Appendix E

A Practice Exercise: Disciplinary Hearing

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THE LEGAL PRACTICUM

PROFESSIONAL RESPONSIBILITY

Disciplinary Hearing

In the Matter of the Petition For
Disciplinary Action Against
Timothy B. Halbrock, Attorney At Law

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John Sonsteng
Linda Thorstad
In the Matter of the Petition For
Disciplinary Action Against
Timothy B. Halbrock, Attorney At Law

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with
Hon. Kenneth Jorgensen and Jennifer Miller
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ASSUME THE DAYS AND DATES IN THIS EXERCISE ARE ACCURATE

The following facts and procedures are agreed to by the parties and must be accepted by them. These facts may be considered as agreed evidence and may be used in the oral argument.

INTRODUCTION

This professional responsibility exercise is designed to provide an opportunity for attorneys to present an oral argument to an appellate court.

The attorneys will be asked to represent the Director or the attorney in this disciplinary matter. The Lawyers Professional Board petitioned the Supreme Court for Disciplinary Action in regard to Attorney Timothy B. Halbrock. Attorney Halbrock has been represented by Attorney Jay Smith of the law firm of Smith, Rojas and Grygelko. The Supreme Court assigned a referee to hear the matter and make recommendations concerning appropriate discipline. The referee has recommended that the attorney be suspended, not disbarred and a three year stay of the discipline be granted. The Lawyers Professional Responsibility Board has appealed the referee’s finding and the matter is now before the Supreme Court. Briefs have been filed support of the referee’s recommendation by Attorney Jay Smith and in opposition to the referee’s recommendation on behalf of the board.

Timothy B. Halbrock has been a lawyer for 17 years. Halbrock specialized in the area of small business incorporation and advising small corporations in legal and financial matters, and was a partner for nine years in the law firm of Osborn, Lewis, Halbrock & Albert. Halbrock served on the firm’s management committee and was the firm’s president for two years shortly after becoming a partner. For the past five years Halbrock was the partner responsible for the financial aspects of the firm. The firm grew considerably while Halbrock was a partner. The growth was due in part to Halbrock’s success in attracting small corporate clients over the past nine years.

Halbrock had an unblemished record as an attorney until recent problems surfaced in the pending disciplinary action.

ISSUES RAISED

(These issues do not limit participants. Other appropriate issues may be raised.)

• Gambling Addiction as a disease/syndrome
• Basis for Disbarment
• Criminal behavior/theft
• Neglect and Misrepresentation
• Commingling
• Mitigating circumstances
• Alternative Dispositions
ALLEGATIONS
About four months ago the Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action against Halbrock in the Supreme Court alleging the following:

Allegation I.  
**Misappropriation of Funds from Power Mitey Corporation.** The Director alleges that Power Mitey, a small software corporation, is a longtime client of Halbrock and the firm. About 3 years ago, Power Mitey was sued by a competitor for patent infringement and hired Halbrock to advise them and also defend them if necessary. Even though Halbrock does not do litigation, Halbrock advised Power Mitey that an effective way to handle the matter would be for Power Mitey to give Halbrock $100,000 so he could use the funds to negotiate with the competitor for a settlement. Halbrock told the client that the $100,000 would be kept in a trust account until the matter was settled.

Instead, Halbrock used the $100,000 to pay his gambling debts within 2 months of receiving it. About 10 months ago, the competitor filed suit against Power Mitey for $45,000. When Power Mitey officers asked Halbrock why the matter had not been settled, Halbrock lied and said that he was still negotiating for a lower amount. Halbrock assured Power Mitey that the funds were safe in a Midstate National trust account. When Power Mitey complained to the firm, Halbrock lied to the partners and stated that the money was in a separate trust account for Power Mitey so that it would earn interest. Power Mitey discovered there was no account when its accountants contacted Midstate National to determine the interest earned on the $100,000. The partners then reported the matter to the Office of Lawyers Professional Responsibility.

Allegation II.  
**Misappropriation of Funds From Osborn, Lewis, Halbrock & Albert Law Firm and Failure to Pay and File Employee Withholding Taxes.** The Director alleges that Halbrock failed to file and pay the firm’s employee withholding taxes for the quarters due during the last two years and used the money set aside by the firm to pay these taxes to gamble and pay gambling debts. The firm’s partners initially became aware of this problem about 18 months ago when they received a notice from the IRS. When asked about the IRS notice, Halbrock falsely told his partners it was a mistake. The amount of taxes now due is $38,000 including penalties and interest. The amount used by Halbrock, which should have been paid to the IRS was $26,000. After Power Mitey contacted the firm about the information obtained from Midstate National, the firm further investigated the IRS problem and determined that Halbrock did not file the firm’s withholding returns but used the funds to gamble and pay his gambling debts.
Allegation III.
Failure to File Personal Income Tax Returns. The Director alleges that Halbrock did not file personal income tax returns for the last 4 years because Halbrock says he was uncertain whether the Power Mitey funds and the tax money he withheld and used to pay his gambling debts was income. He did intend to repay it all along. Halbrock also admits not having funds to pay the taxes due thereon because of his gambling problems.

Allegation IV.
Failure to Communicate with Client. The Director alleges that Halbrock failed to keep Power Mitey abreast of the litigation developments and lied about status of the case on several occasions to conceal his theft of the Power Mitey funds.

Other Facts
The firm terminated Halbrock for misappropriation of funds from Power Mitey and Osborn, Lewis, Albert & Halbrock; for failure to pay and file employee withholding taxes; for failure to file personal income tax returns and for failure to communicate with his client. The firm is withholding $40,000 owed to him under the firm’s pension and profit sharing plan. The firm is claiming these amounts and more are owed by Halbrock to pay the taxes and the cost of the audit and attorney fees incurred when the firm was forced to hire outside counsel to investigate the Power Mitey and IRS matters.

Shortly after the disciplinary petition was filed, Halbrock obtained a $75,000 loan from an uncle and took a third mortgage on the family home. Halbrock sent a personal check to Power Mitey in the amount of $25,000 as a partial reimbursement of their funds.

Neither Power Mitey nor Halbrock’s firm has reported the matter to the criminal authorities and no criminal investigation is pending at the present time.

Halbrock admits using the Power Mitey and firm tax money to pay his gambling debts but claims, like most compulsive gamblers, his intention was always to pay it back “when he hit it big.” Halbrock also admits lying to Power Mitey and the law firm partners concerning both matters in order to conceal his gambling problem from them.

The Disciplinary Hearing before the Referee
Halbrock argued to the referee that lying, improper use of funds and failure to file withholding and personal income taxes was caused by a severe gambling addiction for which he has now sought treatment. After hearing from Halbrock and the treating counselor, the referee found that Halbrock misappropriated the funds from Power Mitey and the firm, lied to conceal the thefts and failed to file employee withholding and personal income tax returns.
PROCEDURAL AND FACTUAL HISTORY (Continued)

THE PARTIES

DISCIPLINED ATTORNEY:
Timothy B. Halbrock
Age: 46
Marital Status: Separated from spouse of 21 years.
2 children: Son, Mitch, age 19.
Daughter, Emily, age 13.
Education: J.D., Midstate University College of Law, Silver Springs, Midstate, ________(Year -17).
Employment: Timothy B. Halbrock was a partner in the nine-person law firm of Osborn, Lewis, Halbrock & Albert since ______(Year -9). Halbrock specialized in the area of small business incorporation and advised small corporations in legal and financial matters. Halbrock was the firm’s president for two years ______(Year -8) to ______(Year -6), was on the management committee, and was the partner responsible for financial aspects of the firm since ______ (Year -5). Halbrock has no record of prior lawyer discipline in 17 years of practice. Halbrock was terminated from the law firm on April 23, ______(Year -2).

LAWYER'S PROFESSIONAL RESPONSIBILITY BOARD:
J.R. Wilbury
Age: 37
Marital Status: Married, 2 children.
Education: J.D., Midstate University College of Law, Silver Springs, Midstate.
M.A., Middlebury State, North Waters, Midstate.
M.B.A., Carlson School of Business, West Hampton, Midstate.
Employment: * Private practice ______(Year -12) to ______(Year -7).
* Assistant Director of the Office of Professional Responsibility, ______(Year -7) to ______(Year -6).
* State Board Professional Responsibility - Staff Attorney, ______(Year -6) to present.

SUGGESTED TIME SCHEDULE
Oral Argument
90 Minutes
• Counsel for Lawyers Professional Responsibility Board 30 minutes (may reserve time for rebuttal)
• Counsel for Attorney Halbrock 30 minutes
• Judges’ discussion and critique 30 minutes

Time limits may vary. Check local jurisdiction for time limits for Oral Argument.
LEARNING OBJECTIVES

ORAL OBJECTIVES

Oral Objective A – Motion/Oral Argument:
- Demonstrate effective motion/oral argument strategy and skills.
- Oral Objective A is achieved by:
  - preparing and presenting a motion/oral argument which demonstrates:
    - how the argument relates to the brief,
    - how to deal with the strengths and weaknesses,
    - how to deal with the opponent’s argument,
    - how to respond to questions,
    - how to balance law and facts,
    - persuasiveness–effective presentation,
    - interest–developed and maintained interest,
    - organization–presentation well organized,
    - balance–appropriate balance of facts, law, reasons,
    - responses to questions–appropriate answers,
    - demeanor and presence–appropriate eye contact, voice projection, facial expressions, physical posture, avoidance of distractions and
    - avoidance of objectionable argument.

Oral Objective B – Individual Analysis:
- Demonstrate an understanding of personal strengths and weaknesses.
- Oral Objective B is achieved by clearly articulating:
  - areas where attorney wants feedback,
  - techniques that will be used,
  - risks and experiments to be taken and
  - personal strengths and weaknesses.

WRITTEN OBJECTIVES

When used for an extended Practicum experience, the Written Objectives will assist the lawyer in understanding and analyzing both oral and written presentations.

FORMAT: The written presentations should be formatted in the following manner: 8½ x 11 inch sized paper, double-spaced, one inch margins on all sides and in 12 pt. font.
Written Objective A – Analysis of Argument:

- Demonstrate an understanding of effective oral argument and written argument strategy and skills.

- Written Objective A is achieved by:
  - preparing a written analysis of the oral argument and brief which demonstrates an understanding of the following:
    - the specific approach to the brief and oral argument,
    - how the argument fits the theory of the case,
    - the structure of the oral argument,
    - how to present a persuasive oral argument and
    - the techniques that will be used.
PLANNING GUIDE AND CHECK LIST

a. Professional Responsibility
   • Pervades all exercise activities
   • Role of attorney
     - Fact-finding
     - Analyzing applicable law
     - Developing legal theories
     - Applying applicable law to specific facts
     - Assessing strengths and weaknesses of client’s case
     - Assessing strengths and weaknesses of opponent’s case
     - Presenting options
     - Counseling client
     - Negotiating for client
     - Advocating for client
     - Drafting and reviewing documents
     - Keeping client reasonably informed
   • Attorney/client privilege
   • Confidentiality
   • Conflict of interest
   • Authority to settle

b. Client Interviews
   • Preparation
     - Confirm time and location with client
     - Have client bring all relevant documents or other evidence
     - Develop a basic understanding of client’s situation
     - Do preliminary research and investigation
   • Rapport
     - Know client’s name
     - Make client feel at ease
     - Establish trust
   • Efficient factual inquiry
     - Elicit all the facts, both favorable and unfavorable
     - Find out what client needs and hopes to accomplish
     - Stay focused on pertinent issues, avoid tangential, non-relevant inquiry
   • Anticipate and analyze pertinent legal issues
     - Statutes of limitations
     - Evaluate all possible causes of action and remedies
     - Eliminate frivolous or marginal theories
   • Assess client’s case
     - Be realistic
     - Compare probable outcomes with client expectations and needs
     - Consider emotional and financial impact of contemplated action
     - Estimate time required to effectively represent client
   • Reject client if necessary
     - Clearly explain reasons for rejection to client
PLANNING GUIDE AND CHECK LIST (Continued)

- Inform client of applicable statutes of limitations and filing deadlines
- Encourage client to seek another opinion
- Refer client
- Confirm rejection in writing, clearly stating reasons and deadlines
  • Develop preliminary strategy with client
    - Further investigation
    - Negotiation
    - Litigation
  • Have client sign all necessary documents
    - Representation agreement
    - Information releases

c. Representation agreements
  • Specifically tailored to the identity and needs of the individual client
  • Client is clearly identified
  • Scope of the representation is clearly defined
  • Attorney fees are adequately explained
  • Costs and expenses are adequately explained
  • Responsibility for fees, costs and expenses is adequately explained
  • Billing procedures are clearly stated
  • Attorney responsibilities are adequately defined
  • Client responsibilities are adequately defined
  • Appropriate termination provisions are included
  • Agreement otherwise complies with local Rules of Professional Responsibility
  • Coherent overall, paragraph, and sentence structure
  • Proofread and checked for misspelling
  • Client can easily understand agreement
  • Reviewed and signed by client

d. Fees
  • Abide by applicable Rules of Professional Conduct
  • Contingency Fees
    - Must be in writing
    - Must be clearly explained to client
    - Not appropriate for a lawyer discipline representation, or family or criminal law cases.
  • Straight time (hourly)
  • Price per project - Flat fee
  • Advance Fees - Trust Account Requirements
  • Billable time
    - Client and witness interviews
    - Phone calls
    - Consultation with other attorneys
    - Research
    - Legal assistant/law clerk time
    - Drafting/reviewing documents
    - Oral arguments
PLANNING GUIDE AND CHECK LIST (Continued)

- Billing procedures
  - Accurate timekeeping
  - Itemized statements
  - Clear explanation of payment terms
  - Regular billing cycle

e. Costs and expenses
- Filing and other court fees
- Notary/service of process fees
- Investigation costs
- Expert witness fees
- Exhibits
- Travel and mileage
- Phone charges
- Postage
- Copies

f. Sources of Disciplinary Law
- Rules of Professional Responsibility
  - Primary source of substantive disciplinary law
  - Local court rules
- Statutes
  - Establish authority for attorney discipline
  - Primary source of procedural law
- Case Law
  - Provides examples of sanctions for specific attorney misbehavior
  - Explains policy considerations involved in attorney discipline
- Other Sources
  - Treatises/hornbooks/textbooks
  - Practice guides/CLE materials
  - Digests and annotations
  - Looseleaf services
  - Specialized publications and periodicals/law review articles
  - Legal dictionaries and encyclopedias
  - Electronic services/CD-ROM
  - Consultation with others

g. The Issues
- Gambling Addiction as a disease/syndrome
- Basis for Disbarment
  - Allegations considered independently
  - Allegations considered in aggregate
- Criminal behavior/theft
  - Harm to clients
  - Effect on client’s ability to practice law
PLANNING GUIDE AND CHECK LIST (Continued)

- Illegal conduct involving moral turpitude
  • Neglect and Misrepresentation
    - Harm to clients
    - Harm to profession
  • Commingling
    - Harm to clients
    - Harm to profession
  • Mitigating Circumstances
    - Effect
    - burden of proof
  • Alternative dispositions
    - Disability status
    - Indefinite suspension
    - Suspension for a definite period (treatment)
    - Reprimand
      ○ Oral
      ○ Written
      ○ Public
      ○ Private
    - Fine

h. Practical Considerations
  • Internal memos
    - Used as a preliminary internal analysis of the strengths and weakness of the case
    - Does not exceed reasonable page length
    - Has appropriate margin, font, or line spacing adjustments
    - Coherent overall, paragraph, and sentence structure
    - Proofread and check for misspelling
    - Pertinent issues clearly identified
    - Applicable procedural and substantive law identified
    - Applicable law applied to specific case facts
    - Neutral assessment as to how the pertinent issues may be resolved
    - Appropriate substance and level of analysis for intended audience
    - Easy to read and informative
  • Appellate Brief
    - Follow rules as to format and composition
      ○ Does not exceed page limits
      ○ Does not use margin, font, or line spacing adjustments to meet page limit
      ○ Coherent overall, paragraph, and sentence structure
      ○ Proofread and checked for misspelling
      ○ Pertinent issues clearly identified
      ○ Applicable procedural and substantive law identified
      ○ Applicable law applied to specific case facts
    - Table of contents
      ○ Clearly label all parts of brief
PLANNING GUIDE AND CHECK LIST (Continued)

- Table of authorities
  - Separate authority by category
  - List all authorities used in alphabetical order
- Legal issues
  - Phrase issues concisely, in a way favorable to client
  - Give the referee’s answer to each issue
- Statement of the case
  - State the procedural history of the case chronologically
  - Provide citation to authorities, the transcript, and appendix
- Statement of facts
  - Provide all facts necessary to support argument
  - State facts in a neutral manner
  - Present facts in a logical order
  - Provide citation to the transcript and appendix
- Argument
  - Use appropriate subheadings
  - Outline standard of review
  - Address each issue separately and thoroughly
  - Apply applicable law to specific facts
  - Provide compelling reasons why client should prevail
- Conclusion
  - Briefly recap reasons client should prevail
  - Ask for appropriate relief
- Appendix
  - Properly indexed and paginated
  - Contains all necessary exhibits and record excerpts

- Oral Argument
  - Obey all court rules
  - Proper appearance and demeanor
  - Proper verbal pacing and body movement
  - Properly manage allotted time
  - Reserve time for rebuttal, if desired
  - Be totally familiar with client’s and opponent’s case
  - Be familiar with all authorities cited by either side
  - Avoid using notes
  - Attorney for Director goes first
  - Ask judges if they need a recitation of the facts
  - Recite facts if necessary
  - Present argument in a coherent manner
  - Concede losing arguments when appropriate
  - Be prepared to answer questions from judges
  - Be honest with judges if you don’t know an answer
  - Ask for appropriate relief
**VERY IMPORTANT**

**DIRECTIONS FOR DETERMINING DATES, AGES, LOCATIONS AND APPLICABLE LAW**

In order to keep this exercise current and workable for any time and place, dates, ages, locations, and statutes MUST be inserted where indicated by a blank line and a bold instruction in parentheses.

