

August 23, 2004

The Honorable Craig Hannah
Circuit Court Judge
Seventeenth Judicial District Circuit Court
Wilbur D. Mills Court Building
Searcy, AR 72143

RE: Advisory Opinion 2004-06

Dear Judge Hannah:

In your capacity as a Circuit Judge for the Seventeenth Judicial District, you have requested an opinion concerning the propriety of signing an affidavit to be used in a lawsuit in Woodruff County, Arkansas. The affidavit concerns actions that took place prior to you becoming a judge, when you were an attorney representing clients in a fraud case.

You question whether you can sign such an affidavit under the Arkansas Code of Judicial Conduct. It is the opinion of this committee that you can. Specifically, Canon 2B provides that "...A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others;...A judge shall not testify voluntarily as a character witness." However, nothing in the Canon addresses a judge testifying as to nothing but facts. In your particular case, the giving of an affidavit to assist a former client, appears to be perfectly acceptable. This question, while never addressed before in Arkansas, has been discussed in other states with the majority finding that such affidavits do not violate the Canons.

Our conclusion is that you may execute the affidavit in question.

Sincerely,

David B. Bogard
For the Committee