to refer him to the State Bar is relevant to the question of whether an actual conflict of interest existed at the time of the Young hearings.

Therefore, for all the foregoing reasons, Mr. Brass asks this Court to grant his Motion to Supplement his Opening Brief to contain the following statement:

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.

DATED this 1st day of March, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 1st day of March, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD DEBORAH L. WESTBROOK
STEVEN B. WOLFSON

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