**DATES**

Use a current calendar. Dates are to be calculated from the date assigned by the instructor.

Should an event occur on a holiday, the holiday should be ignored unless specifically indicated by the exercise or the instructor.

Dates are **NOT** an issue in an exercise unless specifically indicated by the instructor.

The following formula will permit correct dates to be inserted where necessary.

* All dates following the assignment of the exercise are indicated by a “plus” (+) sign, followed by the number of days, weeks, months, or years to be counted:

  (day+1), (week+1), (month+1), (year+1)

* All dates preceding the assignment of the exercise are indicated by a “minus” sign, followed by the number of days, weeks, months, or years to be counted:

  (day-1), (week-1), (month-1), (year-1)

* The date assigned by the instructor is:

  (day 0), (week 0), (month 0) and (year 0).

* NEVER count the current day, week, or month when calculating the dates.

The following examples show how to calculate and insert the dates.

**Example 1:**

* The exercise is assigned on **Friday, July 29, 2005**.

* Before the date is inserted, the exercise reads as follows:

  We purchased the stock on ____ (Wednesday, week -3).

**Directions for Dates, Ages, Locations and Applicable Law**

Page 1 of 3
DIRECTIONS  continued

* Do not count the current week. Count back three weeks. The date that must be inserted is July 6, 2005.

* After inserting this date, the exercise will now read:

We purchased the stock on July 6, 2005  (Wednesday, week -3).

Example 2:

* The exercise is assigned on Monday, August 8, 2005.

* Before the date is inserted, the exercise reads as follows:

I bought the house on _________ (1st Wednesday, month -28).

* Do not count the current month. Count back 28 months. The date that must be inserted is Wednesday, April 2, 2003.

* After inserting this date, the exercise will now read:

I bought the house on Wednesday, April 2, 2003. (1st Wednesday, month - 28).

AGES

The ages of clients and other people may be found throughout the exercise.

Example:

I was born on April 18, year [-64].

This indicates that the person would be 64 years old.

LOCATIONS

* All locations are assumed to be in the United States unless otherwise designated.
* Midstate is a fictional state.
DIRECTIONS continued

APPLICABLE LAW

Unless otherwise indicated by the exercise, the law of your jurisdiction will apply.

Example:

* Before the current statutory reference is inserted, the exercise reads as follows:

The above-named juvenile is alleged to be delinquent pursuant to ________ (state statute) because the juvenile has violated a state/local law as follows ... 

* After inserting the current statutory reference, the exercise will now read:

The above-named juvenile is alleged to be delinquent pursuant to Midstate Stat. 609.015 (state statute) because the juvenile has violated a state/local law as follows ...
THE FACTS
## Graph Time Line of Significant Dates

### Year -3

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 25</td>
<td>Power Mitey is sued and hires Halbrock for settlement--$100,000 supposedly put in firm’s trust acct.</td>
</tr>
<tr>
<td>Jan. - March</td>
<td>Halbrock does not file personal income tax and does not pay IRS the company’s withholding taxes for entire year.</td>
</tr>
<tr>
<td>Jan. - March</td>
<td>Halbrock uses Power Mitey’s $100,000 to pay personal gambling debts instead of placing in a trust account.</td>
</tr>
<tr>
<td>July 7 - 14</td>
<td>Competitor makes settlement demand for $40,000. Halbrock rejects offer (without Power Mitey’s knowledge) because he was using Power Mitey’s funds to pay his gambling debts.</td>
</tr>
<tr>
<td>Aug. 4</td>
<td>Power Mitey questions Halbrock re: settlement status. Halbrock unavailable to Power Mitey.</td>
</tr>
<tr>
<td>Oct. 2</td>
<td>Power Mitey tries to settle with competitor directly.</td>
</tr>
<tr>
<td>Dec. 3</td>
<td>Halbrock denies previous demand and promises new attempt at settlement, but does nothing.</td>
</tr>
</tbody>
</table>

### Year -2

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. - March</td>
<td>Halbrock does not file personal income tax and does not pay IRS the firm’s withholding taxes for entire year.</td>
</tr>
<tr>
<td>March 15</td>
<td>IRS notifies law firm of non-receipt of withholding taxes.</td>
</tr>
<tr>
<td>April 15</td>
<td>Competitor files suit for $45,000 against Power Mitey. Power Mitey files an ethic complaint with partners on Halbrock’s lack of response and lying about settlement offer.</td>
</tr>
<tr>
<td>April 15</td>
<td>Power Mitey contacts the law firm’s accountant. Accountant then contacts partners.</td>
</tr>
<tr>
<td>April 20</td>
<td>Power Mitey tells their settlement deposit funds are safe in Midstate National. Power Mitey contacts Midstate National--no trust account &amp; law firm.</td>
</tr>
<tr>
<td>April 23</td>
<td>Partners respond to Power Mitey’s letter. S. Osborn confronts Halbrock. Halbrock is terminated.</td>
</tr>
<tr>
<td>April 24</td>
<td>Partners report matter to Lawyers Prof. Resp. Office.</td>
</tr>
<tr>
<td>April 30</td>
<td>Halbrock receives $75,000 loan from uncle and 3rd mtg. on his home. Halbrock sends Power Mitey $25,000.</td>
</tr>
<tr>
<td>May 1</td>
<td>S. Osborn writes to Power Mitey and says firm will send $85,000 balance owed to their company.</td>
</tr>
</tbody>
</table>

### Year -1, Months, Weeks

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Wednesday, Month -6</td>
<td>Petition for Disciplinary Action filed.</td>
</tr>
<tr>
<td>2nd Wednesday, Month -6</td>
<td>Letter from Smith to Casino Royale. Halbrock authorizes release of information to his attorney.</td>
</tr>
<tr>
<td>3rd Thursday Month -6</td>
<td>Casino Royale releases information to Halbrock’s attorney.</td>
</tr>
<tr>
<td>4th Monday Month -6</td>
<td>Cover Letter to IRS from Halbrock’s attorney re: taxes.</td>
</tr>
<tr>
<td>2nd Monday, Month -5</td>
<td>Disciplinary hearing before Referee Pat M. Green. Transcript has been typed and is ready for review by Pat M. Green.</td>
</tr>
<tr>
<td>3rd Monday Month -5</td>
<td>Referee Findings.</td>
</tr>
<tr>
<td>Last Friday Month -5</td>
<td>Board Brief.</td>
</tr>
<tr>
<td>Last Friday Month -4</td>
<td>Halbrock Brief.</td>
</tr>
</tbody>
</table>

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Graph Time Line

Professional Responsibility - Page 16
DETAILED TIME LINE OF SIGNIFICANT DATES

Year -3

• Jan. 25  Power Mitey is sued and hires Halbrock for settlement– $100,000 supposedly put in firm’s trust account.
• Jan-March  Halbrock does not file personal income tax and does not pay IRS the company’s withholding taxes for entire year.
• July 7-14  Competitor makes settlement demand for $40,000. Halbrock rejects offer (without Power Mitey’s knowledge) because he was using Power Mitey’s funds to pay his gambling debts.
• Aug. 4  Power Mitey questions Halbrock re: settlement status. Halbrock unavailable to Power Mitey.
• Oct. 2  Power Mitey tries to settle with competitor directly.
• Dec. 3  Halbrock denies previous demand and promises new attempt at settlement, but does nothing.

Year -2

• Jan-March  Halbrock does not file personal income tax and does not pay IRS the firm’s withholding taxes for entire year.
• March 15  IRS notifies law firm of non-receipt of withholding taxes.
• April 15  Competitor files suit for $45,000 against Power Mitey. Power Mitey files ethics complaint with partners on Halbrock’s lack of response and lying about settlement offer.
• April 15  Power Mitey contacts the law firm’s accountant. Accountant then contacts partners.
• April 20  Halbrock tells Power Mitey their settlement deposit funds are safe in Midstate National.
• April 20  Power Mitey contacts Midstate National—no trust account and writes to law firm.
• April 23  Partners respond to Power Mitey’s letter. S. Osborn confronts Halbrock. Halbrock is terminated.
• April 24  Partners report matter to Lawyers Prof. Resp. Office.
• April 30  Halbrock receives $75,000 loan from uncle and 3rd mortgage on home. Halbrock sends Power Mitey $25,000.
• May 1  S. Osborn writes to Power Mitey and agrees that law firm will send $85,000 balance owed to their company.

Year -1

Month -6

• 1st Wednesday  Petition for Disciplinary Action filed.
• 2nd Wednesday  Letter from Smith to Casino Royale
• 2nd Wednesday  Halbrock authorizes release of information to his attorney.
• 3rd Thursday  Casino Royale releases information to Halbrock’s attorney.
• 4th Monday  Cover letter to IRS from Halbrock’s attorney re: taxes

Month -5

• 2nd Monday  Disciplinary hearing before Referee Pat M. Green.
• 3rd Monday  Transcript has been typed and is ready for review by Pat M. Green.
• Last Friday  Referee Findings

Month -4

• Last Friday  Board brief.

Month -3

• 3rd Friday  Halbrock brief.

Detailed Time Line of Significant Dates
Page 1 of 1
Correspondence
Dear Attorney Halbrock:

Thank you for meeting with us yesterday and for your acceptance of representation to advise and defend our company, if necessary, in regard to the law suit that our competitor, St. Helens Worldwide Technology, has brought against Power Mitey for patent infringement. We assume that the long standing representation agreement we have with your firm will remain in place for this matter. You may bill us at your usual hourly rate (with, of course, your preferred client discount).

As agreed upon, we will send you a check in the amount of $100,000 to be deposited in your trust account for settlement purposes.

Sincerely,

Dani Beasley

Dani Beasley
President and CEO
Power Mitey Software
dbeasley@powermitey.com
Letter from Timothy Halbrock to Power Mitey

February 5, ______ (Year -3)

Dani Beasley
President and CEO
Power Mitey Software
512 Wood Lane
South Bluffs, Midstate

Dear President Beasley:

As a follow up to our phone discussion today, we received your certified check for $100,000 and it will be deposited in our trust account. I will keep you apprised of negotiations I have while representing you in the settlement of the law suit that St. Helens Worldwide Technology has brought against Power Mitey. The standing representation agreement is in effect. The 17.5% discount agreement we use is for our long term business clients and it too applies here.

Regards,

Timothy B. Halbrock

Timothy B. Halbrock
Attorney at Law
Letter from St. Helens to Timothy Halbrock

St. Helens Worldwide Technology
11190 Old Ferry Blvd
Bellingham, West-State
“We’re Exploding with Ideas and Solutions”

July 7,_________ (Year -3)

Timothy B. Halbrock
Attorney at Law
Osborn, Lewis, Halbrock & Albert
8255 Milltown Blvd.
West Hampton, Midstate

Dear Attorney Halbrock:

We understand you are the attorney of record for Power Mitey Software. We are willing to forego litigation in the matter of Power Mitey Software’s patent infringement of St. Helens Worldwide Technology if we can agree upon a settlement in the amount of $40,000. For the $40,000, we are prepared to grant Power Mitey a 10-year license to lease our product and will expect an additional $10,000 annual fee for the 10-year license agreement, payable annually on or before June 30 (the end of the fiscal year).

Regards,

Fran Degrew
President and CEO
St. Helens Worldwide Technology
Fran Degrew  
President and CEO  
St. Helens Worldwide Technology  
11190 Old Ferry Blvd.  
Bellingham, West-State

Dear President Degrew:

As attorney of record for Power Mitey Software, I have advised my client not to enter into an agreement in the amount of $40,000 as you suggest in your letter of July 7, ________ (Year -3). It is my position there is no patent infringement issue.

Regards,

Timothy B. Halbrock

Timothy B. Halbrock  
Attorney at Law  
tbhalbrock@olha-attorneys.com
Email from Power Mitey to Timothy Halbrock

From: Dani Beasley [dbeasley@powermitey.com]
Sent: August 4, _________ (Year -3)
To: Timothy Halbrock [tbhalbrock@olha-attorneys.com]
Subject: Settlement Status

I have tried to contact you numerous times over the past weeks. I have left messages with your secretary and voice mails on your answering service but I have received no response. I hope this email reaches you. Would you please get back to me regarding any settlement negotiations you have had with St. Helens Worldwide Technology regarding the patent infringement issues? We would like to have this dispute settled as soon as possible.

This email has been scanned for all viruses.
Email from Power Mitey to Timothy Halbrock

From: Dani Beasley [dbeasley@powermitey.com]
Sent: October 10, _________ (Year -3)
To: Timothy Halbrock [tbhalbrock@olha-attorneys.com]
CC: s.osborn@olha-attorneys.com; b.lewis@olha-attorneys.com; f.albert@olha-attorneys.com
Subject: Settlement Status

Since you have not been in contact with us for the past months—by phone, letter or email—we decided to take matters into our own hands regarding a settlement for patent infringement with St. Helens Worldwide Technology. In that respect, we contacted the President of St. Helens Worldwide Technology, Fran Degrew, directly on October 2, _________ (Year -3). Imagine how surprised we were to learn from Fran Degrew that St. Helens had contacted you on July 7, _________ (Year -3) with an offer to settle the patent infringement issue for a fee of $40,000 and a small annual licensing agreement. Fran Degrew told us that you had summarily rejected their settlement offer on July 14, ______ (Year -3). You never even consulted us. What’s going on?

We demand an explanation and want to know the status of our case!

P.S. We are sending a copy of this email to your partners, in hopes of some resolution.

--------------------------------------------------
This email has been scanned for all viruses.
Osborn, Lewis, Halbrock & Albert EMAIL

From: Timothy Halbrock [tbhalbrock@olha-attorneys.com]
Sent: December 3, __________ (Year -3)
To: Dani Beasley [dbeasley@powermitey.com]
Subject: RE: Settlement Status

Dear President Beasley,

I regret and apologize that I have been unable to be in contact with you recently due to a family emergency that has caused me to be out of the office for a short time.

I want to put your mind at ease that there has not been a negotiation settlement offer received from St. Helens Worldwide Technology, nor have I rejected, for any sum of money, a settlement in regard to the claim of St. Helens that Power Mitey is in violation of a patent infringement.

I will redouble my efforts to expeditiously come to an agreement between Power Mitey and St. Helens so that this matter can be settled to your satisfaction.

Regards,

Timothy B. Halbrock
Attorney at Law
tbhalbrock@olha-attorneys.com

This email has been scanned for all viruses.
Osborn, Lewis, Halbrock & Albert EMAIL

From: S. Osborn [s.osborn@olha-attorneys.com]
Sent: February 1, _______(Year -2)
To: Timothy Halbrock [tbhalbrock@olha-attorneys.com]
CC: b.lewis@olha-attorneys.com; f.albert@olha-attorneys.com
Subject: FW: Settlement Status

Timothy,

See below re: Email from Client, Power Mitey, Dani Beasley. We all need to talk about this.

S. Osborn

----------------------------

POWER MITEY EMAIL

From: Dani Beasley [dbeasley@powermitey.com]
Sent: October 10, _______ (Year -3)
To: Timothy Halbrock [tbhalbrock@olha-attorneys.com]
CC: s.osborn@olha-attorneys.com; b.lewis@olha-attorneys.com; f.albert@olha-attorneys.com
Subject: Settlement Status

Since you have not been in contact with us for the past months–by phone, letter or email–we decided to take matters into our own hands regarding a settlement for patent infringement with St. Helens Worldwide Technology. In that respect, we contacted the President of St. Helens Worldwide Technology, Fran Degrew, directly on October 2, ______ (Year -3). Imagine how surprised we were to learn from Fran Degrew that St. Helens had contacted you on July 7, ______(Year -3) with an offer to settle the patent infringement issue for a fee of $40,000 and a small annual licensing agreement. Fran Degrew told us that you had summarily rejected their settlement offer on July 14, ______ (Year-3). You never even consulted us. What’s going on?

We demand an explanation and want to know the status of our case!

P.S. We are sending a copy of this email to your partners, in hopes of some resolution.

*******************************************************************************
This email has been scanned for all viruses.
March 15, _____________ (Year - 2)

DEMAND FOR IMMEDIATE ATTENTION

To: Osborn, Lewis, Halbrock & Albert
8255 Milltown Blvd.
West Hampton, Midstate

EIN: 99-9999999

Re: Notice of Violation: Non-Receipt of Employee Withholding Taxes

You are hereby notified that the IRS has not received employee withholding taxes from your company, Employee ID Number: 99-9999999, during the last 24-month period.

You have not filed a monthly or semiweekly deposit schedule (Form 941–Employer’s Quarterly Federal Tax Return) during the last 24-month period. You have not deposited federal income tax funds withheld from your employees’ wages, including FICA (Social Security and Medicare) or your matching funds during the past 24-month period.

