

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

August 31, 1993

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether you may furnish an affidavit concerning the effectiveness of trial counsel under the following circumstances.

You presided over the trial and entered a final judgment in a divorce case which is presently on appeal to the Alabama Court of Civil Appeals. After the entry of that judgment, the defendant filed a civil action against his trial attorney alleging legal malpractice. The defendant's trial lawyer has requested you to prepare an affidavit in support of a motion for summary judgment in the malpractice case.

It is the opinion of this Commission that you may provide the requested affidavit provided the information contained in your affidavit is true and correct. See Oregon Judicial Conduct Committee Advisory Opinion 85-2, August 30, 1985, summarized in The Digest of Judicial Ethics Advisory Opinions 459 (American Judicature Society).

While a judge should not testify voluntarily as a character witness, Canon 2C, Alabama Canons of Judicial Ethics, the judge's testimony in the affidavit concerns an attorney's performance as a professional in a proceeding and not the attorney's character. In preparing such an affidavit, a judge must be careful not to lend the prestige of his office to advance the private interests of others. Canon 2C.

This Commission has reviewed the affidavit you have supplied in which you conclude that the attorneys for both parties "diligently represented their respective clients in an aggressive manner consistent with proper court decorum and with professional competence." It appears ethically proper.

This advisory opinion has been reviewed by and is the opinion of the entire Commission.