

**In re Jacob Joel Swanson**  
Attorney-Respondent

Commission No. 2023PR00053

**Synopsis of Hearing Board Report and Recommendation**  
(August 2024)

In a single-count Complaint, the Administrator charged Respondent with committing criminal acts that reflect adversely on his fitness as a lawyer, including possessing, using, and driving after using illegal drugs, in violation of Rule 8.4(b), and with engaging in conduct prejudicial to the administration of justice by committing these criminal acts and purchasing illegal drugs while employed as an assistant state's attorney, in violation of Rule 8.4(d). The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent violated these Rules. The Hearing Board recommended a suspension for two years and until further order of the Court due to Respondent's serious Rule violations, significant aggravation, limited mitigation, and relevant case law.

**BEFORE THE HEARING BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION**

In the Matter of:

**JACOB JOEL SWANSON,**

Attorney-Respondent,

No. 6324729.

Commission No. 2023PR00053

**REPORT AND RECOMMENDATION OF THE HEARING BOARD**

SUMMARY OF THE REPORT

In a single-count Complaint, the Administrator charged Respondent with committing criminal acts that reflect adversely on his fitness as a lawyer and with engaging in conduct prejudicial to the administration of justice by purchasing, possessing, using, and driving after using illegal drugs while employed as an assistant state's attorney. The Hearing Board found that the Administrator proved all of the charges by clear and convincing evidence. Considering the serious misconduct, significant aggravation, limited mitigation, and applicable case law, the Hearing Board recommended a suspension for two years and until further order of the Court.

INTRODUCTION

The hearing in this matter was held on June 3, 2024, at the Springfield offices of the Attorney Registration and Disciplinary Commission (ARDC) before a panel of the Hearing Board consisting of Janaki H. Nair, Lauren M. Noll, and Robbie L. Edmond. David B. Collins represented the Administrator. Respondent was present and represented himself.

**FILED**

August 14, 2024

**ARDC CLERK**

### PLEADINGS AND MISCONDUCT ALLEGED

On August 14, 2023, the Administrator filed a single-count Complaint charging Respondent with violating Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010) by committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, including possessing and using methamphetamine and operating a motor vehicle while methamphetamine was in his system, and with violating Rule 8.4(d) by engaging in conduct prejudicial to the administration of justice, including committing these criminal acts and purchasing methamphetamine while employed as a Montgomery County assistant state's attorney. On December 13, 2023, Respondent filed an Amended Answer, in which he admitted all of the alleged facts and misconduct.

### EVIDENCE

The Administrator called Respondent as an adverse witness, and Administrator's Exhibits 4-14 and 16-17 were admitted. (Tr. 90-93). Respondent testified and called two other witnesses, and Respondent's Exhibits 1-3 were admitted. (Tr. 53-54, 87).

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

In this case, Respondent admitted all of the factual allegations of the Complaint. Therefore, we consider whether the admitted facts constitute the misconduct charged. In re Paganucci, 06 CH 48, M.R. 21727 (Sept. 18, 2007) (Hearing Bd. at 7-8).

**Respondent was charged with committing criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and with engaging in conduct prejudicial to the administration of justice, in violation of Rule 8.4(d), by purchasing, possessing, using, and driving after using illegal drugs while employed as an assistant state's attorney.**

#### A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent committed the criminal acts of possessing and using methamphetamine and operating a motor vehicle while methamphetamine was in his system, which reflect adversely on fitness as a lawyer, and that Respondent engaged in conduct that is prejudicial to the administration of justice by committing these criminal acts and purchasing methamphetamine while employed as a Montgomery County assistant state's attorney. We find that Respondent's conduct violated Rules 8.4(b) and (d).

#### B. Admitted Facts and Evidence Considered

Respondent admitted to possessing and using crystal methamphetamine, with some periods of sobriety, between the summer of 2019 and April 2023. (Amended Ans. at pars. 3-7, 9; Tr. 13-14). When he was actively using crystal methamphetamine, he smoked it with various individuals about every other day and operated a motor vehicle while it was in his system. (Amended Ans. at par. 9; Tr. 13). Between December 2022 and February 2023, Respondent purchased three grams of crystal methamphetamine approximately six times from an unknown individual in Jacksonville or Springfield. (Amended Ans. at pars. 5-6).

Between October 2020 and April 2023, Respondent worked as a Montgomery County assistant state's attorney, successfully handling hundreds of traffic cases and juvenile abuse,

neglect, and delinquency cases. (Amended Ans. at par. 1; Tr. 32-33, 39). Andrew Affrunti became the Montgomery County State's Attorney and Respondent's supervisor on December 1, 2020. (Tr. 31-32). Mr. Affrunti learned about Respondent's alleged illegal drug activity from the Illinois State Police and confronted Respondent about it on April 14, 2023. (Tr. 44). Three days later, both Respondent and Mr. Affrunti reported Respondent's illegal drug activity to the ARDC. (Tr. 14-15). Respondent resigned his position with the Montgomery County State's Attorney's office on April 28, 2023. (Amended Ans. at par. 1; Tr. 32).