If you have accumulated a tax liability of $100,000 or more on any day during a deposit period, you must deposit the tax by the next banking day, regardless of your monthly or semiweekly schedule. You have not made electronic deposits of all deposit taxes (employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System during the past 24-month period.

You may be subject to substantial penalties for your failure to pay your tax liability. You must contact a representative of the IRS immediately at: 1-800-IRS-NOW to address this issue.
Letter from Power Mitey to Osborn, Lewis, Halbrock & Albert

April 15, __________ (Year -2)

Osborn, Lewis, Halbrock & Albert
8255 Milltown Blvd.
West Hampton, Midstate

Re: Formal Complaint Against Timothy B. Halbrock

Dear Attorneys Osborn, Lewis and Albert:

It has now been over one year since we hired Timothy B. Halbrock, an attorney at your firm, to represent us in settlement negotiations regarding a claim by St. Helens Worldwide Technology for patent infringement. In addition, one year ago we deposited $100,000 with Mr. Halbrock for these very settlement purposes. It is our understanding Mr. Halbrock placed our money in your firm’s trust account.

While your partner was at first enthusiastic about advising and representing our company, Mr. Halbrock seemed even more enthused about the money we deposited with your firm for settlement purposes. We have subsequently found that Mr. Halbrock has fallen far short in apprising us of the status of our case, has failed to reach a settlement with St. Helens Worldwide Technology on our behalf and has not responded to our repeated phone calls and emails.

We find it totally reprehensible that Mr. Halbrock has shown no professional integrity. It has come to our attention that Mr. Halbrock flat out lied to us in regard to a previous settlement offer that St. Helens’ President, Fran Degrew, claims to have made to Mr. Halbrock on July 7, __________ (Year-3). St. Helens claims that Mr. Halbrock (without consulting us) refused an offer for settlement in the amount of $40,000—an amount we would have gladly paid at that time in order to settle this matter. St. Helens has now contacted us directly and has demanded a settlement fee in the amount of $45,000.

We wish to file a formal ethics complaint against Mr. Halbrock with your firm before we proceed in contacting the professional board that governs you. Needless to say, we hereby terminate the services of Mr. Halbrock. I left a message with your accountant and requested that our deposit of $100,000 in your trust fund be returned to us immediately so we can settle with St. Helens.

Sincerely,

Dani Beasley

 Dani Beasley
President and CEO - Power Mitey Software
dbeasley@powermitey.com

cc: Timothy B. Halbrock, Attorney at Law
Email from S. Osborn to Timothy Halbrock

From: S. Osborn [s.osborn@olha-attorneys.com]
Sent: April 15, _______(Year -2)
To: Timothy Halbrock [tbhalbrock@olha-attorneys.com]
CC: b.lewis@olha-attorneys.com; f.albert@olha-attorneys.com
Subject: Dani Beasley - Power Mitey - Trust Account Funds

Timothy,

Our accountant, Gary Gilson, has contacted me regarding a message received from Power Mitey Software President, Dani Beasley [your client].

Gary tells me our trust fund account shows no record of a deposit for Power Mitey Software in the amount of $100,000. Please advise as soon as possible.

-------------------------------------
This email has been scanned for all viruses.
From: Timothy Halbrock [tbhalbrock@olha-attorneys.com]

Sent: April 20, ______(Year -2)

To: Dani Beasley [dbeasley@powermitey.com]

BCC: s.osborn@olha-attorneys.com; b.lewis@olha-attorneys.com; f.albert@olha-attorneys.com

Subject: Trust Account Funds

Your settlement deposit in the amount of $100,000 was safely secured in the Milltown Boulevard Branch of Midstate National here in West Hampton. I will get back to you shortly for reimbursement of your funds.

This email has been scanned for all viruses.
April 20,________ (Year -2)

Osborn, Lewis, Halbrock & Albert
8255 Milltown Blvd.
West Hampton, Midstate

Re: Settlement Deposit

Dear Attorneys Osborn, Lewis, Halbrock and Albert:

I have met with the President of the Milltown Boulevard Branch of Midstate National regarding the return of Power Mitey’s funds which I entrusted to Timothy B. Halbrock for settlement purposes in our dispute with St. Helens Worldwide Technology.

After establishing my credibility, and after a lengthy explanation of my situation, the President duly informed me that your firm, and/or Timothy Halbrock, has made no such deposit of Power Mitey’s funds in that banking establishment. It was also confirmed to me that your firm does not have a trust fund account in the Milltown Boulevard Branch of Midstate National. Upon further investigation, the President could find no account for your firm, nor Timothy Halbrock in any of the Midstate National branch offices.

I demand the immediate return of Power Mitey’s funds that were entrusted to your firm, and an explanation for this contemptible behavior and business practice.

Sincerely,

Dani Beasley

Dani Beasley
President and CEO - Power Mitey Software
April 23, __________ (Year - 2)

Mr. Timothy Halbrock  
19472 Hidden Meadow Lane  
Lake City, Midstate

Re: Misuse of Client’s Trust Fund Money

Dear Timothy:

After our meeting today I contacted the Midstate National Bank and learned that you had not placed Power Mitey’s $100,000 to be used for settlement purposes in a trust fund account in that bank. You and I have been talking about this matter for some time and I thought you told me it was resolved. Because you lied to our client Power Mitey and because you lied to me, you are hereby terminated as of today. Please clean out your office and vacate the premises. We are reporting this matter to the Professional Responsibility Board. I will be drafting a letter to them today and will mail it tomorrow.

Sincerely,

S. Osborn

S. Osborn, Attorney at Law
April 23, __________ (Year - 2)

Dani Beasley
President and CEO
Power Mitey Software
512 Wood Lane
South Bluffs, Midstate

Dear President Beasley:

I received your letter this morning. I had a personal conversation with Timothy Halbrock and he once again informed me that your $100,000 was placed in a trust account in the Midstate National Bank. I then contacted Midstate National Bank and learned that there was no trust fund at their bank. I am copying you on the letter we sent to Mr. Halbrock. We will be reporting this to the Lawyers’ Professional Responsibility Board. Timothy Halbrock is no longer employed with this firm.

We apologize for this problem and hope we can resolve it. We will reimburse you any money you are owed. You are a valuable client of the law firm and this should not have happened.

Sincerely,

S. Osborn

S. Osborn, Attorney at Law
Letter from S. Osborn to J.R. Wilbury

Osborn, Lewis, Halbrock & Albert
Law Offices
8255 Milltown Boulevard
West Hampton, Midstate

April 24, ___ (Year -2)

J.R. Wilbury, Assistant Director
Office of Lawyers Professional Responsibility
River View Towers
Suite 772
Northbridge, Midstate

RE: Timothy Halbrock

Dear Mr. Wilbury:

In a follow-up to our phone conversation yesterday, we learned that one of our partners, Timothy Halbrock, may have inappropriately used money from one of our clients. Please investigate this matter. Our files are open to you. We appreciate your willingness to work with us. We know this investigation will take some time. Please understand that you have our full cooperation.

Mr. Halbrock is no longer employed with the firm.

Sincerely,

S. Osborn
S. Osborn, Attorney at Law

cc: Dani Beasley
Timothy Halbrock

COPY
April 30, ______ (Year -2)

Dear President Beasley:

Please find enclosed my personal check for $25,000. I have received a $75,000 loan from my uncle and taken on a third mortgage on my home. While I have other substantial debts, please accept this $25,000 check as my good faith attempt to repay the money to you. I apologize for my inappropriate use of your funds.

Sincerely,

Timothy B. Halbrock

CC: S. Osborn,
Osborn, Lewis, Halbrock & Albert Law Offices
Letter from S. Osborn to Power Mitey

May 1, __________ (Year - 2)

Dani Beasley
President and CEO
Power Mitey Software
512 Wood Lane
South Bluffs, Midstate

Dear President Beasley:

We have examined our records and have determined that the law firm owes Power Mitey $110,000 ($100,000.00 plus accrued interest of $10,000). I have learned that Timothy Halbrock has sent you a personal check in the amount of $25,000 in partial reimbursement. You will receive a certified check from the law firm for the remaining $85,000.00 that is owed to you.

Sincerely,

S. Osborn
S. Osborn, Attorney at Law

cc: Timothy Halbrock
2nd Wednesday, _____(Month -6)

Chief Accountant
Casino Royale Resort and Casino
By the Lake
Lake City, Midstate

Dear Sir or Madam:

I represent Timothy Halbrock in a court hearing. Please send me a copy of Timothy Halbrock’s accumulated losses from January 15, _____(Year -4) to April 20, _____(Year -3). Please also include subsequent payments in May of _____(Year -3). Please indicate if there are further debts owed to Casino Royale from that time forward.

I am enclosing an authorization from Timothy Halbrock. This release, signed by Halbrock, authorizes you to release the above information.

Sincerely,

Jay Smith

Jay Smith
Attorney at Law

Enc.
AUTHORIZATION FOR RELEASE OF INFORMATION

I hereby authorize the release of information requested by my attorney, Jay Smith of Smith, Rojas and Grygelko Law Firm, in a letter to Casino Royale dated Second Wednesday, _______(Month -6).

Signed this Second Wednesday, _____(Month-6).

Timothy B. Halbrock

Timothy B. Halbrock
Jay Smith, Attorney at Law
825 West Randolph Avenue
Forestview, Midstate

Dear Attorney Smith:

Based on your request and attached release of information authorization by Timothy B. Halbrock, I am hereby enclosing the statement of account regarding your client as of January 15, _____ (Year -4) to April 20, _____ (Year -3).

There are no further amounts owing to Casino Royale from Timothy B. Halbrock.

As a responsible gaming institution we are concerned with addictions involving gambling. I am enclosing our advertising that has been running in the Metropolitan News weekly since January 1, _____ (Year -4).

Sincerely,

Billie Marshall

Billie Marshall
Chief Accountant
Casino Royale

Enc.
# Statement of Account

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CASINO ROYALE
RESORT and CASINO
By the Lake, Lake City

BE A WINNER!

• Try your luck on the slots or at the blackjack table.
  • Play live poker, craps or roulette.
  • Enjoy our award-winning hotel and elegant dining.

Casino Royale is fire-arms free
Our guests must be 18 year of age or older to gamble
Public Service Advertising
Paid for by Casino Royal Resort & Casino, Midstate
Gamblers Anonymous
and Gam-Anon

Signs of Problem Gambling:
- Increasing the frequency of gambling activity.
- Increasing the amount of money gambled.
- Spending an excessive amount of time gambling at the expense of job or family time.
- Being preoccupied with gambling or with obtaining money with which to gamble.
- Gambling creates a special and intense pleasure, an aroused sense of being in "action."
- Continuing to gamble despite negative consequences such as large losses, financial problems, absence from work, or family problems caused by gambling.
- Gambling as a means to cope with loneliness, anger, stress, depression, etc.
- "Chasing" - the urgent need to keep gambling--often with larger bets--or the taking of greater risks in order to make up for a loss or series of losses.
- Borrowing money to gamble, taking out secret loans, cashing in or borrowing on life insurance policies or maximizing credit cards.
- Bragging about wins but not talking about losses.
- Frequent mood swings, higher when winning, lower when losing.
- Gambling for longer periods of time or more money than originally planned.
- Secretive behavior such as hiding lottery tickets and betting slips, having mail, bills, etc., sent to work, a P.O. Box or other addresses.

Smith, Rojas & Grygelko
825 West Randolph Avenue
Forestview, Midstate

4th Monday, ____ (Month -6)

Internal Revenue Service
Income Tax Division
1000 Government Blvd.
Central City, Midstate

Letter From Jay Smith to Ms. Ramirez – IRS
Page 1 of 1
Attn:  Ms. Maria Ramirez

Re:  Timothy B. Halbrock
SS #471-56-8092
       Personal Income Tax Files – _____(Year -1) to _____(Year -4)

Dear Ms. Ramirez:

     I am following up on the telephone conversation we had yesterday concerning Timothy B. Halbrock. I represent Mr. Halbrock. Enclosed are his personal income tax filings for _____(Year -1) to _____(Year-4). These are original filings.

     Mr. Halbrock owes delinquent taxes for these 4 years along with appropriate interest and penalties. Mr. Halbrock has no funds at this time. I hope to work with you to make arrangements for him to make scheduled payments as funds become available for him to do so.

Sincerely,

Jay Smith

Jay Smith
Attorney at Law

Enc.
APPENDIX A
Midstate Rules of Professional Conduct
APPLICABLE MIDSTATE RULES OF PROFESSIONAL CONDUCT

RULE 1.15: SAFEKEEPING PROPERTY
(a) All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable interest bearing trust accounts as set forth in paragraphs (d) through (g). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:
(1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein;
(2) funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein.

RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS
In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law.

RULE 8.4: MISCONDUCT
It is professional misconduct for a lawyer to:
(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
APPENDIX B
Petition for Disciplinary Action
In re Petition for Disciplinary Action
against TIMOTHY B. HALBROCK,
Attorney at Law of the State of Midstate.

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PETITION FOR
DISCIPLINARY ACTION

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TO THE SUPREME COURT OF THE STATE OF MIDSTATE:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Midstate on October 10,________ (Year -17).

Respondent has committed the following unprofessional conduct warranting public discipline:

First Count

Misappropriation of Funds from Power Mitey Corporation. Power Mitey, a small software corporation, is a longtime client of Halbrock and the law firm. About 3 years ago Power Mitey was sued by a competitor for patent infringement and hired Halbrock to advise them and also defend them if necessary. Even though Halbrock does not do litigation, he advised Power Mitey that an effective way to handle the matter would be for Power Mitey to give Halbrock $100,000 so Halbrock could use the funds to negotiate with the competitor for a settlement. Halbrock told the client that $100,000 would be kept in a Midstate National trust account.

Instead, Halbrock used the $100,000 to pay his gambling debts within 2 months of receiving it. About 10 months ago, the competitor filed suit against Power Mitey for $45,000. When Power Mitey officers asked Halbrock why the matter had not been settled, Halbrock lied and said that he was still negotiating for a lower amount. Halbrock assured Power Mitey that the funds were safe in a Midstate National trust account. When Power Mitey complained to Halbrock’s law firm, Halbrock lied to the partners and stated that the money was in a separate trust account for Power Mitey so that it would earn interest. Power Mitey discovered there was no account when its accountants contacted Midstate National to determine
the interest earned on the $100,000. The partners then reported the matter to the Office of Lawyers Professional Responsibility.

**Second Count**

**Misappropriation of Funds From Osborn, Lewis, Halbrock & Albert Law Firm and Failure to Pay and File Employee Withholding Taxes.** Halbrock has failed to file and pay the firm’s employee withholding taxes for the quarters due during the last two years and used the money set aside by the firm to pay these taxes to gamble and pay his gambling debts. The firm’s partners initially became aware of this problem about 18 months ago when they received a notice from the IRS. When asked about the IRS notice, Halbrock falsely told his partners it was a mistake. The amount of taxes now due is $38,000 including penalties and interest. The amount used by Halbrock, which should have been paid to the IRS was $26,000. After Power Mitey contacted the firm about the information obtained from Midstate National, the firm further investigated the IRS problem and determined that Halbrock did not file the firm’s withholding returns but used the funds to gamble and pay his gambling debts.

**Third Count**

**Failure to File Personal Income Tax Returns.** Halbrock has not filed personal income tax returns for the last 4 years because he was uncertain whether the Power Mitey funds and the tax money he withheld and used to pay his gambling debts was income. He did intend to repay it all along. Halbrock also admits not having funds to pay the taxes due thereon because of his gambling problems.

**Fourth Count**

**Failure to Communicate with Client.** Halbrock failed to keep Power Mitey abreast of the litigation developments and lied about the status of the case on several occasions to conceal his theft of the Power Mitey funds and did not communicate a $40,000 settlement offer to client.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent from the practice of law, awarding costs and disbursements pursuant to the Rules of Lawyers Professional Responsibility, or for such other, further or different relief as may be just and proper.

Dated: __________________ (First Wednesday, Month -6)

Appendix B - Petition for Disciplinary Action
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APPENDIX C

Transcript of Timothy B. Halbrock
Disciplinary Hearing
APPENDIX C

Transcript of Timothy B. Halbrock
Disciplinary Hearing
File No. 00-464

______________________
In the Matter of the Petition for
Disciplinary Action against
Timothy B. Halbrock,
Attorney at Law
______________________

The above entitled matter came on for hearing on ____ (Second Monday, Month -5) before the Honorable Pat M. Green, Referee, appointed by the Court to make findings, conclusions, and a recommendation for discipline.

The respondent attorney, Timothy B. Halbrock, was present throughout the hearing and was represented by Jay Smith, Esq. of the Smith, Rojas & Grygelko law firm.

J.R. Wilbury, Assistant Director, appeared on behalf of the Office of Lawyers Professional Responsibility and the Lawyers Professional Responsibility Board.
Good morning, this is the matter for disciplinary action against Timothy B. Halbrock, file number 00-464. State your appearances for the record please.

J.R. Wilbury, Assistant Director for the Office of Lawyers Professional Responsibility also referred to as the Director’s Office, your honor.

Jay Smith of Smith, Rojas & Grygelko, your honor and I am here today on behalf of my client Timothy Halbrock, the respondent attorney in this matter.

Timothy Halbrock, your honor.

Is counsel ready to proceed?

Yes, your honor.

We are, your honor.

