

Rule 3.1 [3-200] Meritorious Claims and Contentions
(Commission's Proposed Rule Adopted on February 19 – 20, 2016 – Clean Version)

- (a) A lawyer shall not:
 - (1) bring or continue an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
 - (2) present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.
- (b) A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless defend the proceeding by requiring that every element of the case be established.

**Proposed Rule 3.1 [3-200] Meritorious Claims and Contentions
Synopsis of Public Comments**

TOTAL = XX **A = X**
 D = X
 M = X
 NI = X

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
x-2016-43v	COPRAC (Baldwin)	Yes	A	3.1	COPRAC supports the adoption of proposed Rule 3.1	No response required.
Public Hearing	Alternate Public Defender for Los Angeles (Goodman, Michael) (Provided oral public hearing testimony on July 26, 2016. See pages 64-66 of the public hearing transcript.)	Yes			<p>1. We believe that often, as defense attorneys, we're required to present claims which there is no current reason, under the law, why we would present that claim other than to preserve that claim, oftentimes for cases that as a result for appellate's review will not get resolved for well over 20 years, particularly, in death penalty cases. We ask that there be an addition in order to make this rule, as phrased, comport with what is our defense obligation under the Sixth Amendment.</p> <p>2. We also request that the rule encompass noncriminal proceedings in which an individual's liberty might be restrained. Under Rule [3.1(b)],² insert the following language, "Or other proceedings that may result in an individual's liberty being restrained" so that it provides:</p> <p>"(b) A lawyer for the defendant</p>	<p>1. The Commission believes that these concerns are addressed by paragraph (b)(2) which would allow a defense attorney to assert a defense that is not warranted under existing law but can be supported by a good faith argument for an extension, modification, or reversal of existing law.</p> <p>2. The Commission believes that this concern is addressed by Paragraph 3.1(b) which extends the rule to "a proceeding that could result in incarceration...."</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

² Although the transcript refers to "3.1(e)," it evidently is a transcription error. It should refer to "3.1(b)" as the commenter quoted rule 3.1(b) during his testimony on the rule.

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					in a criminal proceeding <u>or other proceeding that can result in an individual's liberty interests being constrained</u> , or the respondent in a proceeding that could result in incarceration, may nevertheless defend the proceeding by requiring that every element of the case be established.	
Public Hearing	Castaneda, Jose (Provided oral public hearing testimony on July 26, 2016. See pages 82-87 of the public hearing transcript.)	No			We have a great system, there are just a few bad apples (lawyers/judges) that make it really bad.	No response is required as the comment does not specifically address any perceived deficiency in the Rule or how the Rule is drafted.