Respondent admitted that his conduct violated 720 ILCS 646/60, which prohibits the possession of methamphetamine or a substance containing methamphetamine. (Amended Ans. at par. 10(a)). Violating this statute is a felony. 720 ILCS 646/60(b). Respondent also admitted that his conduct violated 625 ILCS 5/11-501, which prohibits driving in Illinois while "there is any amount of a drug, substance, or compound in the person's breath, blood, other bodily substance, or urine resulting from the unlawful use or consumption of ... methamphetamine." (Amended Ans. at par. 10(a)). Violating this statute is a Class A misdemeanor. 625 ILCS 5/11-501(c). Additionally, Respondent admitted that his conduct reflected adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects and prejudiced the administration of justice, in violation of Rules 8.4(b) and (d). (Amended Ans. at par. 10).

### C. Analysis and Conclusions

Rule 8.4 provides that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects" and to "engage in conduct that is prejudicial to the administration of justice." Ill. R. Prof'l Cond. R. 8.4(b), (d). The Administrator charged Respondent with violating these Rules by committing the criminal acts of possessing, using, and driving after using methamphetamine and by purchasing methamphetamine while employed as an assistant state's attorney. Respondent

admitted all of these facts in his Amended Answer. “[A]n admission in a pleading is a formal judicial admission that is conclusively binding on the party making it ... and dispenses of the need for any proof of that fact.” In re Mills, 07 SH 2, M.R. 23070 (May 18, 2009) (Hearing Bd. at 14).

When an attorney violates the law by possessing illegal drugs, it demonstrates a disrespect for the law that requires disciplinary action to protect the public, the courts, and the legal profession. In re Scarnavack, 108 Ill. 2d 456, 460-61, 485 N.E.2d 1 (1985). This principle applies even if the attorney was not arrested for, charged with, or convicted of a crime, as the ethical rules prohibit criminal conduct. In re Sims, 144 Ill. 2d 323, 324-25, 579 N.E.2d 865 (1991). Although Respondent was not prosecuted for his illegal drug activity, he admitted to possessing, using, and driving after using methamphetamine in violation of 720 ILCS 646/60 and 625 ILCS 5/11-501 for a nearly four-year period while licensed as an attorney. Respondent’s ongoing pattern of criminal activity demonstrated a lack of respect for the law and reflected adversely on Respondent’s fitness as a lawyer. We find that Respondent clearly and convincingly violated Rule 8.4(b).

Moreover, it constitutes conduct prejudicial to the administration of justice when an assistant state’s attorney who prosecutes lawbreakers violates the law himself. Mills, 07 SH 2 (Hearing Bd. at 18-20) (citing, among others, Sims, 144 Ill. 2d at 324-25). By engaging in a pattern of illegal drug activity over several years during which he was also employed as an assistant state’s attorney, Respondent engaged in conduct prejudicial to the administration of justice. We find that Respondent clearly and convincingly violated Rule 8.4(d).

#### EVIDENCE OFFERED IN MITIGATION AND AGGRAVATION

##### Aggravation

In December 2022, Respondent learned that J.C., one of the individuals he smoked and purchased crystal methamphetamine with, was wanted on an arrest warrant. Respondent did not report to law enforcement that he knew where J.C. was located. (Amended Ans. at par. 5; Tr. 14).

In April 2023, Mr. Affrunti was surprised to learn of Respondent's illegal drug activity, which he was concerned would affect Respondent's cases and which did hurt the reputation of the Montgomery County State's Attorney's office and its employees. (Tr. 42-43). In November 2023, just two months after Respondent completed a drug treatment program, he testified at his deposition that "being part of an illegal drug trade doesn't result in harm to anyone," buying and selling illegal drugs is a victimless crime, and his misconduct did not harm the reputation of the Montgomery County State's Attorney's office and its employees. (Tr. 21-25).

Respondent testified to fully cooperating with the investigation and discovery of this matter, including participating in a sworn statement and a deposition and admitting all of the allegations in his Amended Answer. The parties disagreed as to whether Respondent timely and completely complied with the Administrator's requests for his medical records and an evaluation by the Administrator's medical expert, which resulted in one continuance of the hearing. (Amended Ans. at pars. 1-10; Tr. 15-20, 26-28, 68-87; Adm. Exs. 4-14, 16-17).

Respondent acknowledged wrongfully accusing Administrator's Counsel of lying and engaging in deceptive tactics in his emails between July and November 2023. He expressed remorse and repeatedly apologized after the underlying misunderstanding was cleared up. (Tr. 19-20, 25-26, 67, 71; Adm. Ex. 17 at 7, 15, 17-18, 21, 24, 26).