Will the Director’s Office then proceed?

Your honor, in order to move things along this morning I propose that all witnesses be called with the understanding that neither party is limited to the issues covered on direct examination. Hopefully this will eliminate the need to recall any witnesses to the stand after they have testified. It will also allow the witnesses to be immediately released after they have testified.

That would also be my preference unless counsel objects.
Respondent’s Counsel: That is fine with us, your honor.

Your honor, we have informed Director’s Counsel that Timothy Halbrock admits to all of the factual allegations set out in the Petition for Disciplinary Action and relies on the defense of a medical basis as a cause for his behavior and therefore discipline is not warranted.

The Court: Is this correct?

Director’s Counsel: This is correct and we have agreed to proceed first in this matter with that understanding. It is the Director’s position that there is no excuse for Timothy Halbrock’s behavior and discipline is justified.

The Court: Timothy Halbrock, do you admit to the factual allegations set out in the petition and agree to proceed with this understanding?

Timothy Halbrock: I admit to the factual allegations and agree to proceed as stated by my lawyer.

The Court: Please call your first witness then.

Director’s Counsel: We call Dr. Wagner, the Director’s expert witness, your honor.
Dr. Wagner

Direct Examination

1 Director’s Counsel: Dr. Wagner, you are a physician, right?

2 Dr. Wagner: Yes.

3 Director’s Counsel: What is your specialty?

4 Dr. Wagner: Psychiatry, neurology.

5 Director’s Counsel: Have you ever testified as an expert in legal proceedings before today?

6 Dr. Wagner: Yes, hundreds of times in my forensic psychiatry practice – for the U.S. Attorney’s Office, insurance companies, and even private individuals. Most of those proceedings involved either commitment or competency to stand trial.

10 Director’s Counsel: My office asked you to examine the respondent, Timothy Halbrock, correct?

11 Dr. Wagner: Yes, and I did so after reviewing the misconduct alleged in this proceeding, talking to former law partners, examining all of Dr. Pope’s records of treatment of Timothy Halbrock, and also examining Timothy about two months ago for approximately three hours in my office. It is my professional opinion that Timothy Halbrock suffers from an impulse disorder that is commonly referred to as compulsive gambling.

17 Director’s Counsel: You are aware that Timothy Halbrock has admitted to misappropriating funds from clients, his former law firm and also failing to file income tax returns for the firm, as well as his own personal income tax returns?
Dr. Wagner: Yes.

Director’s Counsel: Do you believe any of the misappropriations or failure to file tax returns were caused by a compulsive gambling problem?

Dr. Wagner: I do not believe the impulse disorder caused any of the behavior by itself, but it very likely did contribute to the behavior, along with any number of other factors such as shortage of disposable income, and the availability or unavailability of other funds to use for gambling.

Director’s Counsel: Do you have an opinion concerning whether Timothy Halbrock was aware that this conduct was wrong or improper at the time he used the client’s funds instead of placing them in a trust account?

Dr. Wagner: There is no doubt that Timothy Halbrock knew it was wrong. He lied thereafter when confronted about where the funds were. He did the same thing when the IRS sent the notice to the firm about the employee taxes. If he did not truly understand the behavior was wrong, there would have been no motivation to conceal the behavior.

Director’s Counsel: Is this typical of other compulsive gamblers?

Dr. Wagner: Of course, compulsive gambling is only one of several compulsions listed in the book as compulsions “not otherwise classified.” Others include pedophiles, pyromaniacs and kleptomaniacs. They are characterized by patterns where a tension builds up in the person and the only way they can relieve the tension or keep from exploding is to satisfy it, and when they do there is a feeling of satisfaction and relief.

Director’s Counsel: Does your profession have a position on whether compulsive disorders cause persons to be unable to appreciate the consequences or propriety of their conduct?
Dr. Wagner: Yes, the DSM-IV-TR specifically states that an essential feature of the
disorder is a failure to resist the impulse to gamble, but it does not say
anything about the failure or inability to resist the impulse to carry out illegal
or anti-social behavior to obtain funds to gamble.

Director’s Counsel: Anything else that caused you to conclude Timothy Halbrock appreciated the
wrongfulness of his behavior at the time it was occurring?

Dr. Wagner: It my understanding from talking to Halbrock’s former partners and also
from examining Timothy Halbrock, that he was a very competent, busy and
successful attorney during the entire time of the gambling and embezzlement
of funds. This is typical of compulsive gamblers.

Director’s Counsel: Anything else?

Dr. Wagner: I think it is significant that Timothy used the money from Power Mitey and
the payroll account by electronic transfers rather than by writing personal
checks. According to the firm records I reviewed, the firm historically used
electronic transfers only to move funds from one of its accounts to another.
Disbursements or distributions, however, were typically made by check,
almost without exception. In my opinion Timothy made the conscious
choice to use the law firm monies because he believed the funds could be
used without immediate consequence or confrontation. This wouldn’t have
been true if he had simply written a personal check from the firm business
account, or if he had say, sold the Halbrock’s family house.

Director’s Counsel: No further questions, your honor.
Cross-Examination of

Dr. Wagner

1 Respondent’s Counsel: Doctor, have you ever testified in any other legal proceeding about
2 compulsive gambling?

3 Dr. Wagner: No.

4 Respondent’s Counsel: Have you treated any compulsive gamblers within the last 3 years?

5 Dr. Wagner: No.

6 Respondent’s Counsel: Within the last six years?

7 Dr. Wagner: Yes, three or maybe even four patients if I recall correctly.

8 Respondent’s Counsel: Do you believe you are in a better position than Dr. Pope to render a
9 professional opinion concerning my client when you examined Timothy
10 Halbrock for only three hours and Dr. Pope has seen him for over 60 total
11 hours over a five month period?

12 Dr. Wagner: I am in no better position, but I also believe my position to render an opinion
13 is no worse. Both of us are being asked in this proceeding to render a
14 forensic type opinion of what occurred or existed with respect to Timothy
15 Halbrock’s gambling disorder and behavior which has led to this proceeding.
16 Hence both of our opinions are after the fact, so to speak.

17 Respondent’s Counsel: You do agree that Timothy Halbrock is or was afflicted by a pathological
18 gambling disease?

19 Dr. Wagner: Yes.
Respondent’s Counsel: This disease is recognized by the American Psychiatric Association?

Dr. Wagner: Oh yes, it fits within the DSM-IV-TR and is listed as an impulse disorder and it’s a mental disorder. For a pathologic gambler it is almost impossible for the person to resist the impulse to gamble once the person obtains funds.

Respondent’s Counsel: Does such a person tend to use all available resources to satisfy this impulse?

Dr. Wagner: Certainly, any money he or she possesses.

Respondent’s Counsel: Would such a person not necessarily think about where the money is coming from or who it belongs to, in order to satisfy the impulse or compulsion?

Dr. Wagner: It is not a high priority or something that the typical pathologic gambler would give a great deal of thought to, but he or she would still be aware if the money being gambled belonged to someone else both at the time it was embezzled or taken, as well as when the funds are being gambled and of course after the funds are lost to gambling.

Respondent’s Counsel: How can a person be aware of the propriety of something that you concede they would likely not give a great deal of thought to?

Dr. Wagner: All of us do things impulsively that at the time we know is wrong. This is true of all persons with impulse disorders. The kleptomaniac will not steal and the pyromaniac will not set fire if they are under observation and believe they will be caught. The same is true of the pathologic gambler, he or she will not take funds from others if they are being observed and it is likely they will be caught. At the time they steal or embezzle the funds, most pathological gamblers very likely intend to pay the money back when they win. Nevertheless no matter how strong the impulse, if they believed they were going to be caught, most would not steal or embezzle those funds in the
first place.

Respondent’s Counsel: Would you agree that compulsive gambling requires money, whereas the other two disorders you mentioned, kleptomania and pyromania, do not?

Dr. Wagner: Yes.

Respondent’s Counsel: No further questions your honor.

The Court: Thank you Dr. Wagner, you are excused. I would next like to hear from Dr. Pope, the expert identified by the respondent. After we have heard from Dr. Pope, we will then conclude with the testimony of Timothy Halbrock, if that is all right with counsel?

Director’s Counsel: Fine.

Respondent’s Counsel: That is OK with us as well, your honor.

The Court: Good, Dr. Pope will you come up here and be sworn in by the court reporter? Then counsel for the respondent may proceed.
**Dr. Pope**

**Direct Examination**

1 **Respondent’s Counsel:** Dr. Pope, you are a Board certified psychiatrist?

2 **Dr. Pope:** Correct. I have been practicing psychiatry for over thirty years and over the last five years have focused my practice on the diagnosis and treatment of compulsive gambling.

3 During that time I have treated between 35-50 patients with gambling disorders, many of them professionals, and at least two others who were lawyers.

4 **Respondent’s Counsel:** Have you ever testified in legal proceedings about gambling disorders?

5 **Dr. Pope:** Only twice and they were both criminal proceedings. This is my first lawyer licensing case.

6 **Respondent’s Counsel:** You have counseled or treated Timothy Halbrock?

7 **Dr. Pope:** Yes. Let’s see, I have seen Timothy Halbrock for a total of approximately 60 hours over approximately a four month period beginning shortly after Timothy was discharged from the law firm and I am still counseling him twice per month at present and those are 2 hour sessions.

8 **Respondent’s Counsel:** Has Timothy Halbrock been cooperative in making an earnest attempt to gain insight into the problems and your treatment?

9 **Dr. Pope:** Oh yes. Timothy is very open during sessions and counseling is obviously a priority. He always calls when unable to make our sessions.
Respondent’s Counsel: Is Timothy Halbrock a pathological gambler?

Dr. Pope: Oh yes, and his disorder is so acute that in my opinion, it has ruined his life.

Respondent’s Counsel: Why do you say that?

Dr. Pope: There’s the loss of Timothy’s position in the law firm that he spent years building, Timothy is facing the potential loss of a law license that he worked years to obtain, and he has tax problems that will follow him for the rest of his life. There are also the family issues, the loss of relationship with his father over gambling, missing his father’s funeral due to gambling, taking money belonging to his daughter and having to admit to her that her funds were taken, and there is also the impending divorce from his spouse of over 20 years. These are all very severe consequences of Timothy’s gambling and testament to the severity of the gambling problem. All of the behavior I just mentioned is very anti-social.

Respondent’s Counsel: Is this anti-social behavior a conscious or subconscious act?

Dr. Pope: It’s conscious, to the extent that Timothy Halbrock had to physically take the funds from Power Mitey and the firm’s payroll tax account. However, the impulse to do that is so overwhelming that it is not a conscious choice in the real sense, for example, as in deciding which fork in the road to take.

Respondent’s Counsel: Let me ask you a more specific question. Was Timothy Halbrock aware, at the times funds were taken from the firm and Power Mitey, that what he was doing was wrong?

Dr. Pope: That’s a very difficult question and like Dr. Wagner I can only extrapolate backwards, since these events occurred prior to my involvement with Timothy Halbrock. I believe that at the time he took the funds, Timothy was not aware of the anti-social nature of the conduct, but most likely became
aware of it shortly after he had gambled and lost the funds. The irresistible
impulse of the disorder could very likely have affected his judgment at the
time the funds were taken.

48 **Respondent’s Counsel:** Is Timothy Halbrock cured of the gambling disorder?

49 **Dr. Pope:** No, and he will never be cured in the true sense, like a broken arm heals.
Timothy has however, gained significant insight into the problem and has
made substantial progress through treatment to the point that I believe it is
unlikely he would steal, take or embezzle funds. One could be certain of that
if measures were instituted to eliminate the opportunity for him to have
access to client or law firm funds. In other words, if he could work in an
environment where he did not have signatory power over such funds, I have
no doubt Timothy would continue to be the busy productive lawyer he was,
even while the gambling problems were at their peak.

58 **Respondent’s Counsel:** Why is now different than before Timothy Halbrock started treatment with
you?

60 **Dr. Pope:** Timothy now understands that he cannot control the gambling, it is not
possible to just gamble a little or just once, he is powerless once he starts.
Because he is powerless and now understands that, he is likely to do two
things—not gamble and not be placed in an environment where there is the
opportunity to use other’s funds to gamble.

65 **Respondent’s Counsel:** No further questions, your honor.
Cross-Examination
of
Dr. Pope

1 Director’s Counsel: Dr. Pope would you classify your practice as one primarily given to making a diagnosis for the purpose of treating or helping the patient or one given to making a diagnosis for purpose of rendering a forensic psychological opinion about the patient’s behavior?

2 Dr. Pope: Certainly the former and not the latter since this is only my third time appearing in what you call a forensic role.

3 Director’s Counsel: And you plan on continuing to treat Timothy Halbrock after today’s hearing?

4 Dr. Pope: Yes.

5 Director’s Counsel: And in your role as a treating professional, is it not your goal to do whatever is best for your patient in the recovery process?

6 Dr. Pope: Yes, however, it would not be in the best interests of Timothy Halbrock to have me up here giving opinions that are beneficial from his law license standpoint, if I do not in fact hold those opinions – that would be counter productive in the treatment process.

7 Director’s Counsel: Would you agree Timothy Halbrock is a smart person who would be capable of faking or feigning the symptoms of a compulsive gambling disorder?

8 Dr. Pope: He is a very bright person, but I saw no evidence that what was reported to me was anything but what happened.

9 Director’s Counsel: Are you familiar with a term in the DSM-IV-TR called “malingering?”
Dr. Pope: Yes, it is when the patient is as you say faking or feigning symptoms that are being considered in making a diagnosis.

Director’s Counsel: Now Timothy Halbrock has admitted in this proceeding that he lied to clients and former partners. The DSM-IV-TR states that professionals such as yourself should look for malingering anytime a person is seeking a diagnosis which may be used for legal proceedings. He did not consult you until after being fired and this proceeding was just beginning. Did you ever attempt to verify any of the information you obtained from him by talking to his spouse, family, or former partners?

Dr. Pope: No, that could seriously undermine the trust relationship that is necessary for effective continuing therapy.

Director’s Counsel: So you relied solely on the information Timothy Halbrock gave you?

Dr. Pope: Not solely, there was the information from your file that his counsel forwarded to me.

Director’s Counsel: You stated you believe that Timothy Halbrock is unlikely to misappropriate further funds if shielded from any financial accounts?

Dr. Pope: Yes.

Director’s Counsel: Since Timothy Halbrock has admitted lying in this proceeding, isn’t it possible that if the irresistible impulse you refer to becomes so strong, he could misrepresent facts to some client in the future in order to get the client to entrust funds?

Dr. Pope: I don’t think it is very probable but yes, it is possible.

Director’s Counsel: You do not believe that Timothy Halbrock appreciated that the behavior was
wrong at the time of misappropriating the funds but he became aware of it
after losing the money gambling?

Dr. Pope: Correct.

Director’s Counsel: But you are aware, aren’t you, that he took money on several different
occasions from the firm and $100,000 from Power Mitey?

Dr. Pope: Yes.

Director’s Counsel: And yet on each subsequent occasion, it is your opinion Timothy Halbrock
did not appreciate or understand that the use of law firm and client funds was
wrong?

Dr. Pope: Correct, because of the impulse.

Director’s Counsel: And during this entire time he was a very busy, competent lawyer who was
handling complicated legal matters and who I think you even testified, was a
productive lawyer?

Dr. Pope: Yes, and I don’t find that surprising, although it appears you do.

Director’s Counsel: Do you also believe his failure to file taxes was an unconscious act?

Dr. Pope: No, that was a conscious act caused by the results of his gambling impulses.
Timothy could not pay the taxes because he had gambled the money away.
If he had filed the tax returns the governmental authorities would have come
seeking payment and he did not have the necessary funds. I am certain that
he would have filed the returns if he had ever won or otherwise come into
sufficient funds to pay the taxes. But because he continued to gamble and
get farther behind, he really had no choice but to not file the tax returns.
Director’s Counsel: So Timothy Halbrock knew it was wrong not to file the returns at the time, or during the time, when not filing the returns?

Dr. Pope: Absolutely, it is somewhat like the insane murderer who kills someone without appreciating the consequences of their act, but thereafter when they see the body and how the person was killed, conclude they must have killed this person. Therefore they may then undertake to conceal what they have now concluded to be, but did not know at the time to be, their anti-social act of killing someone. They really have no choice at this point because they reasonably believe others will come to the same conclusion.

Director’s Counsel: You stated Timothy Halbrock always called when unable to make your sessions?

Dr. Pope: Yes, without fail.

Director’s Counsel: Was there a set schedule for your sessions with him?

Dr. Pope: We tried to meet at least twice per week since he began seeing me.

Director’s Counsel: How many times did he call and say he wasn’t coming?

Dr. Pope: I’m not sure – not too many.

Director’s Counsel: I’m looking at your records and they reflect six missed sessions over a period of 4 months and three weeks. Do you have any reason to believe your records are inaccurate?

Dr. Pope: No, they are accurate.

Director’s Counsel: What was he doing so that these six sessions could not be attended?
88 **Dr. Pope:** I believe he said there was business to attend to.

89 **Director’s Counsel:** But he wasn’t working during this period, correct?

90 **Dr. Pope:** No, I don’t believe so.

91 **Director’s Counsel:** I have completed my cross-examination of this witness your honor.

