

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 90-01
(March 2, 1990)

**Affidavit Related to Legal Malpractice in
Action over Which Judge Presided**

Issue

May a judge provide an affidavit in a legal malpractice action stating how the underlying case, at which he presided, would have been resolved but for an attorney's negligence?

Answer: No.

Discussion

By providing an affidavit to one of the parties in a legal malpractice action, the judge is giving opinion testimony favorable to one side regarding litigation involving parties who previously appeared before him. This creates the appearance of partiality and would violate Canon 2A, which states, "A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The question of a judge giving testimony has been discussed in *Phillips v. Clancy*, 152 Ariz. 415, 733 P. 2d 300 (App. 1986). We believe the court in *Phillips* correctly analyzed the problem, and we adopt its reasoning.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 2A (1985).

Other References

Phillips v. Clancy, 152 Ariz. 415, 733 P.2d 300 (App. 1986).