#### Mitigation

Mr. Affrunti testified that Respondent did good work for Montgomery County by successfully handling several hundred traffic cases and protecting children from abuse as an assistant state's attorney. (Tr. 38-39). He believed Respondent to be honest and trustworthy before learning of the misconduct in April 2023, but he had insufficient personal knowledge to speak to Respondent's character or fitness to practice law since then. (Tr. 39-41). He further testified that,

related to this misconduct, Respondent did not harm anyone or any property, did not use his title or influence as an attorney, and did not deny any of the accusations. (Tr. 33, 44).

Kellie Brand, a licensed clinical professional counselor, testified that she treated Respondent's drug addiction from April to September 2023, when he successfully completed intensive and basic outpatient programs. (Tr. 46-54; Resp. Ex. 2-3). Although drug addiction is a lifelong disease with no cure, Respondent's likelihood to relapse was low as of September 2023 due to his progress and completion of program objectives, outside counseling and primary care treatment, stable housing, stable employment, and other supports. (Tr. 50-51, 54-55, 60-63). Ms. Brand had not treated Respondent nor tested him for methamphetamine use since September 2023, but she had seen him at alumni events. (Tr. 55-56, 63-65).

Respondent acknowledged that he should be disciplined for his misconduct. (Tr. 75, 110). He testified that he was "at least one year sober" as of the hearing in June 2024. (Tr. 66-67). He completed three continuing legal education courses on attorney wellness in June 2023, saw a therapist from September 2023 to April 2024, still engages in alumni and group activities as needed at his former drug treatment organization, and has a support network of friends and family. (Tr. 66, 70-71; Resp. Ex. 1). Respondent also testified that he is employed at a grocery store and lives paycheck-to-paycheck, with the stability of his housing and employment at risk if he needed to take a day off work. (Tr. 66, 73).

#### Prior Discipline

Respondent has been licensed to practice law in Illinois since November 2016 and has no prior discipline.



## RECOMMENDATION

### A. Summary

Based on Respondent's serious Rule violations, several factors in aggravation, and limited mitigation, the Hearing Board recommends that Respondent be suspended for two years and until further order of the Court. Specifically, Respondent's misconduct was aggravated by his concurrent employment as an assistant state's attorney, pattern of behavior over several years, and failure to fully understand and acknowledge the seriousness of his actions, which caused actual harm. We also considered Respondent's exhibits, witness testimony, and unblemished career prior to this matter, but mitigation was limited by the lack of current character evidence and corroboration of Respondent's claims of ongoing sobriety.

### B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. When recommending discipline, we consider the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We seek to recommend similar sanctions for similar types of misconduct, but we must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

In this case, Respondent's illegal drug activity and tolerance of others' crimes in his presence while employed as an assistant state's attorney is significantly aggravating. In re Sims, 144 Ill. 2d 323, 325, 579 N.E.2d 865 (1991); In re Mills, 07 SH 2, M.R. 23070 (May 18, 2009) (Hearing Bd. at 25). Not only did he violate the law, but he also failed to bring others such as his drug supplier and J.C. to law enforcement's attention. The fact that this conduct was not a momentary lapse of judgment or an isolated incident, but rather a pattern of criminal behavior over

nearly four years, is also aggravating. In re Howard, 69 Ill. 2d 343, 354, 372 N.E.2d 371 (1977); Mills, 07 SH 2 (Hearing Bd. at 16, 25).

Additionally, Respondent's testimony demonstrated that he did not fully understand the seriousness of his misconduct, which caused actual harm that he failed to acknowledge. Respondent admitted the charges and agreed that discipline was warranted in this case, yet he claimed his illegal drug activity while employed as an assistant state's attorney was a victimless crime that harmed no one. In actuality, Mr. Affrunti testified that his office's reputation was harmed by Respondent's misconduct, and this harm is an aggravating factor. In re Saladino, 71 Ill. 2d 263, 276, 375 N.E.2d 102 (1978). Moreover, we are concerned that completing a five-month drug treatment program and going through the disciplinary process was insufficient to convey to Respondent the seriousness and harmfulness of his actions. Although Respondent did not face criminal charges, he admitted to repeatedly violating 720 ILCS 646/60, which makes possession of any amount of methamphetamine a felony. It is aggravating that Respondent did not fully recognize that it is "extremely serious misconduct" "when an attorney is both a prosecutor and a criminal." Mills, 07 SH 2 (Hearing Bd. at 20, 27-28).