92 **The Court:** OK. Thank you. Dr. Pope you are free to leave. In order to again save time we will have respondent’s counsel do the direct examination of the respondent, Timothy Halbrock, and then proceed with the cross-examination by the Director’s Office, with the understanding that because the Director has not yet rested, the cross-examination need not be limited to the subjects covered on direct. Timothy Halbrock, will you come up here and be sworn in?
Direct Examination of

Timothy Halbrock

1 Respondent’s Counsel: You are a lawyer?

2 Timothy Halbrock: Have been for 17 years. Nine years I ago started my own firm with two law
3 school classmates. At the time I left the firm we had nine lawyers and were
4 continuing to grow. There is a lot of potential in the corporate business area
5 of law in this city.

6 Respondent’s Counsel: Ever had a client file a complaint against you?

7 Timothy Halbrock: Not until this matter and even now I am still on good terms with the
8 principals at Power Mitey even though I have caused them some very
9 unnecessary problems.

10 Respondent’s Counsel: Do you admit to all of the factual allegations set forth in the Director’s
11 petition?

12

13 Timothy Halbrock: I do.

14 Respondent’s Counsel: Can you describe those problems?

15 Timothy Halbrock: Only in retrospect. It is kind of like waking up in the middle of a bad dream,
16 only in my case, the bad dream keeps occurring over and over. I was very
17 confused at the time and wasn’t thinking clearly. I must have used funds
18 belonging to Power Mitey for gambling purposes although as I sit here
19 today, I do not recall actually doing that. I must have put their money into
20 my personal account because I now know I did not set up the trust account.
21 There is no doubt I took the money and apparently used it to gamble.

22 Respondent’s Counsel: What about the firm’s tax money from the employee payroll tax account?

Appendix C - Transcript of Timothy B. Halbrock
Disciplinary Hearing
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23 **Timothy Halbrock:** It’s the same story, I don’t recall actually taking the money but have no
doubt that I did.

25 **Respondent’s Counsel:** When you gambled where did you understand the money had come from?

26 **Timothy Halbrock:** I can honestly say that in my 20 plus years of gambling, and I have done a lot
of it, I never once worried or even stopped to think where the money came
from. If I had money in my possession, that was all that mattered at the time.

29 **Respondent’s Counsel:** If you do not recall taking the money from Power Mitey and the firm’s
payroll tax account, then why did you lie to your partners and Power Mitey
about where the money was?

32 **Timothy Halbrock:** When they asked, I looked for the records and there weren’t any. There was
no other conclusion–I had taken the money. And if I had taken the money
and didn’t have it, then there was no other conclusion–I had gambled it away
just like most of the other money I have earned in my lifetime.

36 **Respondent’s Counsel:** Did you come to this conclusion before or after you had stopped taking
money from the firm and clients?

38 **Timothy Halbrock:** Oh, before I stopped, but the use of money after I realized what I was doing
was because I had created such a large hole, this was my only chance to
recover. All of us problem gamblers think this way.

41 **Respondent’s Counsel:** How many times did you improperly use funds after you became aware?

42 **Timothy Halbrock:** Once, maybe twice, I cannot be sure. I have spent so much time over the last
6 months looking at my behavior that I cannot really recall what I knew at
the time and what I have since come to learn through therapy or even this
proceeding.
Respondent’s Counsel: Why did you not file the employee tax returns and your personal tax returns?

Timothy Halbrock: I couldn’t. If I had, there would have been no chance for me to recover from the large hole I’ve referred to. I mean look at me now, even if I were to come into some money tomorrow, the IRS would immediately take it away from me for the taxes now due as a result of the returns I have filed since this matter came to light.

Respondent’s Counsel: When did you start gambling?

Timothy Halbrock: It goes all the way back to my college days and has continued through law school and my career as a lawyer.

Respondent’s Counsel: When did you first believe you had a gambling problem?

Timothy Halbrock: Until recently I never believed I had a gambling problem. My father has always believed I was a problem gambler since my college days. Unfortunately my father was right. I was never able to admit it while he was alive and it ended up destroying our relationship. It is one of several things that gambling has taken away from me that I will never be able to get back.

Respondent’s Counsel: What happened in college with respect to gambling?

Timothy Halbrock: In my second year, several classmates and myself went on a vacation to Las Vegas during Christmas break. My father was upset that I went to Las Vegas with friends instead of spending Christmas with my family. Mom was less bothered by it because she thought I needed the vacation because I had been working so hard in law school. Just before I left for Las Vegas, I received my financial aid loan check for about $7,000 to pay for spring semester. I ended up losing all of the $7,000 in Vegas playing cards, roulette and shooting craps.
When I got back I started spring semester and the school started calling me about my failure to pay tuition. After I put them off for about 2 months, they called my father because he signed as guarantor on my school application. He was furious that the school had bothered him and even more mad when he found out that I had lost the loan funds in Las Vegas. When I asked if he would loan me the money so the school would not kick me out, he said no – that I should suffer the consequences of my acts and if the school kicked me out, then so be it. My mom thought getting kicked out would have been a terrible waste and so she was able to ultimately convince him to lend me the money, but after they had fought about it for over two weeks. Ever since that incident, my father never paid much attention to me or even my children. He did not attend my law school graduation or the open house we had when we opened the Osborn, Lewis, Halbrock & Albert firm. I think he resented the fact that I had become successful despite my gambling problems.

Respondent’s Counsel: When did your father die?

Timothy Halbrock: Just over a year ago. He had taken ill with what we thought was some respiratory virus, but later learned was lung cancer. I had made up my mind when we found out that I was going to try to set things right with him before he died, even told my mom I was going to do it. But like everything else in my life, I was gambling at Casino Royale when he died. Excuse me – could I have a minute?

The Court: Sure, we could take a break.

Timothy Halbrock: If it is OK with your honor I prefer to continue and not use any more of the court’s time than I already have.

Respondent’s Counsel: What happened when you became a lawyer?
Timothy Halbrock: Well, I blew my first year associate salary bonus of $6,000 on the Purdue v. Notre Dame football game and it went downhill from there. I was making a lot of money and still gambling away more than I could make. I would bet on anything, college or pro sports, even the Olympics through my friend who lived in Las Vegas. If I sent her the money she would place the bet. I began obtaining funds by taking advances on my credit cards and eventually started using funds my grandmother set aside for the college education of my two children. Ultimately I used the entire $65,000 so that when my son started college two years ago, I had to pay the expense out of my earnings and tell my spouse the money was invested.

I personally believe that I hit rock bottom with my family about 18 months ago when I took the entire $659 out my daughter’s saving account on my way to the track. We had set up the account when she was seven and she used the account to save her allowances, birthday monies and other small earnings. When I ultimately was forced to admit to her that I had taken the funds, it was one of the most devastating and humiliating events in my entire life. The respect of my children is something else gambling has taken from me that I doubt I will ever be able to get back.

Respondent’s Counsel: How long have you been seeing Dr. Pope?

Timothy Halbrock: For about 4 months. He has been very helpful in assisting me to gain insight and perspective into my gambling disease. It helped a lot just to find out that there are other lawyers who suffer from this problem.

Respondent’s Counsel: If you are permitted to practice what do you intend to do?

Timothy Halbrock: Not solo practice, that’s for sure. It would also have to be in a practice where someone else was the financial person for the firm. I still have a lot of friends in the legal profession who have been very supportive even now as I face these discipline proceedings. Plus I am very good at generating...
business and that is important in the legal business – sometimes more
important than being a good lawyer.

Respondent’s Counsel: Please tell the court about your attempts to make restitution.

Timothy Halbrock: Well there was the $38,000 for the payroll taxes – the firm kept $40,000
which was the balance of my pension to offset this debt. They are claiming I
am also responsible for the cost of the audit which was $5,000. I have
secured a $75,000 loan from my uncle–which went for numerous other
debts–and I also have a $25,000 third mortgage on my home. In regard to
Power Mitey, the total reimbursement amount added up to more than
$110,000 with interest. The law firm had to turn the matter over to the
firm’s malpractice carrier and incurred a $10,000 deductible cost, plus they
lost all of Power Mitey’s business to another firm. I sent Power Mitey’s
President, Dani Beasley, a personal check in the amount of $25,000. I
understand the law firm paid Power Mitey the balance owed in the amount
of $85,000. When I am on sound footing again, I will do my best to
reimburse the law firm for the $85,000 loss they incurred. Right now I don’t
have, or even have access to, any other funds and of course have been unable
to repay the money taken from my kids for their college education.

Respondent’s Counsel: Do you own a car?

Timothy Halbrock: No, I lease one.

Respondent’s Counsel: Are you current in your house payments?

Timothy Halbrock: I have fallen behind since the firm let me go. I believe I am now 2 plus
months in arrears.

Respondent’s Counsel: Any other financial problems?
Timothy Halbrock: We don’t have time today and tomorrow to list them all. The IRS and state tax authorities are my biggest problem. I owe them over $150,000 for unpaid taxes and penalties. Since I filed my tax returns four months ago, the IRS has taken the position that the money I took from the firm and clients was income and so this substantially increased my tax liability. I think they are claiming total liability in the neighborhood of $250,000. There are now federal and state tax liens on my home, but since there is little or no equity in it, they are not interested in foreclosing the liens.

Respondent’s Counsel: Anything else you wish to add for the record today?

Timothy Halbrock: I am very sorry for the shame I have caused the other members of the legal profession by my behavior. I am equally sorry that your honor has had to take time away from the court’s very busy schedule to preside over this matter today, and for that I apologize. Other than that there isn’t really much else to say at this point other than if I am given the chance to again practice law I intend to make the most of it. The humiliation and loss of respect I have suffered since my family and friends have become aware of my gambling problems has provided me with the greatest incentive to quit. I am confident gambling is not going to be a part of my life in the future. I have a lot of problems ahead of me but gambling is not going to be one of them.
Cross-Examination of
Timothy Halbrock

1 Director’s Counsel: You just testified that you recently secured a third mortgage on your home for $25,000. Why didn’t you do that before instead of taking money from the firm and clients?

4 Timothy Halbrock: Actually a friend of mine agreed to co-sign for the mortgage, otherwise I likely would have never been approved.

6 Director’s Counsel: But you were able to secure a $25,000 mortgage commitment?

7 Timothy Halbrock: Yes, but the loan officer and I played college sports together and I doubt that if it had been anyone else with my financial condition that the bank would have approved the loan even with my friend as co-signor.

10 Director’s Counsel: Well you told the truth in making the loan application, didn’t you?

11 Timothy Halbrock: Oh sure, but banks and loan officers have some discretion in making the loans, that’s what I mean – I likely got the benefit of the doubt where any discretion came into play.

14 Director’s Counsel: Prior to being let go by your law firm, were you ever in default on your first two home mortgages?

16 Timothy Halbrock: We may have had late payments but we were not in default. I believe we are now in default.

18 Director’s Counsel: What kind of car do you lease and what is your lease payment?

19 Timothy Halbrock: It is a Lexus and my payment per month is $789. I recently fell behind in the payments and attempted to renegotiate into a less expensive car but no one
else is interested in renting, selling or leasing anything to me right now unless I can post cash security.

Director’s Counsel: But you were current in the payments until you were asked to leave the firm?

Timothy Halbrock: Yes, but it is important for a lawyer who is a business generator to maintain the appropriate successful image. I often drove the car to meetings with clients or potential clients.

Director’s Counsel: Are you still a member of Forest View Country Club?

Timothy Halbrock: Yes, but last month we could not pay the monthly dues and I also was forced to pledge my stock as security for the $75,000 loan from my uncle that I mentioned earlier.

Director’s Counsel: When did you approach your uncle about the $75,000 loan?

Timothy Halbrock: When it became clear that I was going to have to pay restitution to Power Mitey and the firm.

Director’s Counsel: You stated in a previous conversation that your uncle is not aware of why you needed the $75,000 loan?

Timothy Halbrock: That’s right, he never asked and even though he is quite well off, I was surprised he never even asked why I needed the money. Although I can’t be sure, I think he might be seeing this as some sort early inheritance – for all I know $75,000 might be the amount he had set aside in his will for me. I say that because he is the one who came up with the $75,000 figure. I just asked him how much he could afford to lend me and he came up with that figure.

Director’s Counsel: You testified that other lawyers have been very supportive of you even during this proceeding, have any of them offered to employ you?
44 Timothy Halbrock: No.

45 Director’s Counsel: Have you asked any of these lawyers about whether they would employ you if you were to retain your license to practice or when you get it back if it is suspended?

48 Timothy Halbrock: Only a couple of the firms.

49 Director’s Counsel: And what was their response?

50 Timothy Halbrock: Some members of each firm were willing, but other members were reluctant to do so. These days firms are not willing to bring in someone from the outside unless all partners are in agreement.

53 Director’s Counsel: So it would be fair to say that in both of these firms there were lawyers who objected to your being employed by their firm?

55 Timothy Halbrock: Yes, that is what I was told.

56 Director’s Counsel: No further questions of this witness, your honor.

57 The Court: Anything further form either party in terms of witnesses or evidence?

58 Director’s Counsel: None, your honor.

59 Respondent’s Counsel: That is all your honor.

60 The Court: I will review the transcript of the hearing and will issue my written findings and recommendation concerning the discipline to be imposed. Thank you both and we are adjourned.
Ian Shane McMann, RMR, CRR

(3rd Monday, Month -5)

Appendix C - Transcript of Timothy B. Halbrock
Disciplinary Hearing
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APPENDIX D

Referee’s Findings of Fact, Conclusions of Law, Recommendation for Discipline and Memorandum
The above matter came on for hearing before the undersigned as the referee appointed to hear this matter.

J.R. Wilbury appeared on behalf of the Office of Lawyers Professional Responsibility.

Timothy B. Halbrock, the respondent attorney herein, appeared with counsel, Jay Smith of the Smith, Rojas & Grygelko law firm.

Based upon the files, records, evidence and testimony of this proceeding, as well as the arguments of counsel, the undersigned hereby makes the following findings of fact, conclusions and recommendation for discipline.

FINDINGS OF FACT

1. The Respondent attorney has been admitted to practice law in this state for 17 years. Until recently Respondent had been a partner in the Osborn, Lewis, Halbrock & Albert law firm for the past nine years. Respondent’s practice has concentrated in the area of advising small businesses in incorporation and financial matters. Respondent served on the firm’s management committee and in fact was firm president for two years. For the past five years Respondent has been the partner responsible for handling the firm's financial affairs, including the firm's trust account and the firm’s tax matters.

2. The firm has grown and prospered considerably over the last nine years. When Respondent started at the firm, there were 5 lawyers in the firm and now there are 9, including four partners. The firm has gained many new clients and a substantial amount of new business
through Respondent's success in attracting many new small corporate clients which has generated "spin-off" legal needs handled by other attorneys in the firm.

3. Respondent has no record of prior lawyer discipline in 17 years of practice.

4. Respondent is currently separated from spouse of 21 years and has two children, a son who attends college and a daughter who attends junior high and resides with Respondent’s spouse. Respondent claims the recent separation from his spouse is due to gambling and resulting financial problems.

5. The misconduct which caused the Director to bring this proceeding arises out of Respondent's handling of client funds for one of Respondent's clients, Power Mitey. About three years ago, at Respondent's request, Power Mitey gave respondent $100,000 to use in negotiating a settlement of litigation that had been instituted by a competitor for alleged patent infringement. Respondent represented to Power Mitey that the funds would be held in the firm's trust account until the matter was either settled or it appeared the matter would go to trial.

6. Respondent did not put the $100,000 from Power Mitey into a trust fund account but instead used the funds to pay his gambling debts. Thereafter counsel for Power Mitey's competitor made a settlement demand for $40,000. Respondent rejected the offer without consulting Power Mitey because he used the funds for his gambling debts. Power Mitey became aware of the $40,000 offer about two years ago when it tried to settle the suit directly with the competitor.

7. When Power Mitey questioned Respondent about the offer, Respondent falsely stated that no such offer had been made, but that Respondent would attempt to again settle the matter. However, Respondent took no further action in the matter and when Power Mitey called to inquire about the status of the matter, Respondent failed to return their calls.

8. Due to Respondent's lack of response, Power Mitey complained to Respondent's partners and informed them of the $100,000 supposedly being held in the firm's trust account. After
determining that Power Mitey's $100,000 had never been placed in a trust account, the partners confronted Respondent. Respondent falsely told partners that the funds had been deposited in a separate interest bearing account for Power Mitey at Midstate National in order to accrue the interest earned for Power Mitey's benefit.

9. Several months later, Power Mitey’s accountant contacted Midstate National to determine the amount of interest that had been earned for the year on the $100,000 purportedly in the separate account for Power Mitey. When the bank could not locate such an account, it notified Power Mitey’s accountant who contacted Respondent’s partners.

10. After checking with the bank and determining no separate account existed for Power Mitey, Respondent’s partners confronted Respondent. Respondent then admitted using the Power Mitey funds and also disclosed his gambling problems. The firm also proceeded to have its own records audited by its accountants.

11. The audit conducted by the firm’s accountants disclosed that Respondent had failed to file and pay the firm’s employee withholding taxes for the quarters due during the last 2 years and had used at least $26,000 withheld from employees’ paychecks to pay gambling debts. Respondent was questioned by one of Respondent’s partners about 18 months earlier when the firm received a notice from the IRS. At that time Respondent falsely stated that the IRS notice was a mistake. At the time of the hearing before the undersigned, the firm was attempting to resolve the matter with the IRS who claims the firm owes approximately $38,000 including penalties and interest. After terminating Respondent, the firm withheld $40,000 from Respondent’s pension and profit-sharing to offset this liability, claiming that Respondent’s record keeping practices have made it impossible to refute the IRS’s claim that $38,000 is due for withholding taxes.

12. Respondent failed to file personal income tax returns for the last four years, even though there was sufficient income in each year to require filing. Respondent claims financial affairs and personal records are in “shambles” due to Respondent’s gambling problem and attributes gambling as the reason for failing to file taxes and also inability to pay the taxes due. Respondent did file the returns for the last four years approximately two months ago but is without funds to pay the substantial taxes due thereon.
13. Respondent has secured a $75,000 loan from a relative and a $25,000 third mortgage on Respondent’s home. Respondent paid $25,000 to Power Mitey and in the future will make restitution to the law firm for the $85,000 owed to them in regard to this account. Respondent appears to have made earnest attempts at restitution given respondent’s current financial circumstances.

14. Respondent has a long history of gambling related problems dating back to at least law school.

15. Respondent began counseling with the current counselor shortly after respondent was terminated from Respondent’s law firm. Respondent’s counselor, Dr. Pope, believes Respondent has an acute gambling addiction which very likely contributed to misappropriating funds and lying to conceal misappropriations. Dr. Pope believes that Respondent is unlikely to engage in further gambling because he now has support from family and others who are aware of his gambling problem. Because of their awareness of the problem they are also in a better position to assist Respondent in dealing with the problem.

CONCLUSIONS OF LAW

16. Respondent’s conduct in misappropriating funds from the client (Power Mitey) and Respondent’s law firm and thereafter making misrepresentations to the client and his partners to conceal misappropriations violated Rules 1.15 (a), 4.1 and 8.4 (c), Rules of Professional Conduct, which prohibit lawyers from engaging in illegal conduct, and conduct involving deceit, fraud and misrepresentation.

17. Respondent’s conduct in failing to file personal income tax returns and employee withholding returns on behalf of Respondent’s law firm when required by law to do so violated Rules 8.4 (c) and (d), Rules of Professional Conduct, which prohibit lawyers from engaging in conduct that is illegal and is prejudicial to the administration of justice.

18. Conduct involving misappropriation, misrepresentation, and failure to file taxes generally warrants substantial suspension or disbarment absent extreme mitigating circumstances.
Respondent’s gambling addiction appears to constitute an extreme mitigating factor thereby warranting a lesser sanction.

19. Failure to communicate offer of settlement with client.

20. Co-mingling of funds (client funds in personal account).

RECOMMENDATION

Respondent should be suspended from the practice of law for 3 years but the suspension should be stayed provided: (1) Respondent continues in gambling treatment and counseling; (2) Respondent is supervised by another practicing lawyer who shall ensure that Respondent’s tax returns are timely filed; (3) Respondent continues to make best efforts to make restitution to Respondent’s partners for the Power Mitey funds; and (4) Respondent does not practice in a solo practitioner setting or any comparable setting where Respondent is solely responsible for the financial management or administration of client funds. Respondent should also be required to pay the Director’s costs and disbursements in this matter when Respondent is able.

Date:_____________ (Last Friday, Month -5)

    Pat M. Green

Pat M. Green, Referee
MEMORANDUM

There is no doubt that the Respondent’s conduct warrants serious discipline. Nevertheless, the purpose of lawyer discipline is to protect the public. This referee finds that Respondent’s gambling addiction constitutes a severe emotional condition which should be considered in mitigation of the discipline to be imposed. After reviewing the testimony and the conduct itself, this referee believes that it unlikely that Respondent would have engaged in the serious conduct which has resulted in this proceeding, were it not for a gambling disease. Respondent’s need for funds was driven by gambling losses. It was not until Respondent exhausted all of his personal resources that he began misappropriating funds belonging to others.

The self destructive nature of Respondent’s gambling habits illustrate the inability to control his own behavior. While in his second year of law school, Respondent took a Christmas vacation junket to Las Vegas and ultimately ended up losing $7,000 he had borrowed through various governmental loan programs for the second semester. Respondent was then forced to borrow the necessary funds for his second semester from his mother and father. There was apparently a serious disagreement between Respondent’s mother and father over whether they should lend Respondent the funds. After this incident, Respondent and his father had a rather “distant relationship” until his father’s death. Respondent cites this incident as causing the decline in his relationship with his father. Another example of the severe nature of Respondent’s gambling addiction is when he lost the first year associate bonus of $6,000 which Respondent bet on a single college football game.

As gambling became more available to members of our society, Respondent’s gambling problems exacerbated to the point where he began using funds that were not his and also began lying to conceal not only use of the funds, but also a raging gambling problem. In addition to the problems set forth in the findings, Respondent used approximately $65,000 given by his maternal grandmother for his children’s college education. Consequently when his son began college two years ago, Respondent began paying all of his son’s education expenses out of current earnings and did not disclose to anyone that funds received from his grandmother were gone. In fact, Respondent misrepresented to his spouse that the funds were invested so as not to have to confront his gambling problem.

One of the more telling signs of the severity of Respondent’s gambling problem is the use of funds held in a joint account with his daughter. When his daughter was seven, he took her to the bank and opened a joint bank account. Over the years Respondent’s daughter deposited savings from her allowances, birthday monies and the like into the account. When Respondent’s gambling problems appeared to have reached its peak about 18 months ago, he, without consulting his daughter or spouse,
withdraw the entire balance of the account ($659) on his way to gamble at the local horse track. Respondent testified that admitting to his daughter that he had taken her funds to gamble was “one of the most devastating and horrifying events in my life.”

This referee believes that if given the chance, Respondent can again be a productive member of this profession. Given his practice as a lawyer for over 17 years, this referee doubts whether another vocation is a viable alternative for Respondent at this point in his life. The conditions of the stay have been imposed with the protection of the public in mind. The stayed suspension should also expedite Respondent’s ability to make restitution to his former partners and pay the substantial tax obligations that are outstanding.

P.M.G.
Appendix E

Appellant’s Brief
APPENDIX E
File No. 00-464

In re Petition for Disciplinary Action
against TIMOTHY B. HALBROCK
an Attorney at Law of the State of Midstate.

Appellant’s Brief
and
Appendix
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## MIDSTATE RULES OF PROFESSIONAL RESPONSIBILITY

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LEGAL ISSUES

I. Was the referee’s conclusion of law that Respondent’s gambling addiction constituted mitigation evidence clearly erroneous given that it did not (and would not) meet the standard set forth in In re Falcon? The referee concluded Respondent established that his gambling addiction was a psychological disability worthy of mitigating consideration.

**Apposite Cases:**  
*In re Walton, 755 Midstate 2d 500 (Year -2)*.  
*In re Falcon, 559 Midstate 2d 80 (Year -22)*.

II. Even if the referee’s finding of mitigation is not clearly erroneous, do public policy considerations warrant this Court’s review of the recommended discipline? The referee recommended a three-year stayed suspension from the practice of law, subject to various conditions.

**Apposite Cases:**  
*In re Pfizer, 672 Midstate 2d 21 (Year -7)*.  
*In re Romaine, 587 Midstate 2d 715 (Year -13)*.

STATEMENT OF THE CASE

An evidentiary hearing was held in front of Referee Pat M. Green in this matter. Respondent admitted to all of the factual allegations set out in the Director’s petition, and relief on the defense of pathological gambling disorder to mitigate any recommended discipline. Respondent testified on his behalf and also called his psychiatrist, Dr. Pope, as an expert witness. Dr. Wagner, the Director’s expert, also testified at the hearing. The referee found that Respondent committed the alleged ethical conduct and acknowledged that such behavior generally warrants substantial suspension or disbarment. However, he also found that Respondent’s gambling and addiction constituted a severe emotional condition in mitigation of discipline. Therefore, the recommendation was a three-year stayed suspension, subject to conditions. The Director has brought this appeal, challenging the referee’s findings and conclusion that Respondent’s gambling problems should be considered as a mitigating factor in his discipline.

STATEMENT OF THE FACTS

On direct examination during the evidentiary hearing, Respondent admitted to all of the factual allegations set forth in the Director’s petition. (D. 3). Therefore, Respondent admits to misappropriating funds from a client and his law firm, making misrepresentations to conceal his misconduct, and failing to
file personal income tax returns and employee withholding returns. (D. 3). The total amount of money
Respondent has misappropriated to date is in excess of $125,000. (C. 3). The referee concluded that
Respondent’s conduct violated rules 1.15(a), 4.1, and 8.4(c) and (d), of the Rules of Professional
Conduct. (C. 4).

Dr. Pope testified on Respondent’s behalf, both as an expert and in the capacity as Respondent’s
psychologist. Dr. Pope has been seeing Respondent for his gambling problems for approximately four
months (D. 10). Dr. Pope began treatment with Respondent after he was discharged from his law firm
(D. 10). Dr. Pope testified that Respondent was a pathological gambler and that this disorder contributed
to his attorney misconduct. (D. 10). Specifically, Dr. Pope theorized that since Respondent had such an
overwhelming impulse to gamble, his decision to take funds was “not a conscious choice in the real
sense.” (D. 11). However, on cross-examination, Dr. Pope admitted that Respondent’s failure to file
taxes was a conscious act; Respondent knew it was wrong, but he felt it was necessary to conceal the
results of succumbing to previous gambling impulses. (D. 15).

Dr. Pope testified that although Respondent will never be cured of his gambling disorder, it is
unlikely that he would steal funds again after his successful treatment. (D. 11-12). However, Dr. Pope
admitted that Respondent missed six sessions with him during the treatment. (D. 16). Dr. Pope felt that
Respondent now understands his inability to control the gambling, and would no longer put himself in a
position where there is an opportunity to use other’s funds. (D. 12). Interestingly, when confronted with
the fact that Respondent admitted to lying in the past, Dr. Pope did admit it was possible that Respondent
could misrepresent facts in the future to obtain client funds. (D. 14).

Respondent testified at the evidentiary hearing that he has been gambling since his days in
college. (D. 19). Specifically, Respondent stated that in his “20 plus years of gambling . . . if [he] had
money in [his] possession, that was all that mattered at the time.” (D. 18). Yet Respondent admitted he
was able to keep up with his car and house payments, in addition to his country club dues, all the while
he was misappropriating funds. (D. 24-25). Respondent also testified that there were occasions when he
improperly used funds even after he was aware of what he was doing. (D. 18). Finally, Respondent
acknowledged the difficulty in finding future employment at a firm setting. (D. 26).

ARGUMENT

I. The referee’s conclusion of law regarding mitigation was clearly erroneous.

Respondent had the burden of proving to the referee by clear and convincing evidence that his
gambling addition was a psychological disability worthy of mitigating consideration. See In re Falcon,
559 Midstate 2d 80 (Year -22). To do this, Respondent had to prove all five Falcon factors to the
referee, specifically that: (1) he has a severe psychological problem; (2) this problem caused his
misconduct; (3) he is undergoing treatment and is making progress to recover; (4) recovery has arrested the misconduct; and (5) the misconduct is not apt to recur. *Id.* In the referee’s conclusion of law, however, he simply stated that “[R]espondent’s gambling addiction appears to constitute an extreme mitigating factor thereby warranting a lesser sanction.” (C. 5). The referee did not go into any analysis of the factors to show how the record supported such a finding. If he had, the analysis would have shown that there was insufficient evidence to prove that Respondent’s gambling problem caused the misconduct. Even assuming *arguendo* that the problem did cause his misconduct, the Respondent did not show that he has properly recovered.

There is insufficient evidence to show that Respondent’s gambling addiction caused his misconduct. In lawyer discipline cases involving psychological problems and misappropriation of funds, courts have held that there is no causation where attorney was cognizant that the funds needed to be returned. See *In re Walton*, 755 Midstate 2d 500 (Year -2) (finding no causation where attorney continued to deceive others to avoid detection.)

To illustrate, the court in *Walton* analyzed a referee’s application of the *Falcon* factors in an attorney misappropriation case. *Id.* Although the referee ruled that the attorney proved each factor by a clear and convincing standard, the court overruled his decision in part because the attorney “possessed enough cognitive ability to understand that he needed to restore the funds that he repeatedly withdrew.” *Id.* Additionally, the attorney’s misrepresentations to those he stole from demonstrated the alleged problem “had not impaired [his] ability to direct his actions and that he continued to recognize that his actions were wrong.” *Id.*

Here, although Dr. Pope felt Respondent did not appreciate the act of misappropriating funds, he did testify that Respondent knew it was wrong not to file taxes. Respondent made this decision because he was cognizant that his misappropriation of funds would likely be discovered. Thus, because Respondent understood that his acts were wrongful and took affirmative steps to cover it up, the gambling problem could not have caused the misappropriation. *See id.* Moreover, Respondent was able to maintain his personal finances—including his house and car payments and his country club membership. This further demonstrates that the gambling problem did not exert complete control over his actions.

The record also shows that Respondent failed to prove that recovery has arrested his misconduct. In *Walton*, the court found that a period of two months of treatment, especially when the attorney was not practicing at that time, was too short to provide clear and convincing evidence of sufficient recovery. *Id.* Respondent’s doctor testified that he started seeing him only four months ago, and then, only after he was fired. In addition, Respondent’s own doctor’s records reflect that Respondent missed six sessions
during that time—each time using “business” as his excuse. If overcoming this psychological problem and becoming part of the profession again was important to him, Respondent would not have missed this amount of sessions over this brief period of time.

Because Respondent failed to prove both factors by clear and convincing evidence at the hearing, the referee’s conclusion of law affording mitigation to his defense was clearly erroneous.

II. Even if the referee’s conclusions were not clearly erroneous, this Court should reconsider the referee’s recommendation in light of public policy.

The appropriate discipline in these proceedings should not be punitive, but should seek “to guard the administration of justice and to protect the courts, the legal profession, and the public.” In re Pfizer, 672 Midstate 2d 21 (Year -7). Therefore, this Court “does not hesitate to impose the strictest discipline available, including disbarment, in order to maintain public confidence in the legal profession.” Id. In Midstate, both published cases that dealt with gambling addiction evidence led to the attorneys’ eventual disbarment, although neither attorney adequately proved mitigation. See id., In re Romaine, 487 Midstate 2d 815 (Year -13). This can be attributed to the ample precedent supporting disbarment for misappropriation of client funds. See, e.g., In re Aitken, 744 Midstate 2d 106 (Year -3) (disbarment is appropriate for an attorney who misappropriated client funds and made false statements to conceal misappropriation and neglect).

Courts in other jurisdictions have declined to accept gambling addiction as a mitigating factor. For example, the Lower State Supreme Court ruled in favor of disbarment in a case with a fact pattern strikingly similar to that of the Respondent’s. See In re Klevinski, 541 Midstate 2d 866 (Year -19). In In re Klevinski, Klevinski presented testimony from his treating psychiatrist that he suffered from compulsive gambling, but that he was in a successful state of arrest and his prognosis was excellent. Id. The underlying misappropriation of funds had been Klevinski’s only ethical violation in twenty-six years, and the court heard evidence about his personal and family background “that would test anyone’s endurance.” Id. And yet, the court found that “any discipline less than disbarment would depreciate the seriousness of Respondent’s act of misconduct.” Id.

Most importantly, even if Respondent has successfully proven his disease, the court must keep an eye on precedent in establishing its discipline in this case. Moreover, our profession is unique in that it is self-regulating. Respondent committed the ultimate sin of our profession as well as other aggravating factors, including: failing to pay income tax, misappropriating his firm’s funds, making misrepresentations to both firm and client, and failing to keep in contact with his client. Therefore, if
Respondent receives only a *stayed* suspension, the public is going to view this as merely a hand slap. To keep the confidence of the public, this Court should send the message that our profession can, and will, properly regulate attorney misconduct. While the circumstances of this case are unfortunate, no single attorney is above keeping the integrity of our profession intact.
CONCLUSION

The Respondent failed to prove by clear and convincing evidence that his gambling problems caused him to misappropriate client funds. Therefore, the referee’s finding were clearly erroneous. However, even if the Respondent met his burden, discipline of a stayed suspension does not adequately safeguard the public and dilutes the otherwise harshest of attorney misconduct: theft of client funds. Thus, this Court should disbar Respondent.

Dated: Last Friday,_____ (Month -4) Respectfully submitted

________________________
________________________

COUNSEL FOR THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Appendix F

Respondent’s Brief
In re Petition for Disciplinary Action
against TIMOTHY B. HALBROCK
an Attorney at Law of the State of Midstate.

Brief for Respondent
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LEGAL ISSUES

I. Was the referee’s conclusion of law that Respondent’s compulsive gambling addiction is a mitigating factor clearly erroneous? The referee’s conclusion was not clearly erroneous and the Respondent’s disability was a mitigating factor.

II. Whether the referee’s recommendation for discipline is appropriate in light of public policy? The referee’s recommendation for discipline is appropriate because public policy does not warrant disbarment.

STATEMENT OF THE FACTS

Respondent has been a practicing attorney for seventeen years. (D. 17). Respondent has never had a complaint filed against him until this incident. (D. 17). He has admitted to all of the factual allegations set out by the Director. (D. 3). It is the Respondent’s defense that his addiction to gambling was the cause of his actions. (D. 18). He testified that he never believed that he had an addiction. (D. 20). When Respondent was in his second year of college he used a $7,000 financial aid loan check to gamble in Las Vegas. (D. 19). Respondent lost the entire $7,000 and was forced to ask his father for a loan to pay the tuition for which the money was originally to be used. (D. 20). This incident caused a very distant relationship between the Respondent and his father until his father died last year. (Referee Mem.) Additionally, Respondent gambled his entire $6,000 first year associate bonus on one football game, losing it all. (Referee Mem.) He has gambled away his children’s entire college fund of $65,000 and even depleted his daughter’s savings account of $659 to gamble. (D. 21).