We decline to find that Respondent failed to cooperate with the disciplinary process, as the Administrator claimed. Although Respondent could have been more compliant with providing medical records and submitting to the medical examination requested by Administrator's Counsel, his lack of cooperation did not substantially impede the overall progress of this case. Rather, Respondent participated in the pre-hearing conferences and the hearing, appeared for both a sworn statement and a deposition, and timely filed case documents. We do not condone that Respondent wrongfully accused Administrator's Counsel of lying, but we find his apologies and remorse for this error, which was based on a misunderstanding, to be genuine.

In mitigation, we find the testimony of Respondent's witnesses to be credible, albeit limited in impact. While Mr. Affrunti spoke positively of Respondent's career success and honesty before learning of the misconduct, neither he nor Ms. Brand testified about Respondent's character since then. We applaud Respondent's completion of a five-month drug treatment program in 2023, as confirmed by Ms. Brand and the medical records. However, the only evidence of Respondent's sustained sobriety after September 2023 was his testimony, and he admitted at the hearing that some of the factors that supported a low likelihood to relapse had changed in the nine months since Ms. Brand's last assessment. Specifically, Respondent stopped going to therapy in April 2024 and, as of June 2024, lives paycheck-to-paycheck, with the stability of his housing and employment at risk if he needed to take a day off work.

Finally, we find mitigating that Respondent has no prior discipline, but this bears little weight because Respondent's misconduct began less than three years after he was licensed and then continued for nearly four years, only stopping after he was caught. "[T]he import of his unblemished record is minimal" when the misconduct is a "grave wrong-doing early in his professional life." In re Vavrik, 117 Ill. 2d 408, 414, 512 N.E.2d 1226 (1987).

As for the recommended sanction, the Administrator requested a suspension for two years and until further order of the Court (UFO). In support, she cited Mills, 07 SH 2 (suspension for two years UFO), and Sims, 144 Ill. 2d 323 (suspension for two years), which are discussed in further detail below. She cited another case which underscores the seriousness of illegal drug activity by an assistant state's attorney but is otherwise inapplicable because a voluntary relinquishment of a law license is distinguishable from a contested disciplinary hearing. In re Stewart, 98 SH 97, M.R. 15437 (Feb. 1, 1998) (name stricken from master roll by consent). On the other hand, Respondent requested a straight suspension for up to five years. He had no caselaw

to support this recommendation, but he felt a UFO provision was inappropriate because it would require him to keep proving his sobriety for the rest of his life.

Respondent's case is substantially similar to Mills, as both possessed, used, and purchased illegal drugs while employed as assistant state's attorneys; admitted to most or all of the factual allegations; claimed they did not harm others or the state's attorney's office; had some favorable character witnesses; and had no prior discipline. Additionally, the same two Rules were at issue in both cases. Although Respondent's drug use lasted for approximately three years, which is longer than Mills' one year, Respondent provided some evidence of treatment through his counselor's testimony and medical records, whereas Mills presented no evidence of treatment or sobriety beyond his own testimony. As such, we recommend the same sanction of two years UFO for Respondent.

This recommendation is further supported by Sims, in which the Court explained that the most important factor resulting in a two-year suspension was "the flaunting of the law by a prosecuting attorney over a several year period," such that any lesser sanction "would denigrate the seriousness of his conduct and would erode public trust in the accountability of its elected officials." Sims, 144 Ill. 2d at 325. Sims was the elected state's attorney for his county, whereas Respondent was an assistant state's attorney, but both engaged in similar misconduct and tolerated others' illegal drug activity in their presence for several years. The main difference is that Sims' six years of demonstrated rehabilitation did not require a suspension UFO. In contrast, Respondent presented no objective evidence of his sobriety or treatment other than five months in 2023, which followed nearly four years of drug use, and he is no longer receiving drug addiction or mental health treatment.

We recognize that an attorney suspended UFO must prove his fitness to practice law if he wishes to be reinstated, and that process includes presenting evidence of any substance abuse or

mental health treatment received during the suspension. Ill. S.Ct. R. 767; Comm. R. 400-02, 411-15. While the Court may order ongoing proof of sobriety and other supports for a specific length of time as conditions of reinstatement, that does not mean that the reinstated attorney must provide this proof indefinitely, as Respondent claimed. For example, after Mills successfully petitioned for reinstatement, he had to satisfy conditions including random substance testing and monthly mental health therapy for the next two years. In re Mills, 2021PR00099, M.R. 031068 (Mar. 21, 2023). These temporary conditions serve as safeguards and supports that facilitate an attorney's successful return to law practice.

Considering the proven misconduct, mitigating and aggravating factors, and relevant case law, we recommend that Respondent, Jacob Joel Swanson, be suspended for two years and until further order of the Court.

Respectfully submitted,

Janaki H. Nair  
Lauren M. Noll  
Robbie L. Edmond

### **CERTIFICATION**

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on August 14, 2024.

/s/ Michelle M. Thome  
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Michelle M. Thome, Clerk of the  
Attorney Registration and Disciplinary  
Commission of the Supreme Court of Illinois