Respondent is responsible for misappropriating a total of $125,000, $100,000 from his client Power Mitey, and $25,000 of the firm’s money from the employee payroll tax account. (D. 22). Respondent does not recall taking the money and testified that he never worried about where the money came from when he gambled. (D. 18). He only realized that he must have taken the money when he was asked to review the records, he testified that “there was no other conclusion–I had gambled it away.” (D. 19). Respondent has made attempts at restitution. (D. 22).

Respondent is currently seeking treatment for his gambling problem. (D. 21). After only examining him for three hours, the Director’s expert, Dr. Wagner, testified that the Respondent’s impulse to gamble only contributed to the problem. It was not a cause of the problem (D. 5). However, Dr. Wagner did agree that the Respondent does have a gambling problem. (D. 7). Respondent’s therapist is
Dr. Pope, who also testified as an expert at the hearing. Dr. Pope has seen the Respondent for approximately 60 hours in the last four months, and testified that Respondent is a pathological gambler. (D. 10). Dr. Pope testified that the following reasons were evidence that the Respondent is a pathological gambler. Loss of position, potential loss of law license, personal and professional tax problems, family problems, and an impending divorce. (D. 10). Dr. Pope testified that the Respondent’s impulse to gamble is so strong that it affected his judgement, he was not really aware of taking the money until he lost it. (D. 11). Dr. Pope testified that although Respondent will never be cured, if Respondent continues with treatment, and has the support of his co-workers, it is not likely the Respondent will ever do this again. (D. 11).

**ARGUMENT**

I. **The referee’s conclusion of law that compulsive gambling is a mitigating factor should not be considered clearly erroneous.**

The clearly erroneous standard applies to the referee’s conclusions of law and facts; thus, the Supreme Court will affirm the referee’s facts and conclusions of law unless they are clearly erroneous or not supported by evidence. *In re Romaine*, 587 Midstate 2d 715 (Year -13). The Director has the burden of proof to show clear and convincing evidence that the referee’s findings of facts and conclusions of law are clearly erroneous. *Id.* The Supreme Court places “great weight on recommendations made by a referee.” The court alone still has the responsibility to come to their own conclusions. *Id.*

The Director has asserted that the referee did not go into an analysis that shows how the record supported the *Falcon* factors: the Respondent disagrees with this argument. The *Falcon* standard is used to prove a severe psychological disability should be a mitigating factor. To do this, the following factors need to be addressed: 1) a severe psychological problem; 2) causal relationship between psychological problem and misconduct; 3) treatment for the psychological problem and progress toward recovery; 4) misconduct has been arrested by recovery; and 5) the misconduct is not likely to happen again. *In re Falcon*, 559 Midstate 2d 80 (Year -22).

The Respondent has been diagnosed by Dr. Pope as having a severe gambling disorder. Pathological gambling is accepted by the psychiatry field and is a part of the American Psychological Association’s *Diagnostic and Statistical Manual*, fourth edition (DSM IV) (312.31). Dr. Pope testified at the hearing that the Respondent’s compulsive gambling is the cause of most of the problems in his life. The referee has already determined that the Respondent did have a compulsive gambling addiction. The referee based this decision on the evidence before him.

In *In re Romaine*, the attorney misappropriated a significant amount of client funds and used
those funds to support his gambling addiction. See In re Romaine, 587 Midstate 2d 715 (Year -13). The referee in the In re Romaine case did not find that the attorney had established enough evidence to show that gambling was a mitigating factor and the Supreme Court relied on the referee’s recommendation. Id. 874. In the Respondent’s case he has strong evidence of an addiction. The referee stated that “the self destructive nature of Respondent’s gambling habits illustrate the inability to control his behavior.” Ref. Mem. The evidence of Respondent’s psychological problem is immense. Gambling has affected the Respondent’s employment, his relationship with his spouse, and his relationship with his children. The Respondent’s addiction goes back as far as his college days, and he took money from his children’s college funds to support his addiction. The referee found such significant evidence of a psychological disorder that he based his decision on it.

The Director has asserted that there is insufficient evidence to show that Respondent’s gambling disorder caused the misconduct. In similar disciplinary cases, this court has held that when misappropriation of funds is the issue, and if the attorney tried to cover up his actions because he was aware that they were wrong, then the disorder did not cause the misconduct. See In re Walton, 755 Midstate 2d 500 (Year -2).

Both experts testified that the Respondent is afflicted by a pathological gambling disease. The Respondent himself testified that he does not remember taking the money and never believed he had a problem. Dr. Pope testified that though the Respondent was conscious while taking the funds, his impulse was so strong that it removed his choice. The Respondent did not truly become aware of the problem until he lost all of the funds.

The court in In re Duggins, was confronted with a situation in which the psychological disorder was the cause of some of the behavior, but was not the entire cause. See In re Duggins, 720 Midstate 2d 618 (Year -4). The court held that because great strides were being made in therapy, it would suspend Duggins from practicing law until he provided adequate evidence showing that he was fit to practice. Id. The Director asserted that because the Respondent was aware that failing to file taxes was wrong, and he took steps to cover it up, the Respondent’s gambling problem could not have caused the misappropriation. The referee and both experts found that there was significant anti-social behavior in both his personal and professional life which is evidence of a pathological disorder. On a professional level, the Respondent may lose his law license; on a personal level he is facing tax problems, loss of a relationship with his children, and a possible divorce. Contrary to the Director’s argument that Respondent’s home life was not as effected because he maintained payments on his house, car, and country club, his compulsive gambling did control his home life. This was evident by him taking the $65,000 in his children’s college fund and the $659 from his daughter’s saving account. His gambling problem controlled both his professional life and his personal life.
The Respondent began treatment immediately upon discovering his compulsive gambling disorder and he plans to continue this treatment indefinitely. He has been involved in treatment for the last four months, and has been seen by his doctor for at least sixty hours. In *In re Walton*, the court did find that treatment for a period of two months was inadequate to prove sufficient recovery. See *In re Walton*, 755 Midstate 2d 500 (Year -2). The Respondent’s situation can be distinguished from *Walton* for numerous reasons. First, *Walton* was on his second disciplinary hearing, and had previously been reprimanded and placed on probation. *Id.* Here, this is the first time that Respondent has ever even had a complaint filed against him. Second, although the Respondent has only had four months of treatment, he did not realize the misconduct until he was fired. Once Respondent was fired, he took immediate steps to rectify the problem and began treatment. The Respondent has also taken great strides to pay restitution.

Finally the referee found that the Respondent’s misconduct is not apt to recur because of Respondent’s treatment with Dr. Pope, the fact that he is aware of his gambling problem and the fact that the Respondent has support from family and others to get through this. Dr. Pope testified that although the Respondent will never be cured, he has made great progress through treatment. Dr. Pope believes that with the proper restrictions the Respondent could be a busy productive lawyer.

II. The referee’s recommendation for discipline is appropriate because public policy does not warrant disbarment.

The de novo standard of review applies to the issue of whether the sanction recommended by the Referee is appropriate; thus, the Supreme Court has the ultimate authority on deciding what sanction is appropriate. See *In re Duggins*, 720 Midstate 2d 618 (Year -4). Despite this, the Supreme Court does place great weight on the Referee’s recommendations. See *In re Romaine*, 587 Midstate 2d 715 (Year -13).

The purpose of sanctions is not to punish attorneys, but to protect the public. See *In re Pfizer*, 672 Midstate 2d 21 (Year -7). The court considers “the nature of [the] misconduct, the cumulative weight of the violations, the harm to the public, and harm to the profession.” *Id.* The court also considers the number of clients harmed by the attorney’s conduct, the extent of the injuries, any mitigating circumstances and any prior misconduct. *Id.* Additionally, this court “recognizes that each case comes to [it] bearing its own unique factual circumstances.” *Id.*

In Midstate, there are only two cases that discuss gambling addiction as possible mitigating factor. See *In re Pfizer*, 672 Midstate 2d 21 (Year -7). See *In re Romaine*, 537 Midstate 2d 715 (Year -13). Though disbarment was the sanction ordered in both of these cases, they are both distinguishable from our case.

First, in *In re Pfizer*, the attorney misappropriated more than $62,000 from thirteen different
clients by settling their claims and then forging their signatures on the settlement checks and releases without her clients’ consent, failed to communicate with clients, misrepresented facts to opposing parties and counsel, maintained inadequate books and records, and engaged in additional misconduct while the disciplinary action was pending. *See In re Pfizer*, 672 Midstate 2d at 21. This court agreed with the referee’s finding that Pfizer did not establish that her psychological disorder caused her misconduct, that her recovery from the disorder has arrested the misconduct, or that the misconduct is not apt to recur. Further, this court was disturbed by the fact that Pfizer forged her clients’ signature. Here, Respondent did not forge his client’s signature or engage in any misconduct while his disciplinary action was pending.

In the second case, the attorney was charged with twelve counts of misconduct, including misappropriating funds from clients, misrepresentations to the members of his firm, trust account violations, failing to file tax returns, inducing a client to give a large unsecured personal loan by misrepresenting the purposes other than those stated, and misappropriating property of his law firm. *See In re Romaine*, 537 Midstate 2d at 715 *(Year -13)*. Romaine was a compulsive gambler, had made partial restitution to his client, and had never been disciplined for misconduct before. Despite these similarities, our case can be distinguished from *In re Romaine*. First, the only restitution Romaine made was using funds he misappropriated from other clients. Also, this court placed great deference on the referee’s finding that Romaine did not prove that his compulsive gambling caused his misconduct and that Romaine did not suffer any financial hardships. Also, Romaine misappropriated $200,000 of client funds. Further, Romaine was unable to show that his compulsive gambling disorder caused his misconduct. Here, Respondent has made partial restitution to his client from personal sources, suffered financial hardships, and although he misappropriated a substantial amount, it was half of what Romaine had misappropriated.

While this court has ordered disbarment in cases of severe misappropriation of funds, there are cases in which it has not imposed the sanction of disbarment. *See In re Smithson*, 451 Midstate 2d 319 *(Year - 19)*. (Isolated incident, less than $10,000 of misappropriated funds, significant pro bono work.) Similarly, this is Respondent’s only disciplinary action in the seventeen years he has practiced law. Though the extent to Respondent’s pro bono service is not known, he is committed to practicing law and helping people in need of legal services. Respondent has gained many new clients and a substantial amount of new business for his firm. Respondent has also made earnest attempts to pay restitution. He has secured a $75,000 loan from a relative and taken out a $25,000 third mortgage on his home to help pay off his restitution. The misconduct that Respondent has committed was during a relatively short period of three years and only with his firm and one client.

Other jurisdictions have accepted gambling addiction as a mitigating factor. *See In re Boynton*, Appendix F – Respondent’s Brief
132 Midstate 2d 424 (Year -10). (Court accepted gambling as a mitigating factor where attorney stole $160,000 from a client’s estate and ordered suspension for five years.)

Director cites to a Lower State decision to support its proposition that other states have not accepted compulsive gambling as a mitigating factor. See In re Klevinski, 641 Midstate 2d 766 (Year -19). The attorney’s misconduct in that case consisted of Klevinski’s pledging his firm’s trust account as security for obtaining a line of credit at the casino 161 times in two years for a total amount of $164,000. Id. The lower Midstate Court did not dismiss the idea that a gambling addiction could be a mitigating factor; rather, it found that in that particular case, Klevinski’s addiction did not render him incapable of controlling his conduct because he was able to keep his open balance well under control by frequent payments of cash or chips. Thus, in that case Klevinski’s compulsive gambling could not be used as a mitigating factor. Here, Doctor Wagner, the doctor for the Director, states that Respondent’s impulsive disorder very likely did contribute to his misconduct. In addition, Doctor Pope, Respondent’s doctor, states that Respondent’s conduct did render him incapable of controlling his conduct. Respondent was not able to control his misappropriations by replenishing the funds with frequent payments.

Respondent has concretely demonstrated that he has significantly changed and there is no risk that he may commit misconduct in the future. His pathological gambling disorder is a causal factor in his willful misconduct. He has confronted his pathological gambling disorder, willingly sought counseling, rearranged his priorities, and found workable solutions to the numerous life problems that gambling has created. Further, the referee has recommended a sanction that allows Respondent to continue practicing. Respondent has no discipline history and he has not had any misconduct during this discipline hearing process. Further, Respondent has fully cooperated with the Director. Today, Respondent abstains from gambling and is rebuilding his life. Doctor Pope attests to Respondent’s continuing rehabilitation. For these reasons, the public will not be harmed if Respondent is permitted to practice law.

CONCLUSION

For all of the above stated reasons, Respondent respectfully requests this court to affirm the Referee’s Findings of Fact, Conclusions of Law, and Recommendation for Discipline.

Respectfully submitted,

Attorneys for the Respondent

Dated: 3rd Friday, ____ (Month -3)
Appendix G

Memo to Senior Partner for Appellant - Office Of Lawyers’ Professional Responsibility Short Case Analysis
INTEROFFICE MEMORANDUM

TO: Senior Partner
FROM: Associate
CLIENT: Office of Lawyers Professional Responsibility
SUBJECT: Initial Overview

ISSUES:

1. Is the referee’s Conclusion 18–that Respondent’s gambling addiction is an extreme mitigating circumstance, clearly erroneous?

2. Do the referee’s recommendations accomplish the purposes of attorney discipline?

SHORT ANSWERS:

1. Yes. The referee’s Conclusion 18–that Respondent’s gambling addiction is an extreme mitigating circumstance–is clearly erroneous.

2. No. The referee’s recommendations do not accomplish the purposes of attorney discipline.

FACTS:

The referee found the following: Respondent convinced a client (Power Mitey) to give him $100,000 for settlement negotiations. Respondent spent the money gambling and told both the client and his partners that it was in a separate trust account. Meanwhile the client’s adversary made a settlement offer to Respondent. Respondent rejected it without consulting the client because he had already spent the money. When questioned about the offer, Respondent denied it was made. Respondent also took more than $26,000 in employee’s tax withholdings from his law firm. To cover up the lack of funds, Respondent failed to file the firm’s withholding taxes for six consecutive quarters. Finally, Respondent failed to file personal income tax returns for four consecutive years.

Respondent borrowed $75,000 from an uncle and received a $25,000 third mortgage on his home. He has paid the client $25,000 and has used the remaining $75,000 to cover other debts and for living expenses. Halbrock calculates that he owes his law firm $85,000 to reimburse the firm for the money the firm paid to reimburse the client (Power Mitey); however the loss of the offer has not been rectified. Respondent’s firm withheld $40,000 from his pay to cover the unpaid taxes, which the IRS claims are $38,000. Finally, Respondent has filed back taxes but is unable to pay them.

The referee found that while the above conduct would ordinarily warrant disbarment, Respondent suffered from a gambling addiction which constituted an extreme mitigating factor, thereby warranting a lesser sanction.
STANDARD OF REVIEW:
In disciplinary hearings, the standard of review is whether the referee’s findings and conclusions were clearly erroneous. *In re Schoenemann*, 502 Midstate 2d 912 (Year -19). While the court places great weight on the disciplinary recommendations made by the referee, “the final responsibility for determining appropriate discipline rests solely with [the] court.” *Id.* In other words it is *de novo*.

ANALYSIS:
1. The referee’s Conclusion 18—that Respondent’s gambling addiction is an extreme mitigating circumstance—is clearly erroneous.

The referee concluded that “Respondent’s gambling addiction appears to constitute an extreme mitigating factor thereby warranting a lesser sanction.” In order to establish severe psychological disability as a mitigating factor the attorney facing discipline must prove that: 1) Respondent has a severe psychological problem; 2) the psychological problem was the cause of the misconduct; 3) Respondent is undergoing treatment for the psychological problem and making progress toward recovery; 4) the misconduct has been arrested by recovery; and 5) the misconduct is not likely to happen again. *In re Wortman*, 439 Midstate 2d 557 (Year -23).

The finding of severe psychological disability as a mitigating factor can best be attacked through element 2) cause. Respondent claims to be a compulsive gambler. Respondent is not charged with gambling, he is charged with stealing and lying. The situation is analogous to the difference between proximate cause and cause in fact in tort law.

Central theory at trial will be that there is an important degree of separation between the disability and the theft. All the cases in which severe psychological disability was found to be a mitigating factor involve discipline for the very conduct which the disability caused. Therefore, no case has specifically ruled on the importance of this separation. However, I think this is inherent in *Wortman* element 2). I will argue that the “cause” required by *Wortman* is proximate cause and not just cause in fact. Requiring proximate cause negates application of *Wortman* to this case since Respondent was not compelled to seal or lie or failed to file taxes. Respondent was only compelled to gamble, which led to needing money, which led to stealing and failing to file taxes, which led to lying. This construction of *Wortman* is endorsed by the fact that no Midstate case has found compulsive gambling to be a mitigating factor.

*Wortman* fact 5) is also winnable. While the referee’s Finding 15 holds that Respondent is unlikely to gamble again, there is no factual finding as to the probability that Respondent will again engage in misconduct of stealing, lying, and failing to file tax returns. Respondent’s therapist/witness
testified favorably on this subject. However, most of Respondent’s therapist’s statements were contingent in nature. For example, “[I]f, Timothy could work in an environment where Timothy did not have signatory power of such funds . . . .” Emphasis added. That’s a big “if.” In fact, if the referee’s recommendations are followed, Respondent will be in an environment where he has control over clients funds in just three years. The simple way to ensure this “if” is to disbar Respondent.

2. The referee’s recommendations do not accomplish the purposes of attorney discipline.

In determining appropriate sanctions for misconduct, the court weighs: (1) the nature of the misconduct, (2) the cumulative weight of the disciplinary violations, (3) the harm to the public, and (4) the harm to the legal profession. In re Panel Case #051267, 769 Midstate 2d 509.

Criteria (1) and (2) work in favor of disbarment because there are multiple allegations of theft and deceit—violations of the highest order. Criterion (3) is the most problematic since it seems that much of the harm has been remedied.

Criterion (4) is the most effective argument for disbarment. Respondent has betrayed the two most important entities in the life of a lawyer, his client and his firm. In so doing, Respondent has caused great harm to the esteem of the profession.

Even if the referee’s Conclusion 18 is not found to be clearly erroneous, the case of disbarment can be made. The recommendations of the referee do not accomplish the purposes of attorney discipline and therefore should not be followed. The purpose of attorney discipline is to provide protection to the public. In re Disciplinary Action Against Werneck, 561 Midstate 2d 822 (Year - 16).

The referee’s recommendations can be said to do very little to protect the public. Under the recommendations, for three years Respondent would continue treatment, be supervised by another attorney, make “best efforts” at restitution, and not be responsible for client funds. Reliance on these measures requires two dangerous assumptions.

First, one must assume that treatment would effectively cure Respondent in three years. Even Respondent’s treating physician acknowledges that he will never be cured. Second, one must assume that Respondent will not be able to deceive his supervising attorney in the way that he was able to deceive his partners. This is difficult to swallow since Respondent’s partners clearly had a pecuniary interest in ensuring his good conduct, yet he was able to defraud them. A court appointed supervisor would have less incentive and would likely do worse.

The record is rife with incidences, not only of Respondent stealing, but stealing from and lying to, people who trust him. I believe the court will be persuaded that we, as a profession, cannot expose the public to this risk. The only permanent solution to Respondent’s permanent problem is permanent
CONCLUSIONS/RECOMMENDATIONS

This case essentially comes down to how the court will fill in the gaps left by case law concerning the definition of “cause” in the *Wortman* analysis. Public policy, the factors governing lawyer discipline and, most importantly, the purpose of lawyer discipline, all point to requiring proximate cause to satisfy the *Wortman* analysis. Therefore, it seems likely that the court will reverse the referee’s conclusion and the Respondent will be disbarred.
Appendix H
Memo to Senior Partner
for Respondent - Halbrock
Short Case Analysis
INTEROFFICE MEMORANDUM

TO: Senior Partner
FROM: Associate
SUBJECT: In Re Halbrock: Initial Case Analysis

The law firm of Smith, Rojas & Grygelko (SR&G) has hired our firm to represent their client, Timothy Halbrock, in a disciplinary action. The Director of the Office of Lawyers Professional Responsibility (“the Director”) filed a petition for disciplinary action against Halbrock alleging the following:

Allegation I: Misappropriation of Funds from Power Mitey Corporation
Allegation II: Misappropriation of Funds from Osborn, Lewis, Halbrock & Albert Law Firm and Failure to Pay and File Employee Withholding Taxes
Allegation III: Failure to File Personal Income Tax Returns
Allegation IV: Failure to Communicate with Client

In the disciplinary hearing before the referee, Halbrock admitted to all of the factual allegations, but argued that his actions were caused by severe gambling addiction for which he has now sought treatment. The referee found that Halbrock did commit these offenses, but that his violations were the product of a severe gambling addiction. Instead of recommending disbarment, the referee recommended a three year suspension stayed subject to certain conditions. The Director is contesting the findings and conclusion that Halbrock’s gambling problems should be considered as a mitigating factor.

The issue in this case is whether Halbrock’s gambling addiction should be considering a mitigating factor. We will be arguing that the proper disposition for the admitted misconduct by Halbrock, a compulsive gambler, who is successfully making recovery with the treatment of a psychiatrist, is a the recommendation of a three year stayed suspension made by the referee. In order to succeed in this argument we must prove that gambling addiction is a mitigating factor that should preclude Halbrock’s disbarment. These are two separate standards of review for attorney discipline cases. The first is to uphold the referee’s factual finding if they are not clearly erroneous or if they are supported by evidence. The second standard of review is de novo when reviewing the discipline order.

Mitigating Circumstances

When raising a psychological disability as mitigating factor in an attorney-discipline case, the respondent has the burden to prove by clear and convincing evidence that: (1) the attorney has a severe
psychological problem; (2) the psychological problem caused the misconduct; (3) the attorney is undergoing treatment and is making progress to recover from the psychological problem which caused or contributed to the misconduct; (4) recovery has arrested the misconduct; and (5) the misconduct is not apt to recur. In re Wortman, 439 Midstate 2d 557 (Year -23).

(1) The attorney has a severe psychological problem

Both expert witnesses who testified at the initial hearing, Dr. Wagner and Dr. Pope, stated that Halbrock is, or was, afflicted by a pathological gambling disease. Further, they both agreed that compulsive gambling is recognized by the American Psychiatric Association and is in the DSM-IV listed as an impulse disorder and a mental disorder. The case can be distinguished from In re Oland in that Halbrock was able to present medical testimony to prove the five Wortman factors were satisfied. Further, he provided direct testimony from his doctor stating his exact diagnosis. In In re Oland, the only evidence provided other than Oland’s own testimony was that of laymen who also suffered from the disease. Halbrock has presented adequate medical testimony; thus, we should not have difficulty satisfying this element of the factors. See e.g., In re Popplar, 549 Midstate 2d 789 (Year -6).

(Respondent claimed he was treated by a psychiatrist but did not present any evidence of treatment and testimony of a psychologist was inadequate to establish mitigation.)

(2) The psychological problem caused the misconduct

The expert witnesses had diverging testimony regarding whether Halbrock’s violations were caused by his gambling disorder. The Director’s witness, Dr. Wagner, stated that Dr. Wagner did not believe Halbrock’s disorder caused any of the behavior by itself, but that it very likely did contribute to the behavior. However, Dr. Pope, Halbrock’s treating psychiatrist, testified that he is a compulsive gambler and it was this disorder that prevented Halbrock from denying the impulse to steal in order to satisfy Halbrock’s gambling urges. Basically, Halbrock stated that if it were not for this gambling disorder, he would never have felt the need to steal from his firm and client. This is a strong argument that there is a causal relationship here. Halbrock was stealing the money to fund his gambling addiction. Halbrock was not stealing this money to spend on anything but Halbrock’s gambling and/or gambling debts. It will be crucial that we discredit Dr. Wagner by showing that unlike Dr. Pope, Dr. Wagner is not very experienced with gambling disorders and has only met with Halbrock for a fraction of the time that Dr. Pope has.
(3) The attorney is undergoing treatment and is making progress to recover from the psychological problem which caused or contributed to the misconduct

Unlike the attorney in In re Oland, Halbrock has continued treatment with his doctor. Dr. Pope testified that Dr. Pope has seen Halbrock 60 hours over the last four months and is still seeing him at the present time twice a month for 2-hour sessions. Dr. Pope further testified that Halbrock is very open during sessions and Halbrock’s counseling is a priority. The Director will likely argue that treatment is not a main concern of Halbrock’s considering the six missed appointments with Dr. Pope over a four-month period. However, missing only six appointments out of 30-40 sessions is not that many. It can be argued that it is not outlandish that Halbrock missed a few appointments. This person was and is undergoing extreme life changes. Halbrock’s family life is in shambles, he has lost the respect of his children, he is in the middle of a divorce, was recently suspended from his job, and has a pending court action against him. It is understandable that Halbrock’s time would be consumed by other issues. Still, Dr. Pope is in a much better position to evaluate whether he is taking the treatment seriously.

(4) Recovery has arrested the misconduct

We will need to firmly establish that Halbrock’s gambling has ceased since the time Halbrock began seeking treatment from Dr. Pope. This is unclear in the record. Assuming that Halbrock has not participated in any type of gambling since beginning treatment, we will have a very strong argument here. However, if there is any evidence that Halbrock has been gambling it will be crucial that we do not offer this evidence.

(5) The misconduct is not apt to recur

Dr. Pope specifically testified that Halbrock has made “substantial progress through treatment” to the point that Dr. Pope believes that “it is unlikely [Halbrock] would steal, take or embezzle funds.” Dr. Pope further suggested that Halbrock would work well in an environment where he did not have signatory power over clients or law firms funds. Further, Halbrock testified under oath that he is confident that gambling will not be a part of his life in the future. Halbrock has finally accepted that he has a problem and has taken the necessary steps to begin to control this addiction. However, the speculation of a doctor and the testimony of an addict do not provide us with a concrete argument for this factor. It is vital that we strongly emphasize that Halbrock has suffered a great deal of shame and loss from his behavior. Halbrock is doing everything in his power to beat this addiction and therefore it is unlikely that he will allow this misconduct to recur.
Conclusions and Recommendations

In arguing this matter in the appellate hearing, we will need to strongly emphasize that Halbrock admitted misconduct, expressed profound remorse and has made restitution to the fullest extent of his abilities. We will need to prove that Halbrock is a compulsive gambler, but this is not a defense for Halbrock’s actions and it does not exonerate him from responsibility. However, it does explain Halbrock’s misconduct and sheds light on the element of intent. Our biggest obstacle will be to overcome the decision in In re Oland where the court disbarred the attorney despite his gambling addiction. However, we do have a strong argument to distinguish Halbrock from this attorney based on the medical testimony and steps taken for recovery. It will also be crucial to demonstrate that if Halbrock continues seeking treatment from his psychiatrist and abstains from gambling, the misconduct is unlikely to recur.

There is a strong presumption that the referee’s Finding and conclusion should be affirmed. The referee heard the case, had all the evidence and observed the demeanor of Mr. Halbrock. The referee’s conclusion is a reasonable one based on the evidence in front of the referee. A good argument can be made that under the circumstances of this case the findings of the referee were not erroneous and should be affirmed.
APPENDIX I

Cited Cases
Appendix I – Cases Cited

**CASES CITED**

*In re Aitken*, 744 Midstate 2d 106 *(Year –3)*.
Disbarment was appropriate sanction for attorney who misappropriated client funds, neglected client matters, made false statements to conceal misappropriation and neglect, did not cooperate with disciplinary process, engaged in criminal conduct, failed to pay court reporter, and failed to satisfy court-imposed sanctions. Attorney failed to establish that alcoholism was mitigating factor.

*In re Boynton*, 132 Midstate 2d 424 *(Year –10)*.
While acting as an attorney for an estate, the lawyer conspired with the administrator to remove more than $160,000 from the estate's assets. He pled guilty to the criminal charges against him and admitted responsibility during the disciplinary hearing. The lawyer's mitigation evidence showed alcoholism and a compulsive gambling disorder. Court held that the mitigation evidence showed that the respondent merited a five year suspension.

*In re Disciplinary Action Against Werneck*, 561 Midstate 2d 822 *(Year -16)*.
In attorney discipline proceeding, the Supreme Court held that attorney misconduct in lying to clients, neglecting client matters, forging client's signature, misappropriating funds, failing to comply with discovery requests and to communicate with client, failing to account for or return client property or unearned fees, knowingly issuing checks on closed account, failing to appear in court pursuant to arrest, failing to cooperate with disciplinary process, failing to return client files and unearned retainer, neglect, failing to pay court-ordered fee award, and practicing law after suspension warrants disbarment.

*In re Duggins*, 720 Midstate 2d 618 *(Year –4)*.
Director of the Office of Lawyers Professional Responsibility petitioned for disciplinary action. The Supreme Court held that attorney's neglect of clients' matters, fraudulent execution of clients' affidavits, false statements, and other misconduct warranted an indefinite suspension from the practice of law for a minimum of one year.

Respondent's psychological disorders warrant conditioning his reinstatement on adequate psychological or other medical evidence establishing that he has no physical or psychological problems that would affect his ability to practice law competently, diligently, and within the rules of conduct for attorneys.

*In re Falcon*, 559 Midstate 2d 80 *(Year –22)*.
A psychological disability may be raised as a mitigating factor in a disciplinary proceeding. Attorney must prove by clear and convincing evidence that he had a severe psychological problem that caused his misconduct, that he is undergoing treatment and making progress, that recovery has caused the misconduct to cease, and that the misconduct is not apt to reoccur.

*In re Klevinski*, 641 Midstate 2d 766 *(Year –19)*.
Attorney disciplinary proceeding was brought. The Supreme Court held that misappropriation of client moneys to fund compulsive gambling habit warrants disbarment.

*In re Oland*, 587 Midstate 2d 6 *(Year -14)*.
Disciplinary proceedings were filed against attorney. The Supreme Court accepted referee's recommendations, and held that misconduct including misappropriation of over $200,000 in client funds over four-year period, aggravated by other serious misconduct, warrants disbarment.
Disbarred.

*In re Panel Case #051267, 769 Midstate 2d 509 *(Year -3)*.
Attorney appealed Lawyers Board on Professional Responsibility's affirmation of admonition by Director of the Office of Professional Responsibility for attorney's submission of frivolous claims on client's behalf. The Supreme Court held that: (1) trial judge's failure to impose rule 11 sanctions for frivolous claims in underlying action did not collaterally estop ethics complaint; (2) attorney was not entitled to notice that ethics complaint might be issued; (3) attorney lacked good faith basis to assert that complainant in underlying action "shot bullets into the car above the tire-line, including the entire back trunk of the car;" and (4) attorney lacked good faith basis to assert defamation claim against complainant.
In re Pfizer, 672 Midstate 2d 21 (Year – 7).
Attorney misappropriated more than $62,000 from 13 clients by purportedly settling their claims and then forging their signatures on settlement checks and releases. Additionally, attorney lied to clients and failed to communicate with them both before and after the misappropriations. Furthermore, attorney misrepresented facts to opposing parties and counsel, and maintained inadequate books and records. This misconduct warranted disbarment, particularly absent proof that psychological gambling disorder caused misconduct, that recovery from disorder had arrested misconduct, and that misconduct was not apt to recur.

In re Poplar, 549 Midstate 2d 789 (Year -16).
Disciplinary proceedings were brought against attorney for his alleged falsification of documents in connection with execution and probate of will, misappropriation of money from trust accounts, and failure to keep required trust account books and records. The Supreme Court held that: (1) manic-depression from which attorney allegedly suffered was not mitigating circumstance; (2) attorney's disclosure of misconduct in falsifying documents in connection with execution and probate of will was likewise not mitigating circumstance; and (3) appropriate sanction for attorney's misconduct was indefinite suspension without leave to petition for reinstatement for period of at least six months.

In re Romaine, 587 Midstate 2d 715 (Year –13).
Disciplinary proceedings were filed against attorney. Referee recommended disbarment. The Supreme Court will affirm the referee's facts and conclusions of law unless they are clearly erroneous or not supported by law. The Director has the burden of proving that the referee's findings of facts and conclusions of law are clearly erroneous. The Supreme Court, placing great weight on the referee's recommendations, accepted the recommendations, and held that misconduct including misappropriation of over $200,000 in client funds over four-year period to support compulsive gambling addiction, aggravated by other serious misconduct, warrants disbarment.

In re Schoenemann, 502 Midstate 2d 912 (Year -19).
In disciplinary proceeding, the Supreme Court held that misrepresenting facts to judge, opposing counsel and client during course of litigation, misrepresenting facts to client in order to secure release absolving lawyer from professional liability and delays in handling of client affairs and failing to keep in communication with clients merits public reprimand and six months suspension.

In re Smithson, 451 Midstate 2d 319 (Year –19).
Disciplinary proceedings were brought. Attorney misappropriated funds, failed to maintain required books and records while falsely certifying that proper records were maintained. This was an isolated incident and less than $10,000 were misappropriated additionally, attorney had performed a significant amount of pro bono work.
Supreme Court held this misconduct warrants public reprimand, suspension from practice of law for three months, and placement on supervised probation for a minimum of three years.

In re Walton, 755 Midstate 2d 500 (Year –2).
Attorney claimed that his untreated depression mitigated his misconduct. Court held that attorney failed to prove by clear and convincing evidence that the depression was causally related to his misappropriations of client funds, or to his misrepresentations to clients and to the director of the Office of Lawyers Professional Responsibility. Furthermore, the Court held that the attorney's active manipulation of various accounts, in an attempt to avoid detection of his misappropriations, and his misrepresentations to clients and the director's office, demonstrated that the depression had not impaired the attorney's ability to direct his actions and that he continued to recognize that his actions were wrong.

In re Wortman, 439 Midstate 2d 557 (Year -23).
Disciplinary proceeding was brought. The Supreme Court held that gross neglect of client affairs, failure to communicate with clients and essentially abandoning handling of client affairs, failure to make scheduled court appearances without excuse, conducting bad-faith litigation, and failure to cooperate with Lawyers Professional Responsibility Board warrants disbarment.