

**Rule 3.1 [3-200] Meritorious Claims and Contentions**

- (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, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

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  - (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)<sup>1</sup> A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

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<sup>1</sup> Revision made in response to public comment from L.A. Public Defender, X-2016-93g and Alternate Public Defender for Los Angeles at the 7/26/2016 Public Hearing.

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

**TOTAL = 5**      **A = 2**  
**D = 0**  
**M = 2**  
**NI = 1**

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
X-2016-43v	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (08-22-16)	Yes	A	3.1	Supports adoption of proposed Rule 3.1.	No response required.
X-2016-93g	Los Angeles County Public Defender (Brown) (9-27-16)	Yes	M	3.1	<p>1. We strongly urge that language forbidding <i>frivolous</i> claims be added to the proposed rule because a lawyer defending a criminal prosecution may be constitutionally obligated to bring motions where the facts have not been fully substantiated and can only be developed by discovery.</p> <p>2. Paragraph (b) of the propose rule embraces the advocacy duties of a lawyer for a criminal defendant but does not fully appreciate the scope and variety of clients that we represent in addition to those in criminal proceedings or in proceedings wherein they may face incarceration.</p>	<p>1. The Commission has not made the requested change. Paragraph (a) carries forward current rule 3-200 nearly verbatim; the Commission is not aware that the current rule has resulted in discipline charges against criminal defense lawyers requiring the prosecution to establish every element of the alleged crime.</p> <p>2. The Commission has revised paragraph (b) to expressly include involuntary commitments and confinements.</p>
X-2016-104ai	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A	3.1	Supports adoption of proposed Rule 3.1.	No response required.

<sup>1</sup> A = AGREE with proposed Rule      D = DISAGREE with proposed Rule      M = AGREE ONLY IF MODIFIED      NI = NOT INDICATED

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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	M		<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 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)],<sup>2</sup> insert the following language, "Or other proceedings that may result in an individual's liberty being restrained" so that it provides:</p> <p><u>"(b) A lawyer for the defendant in a criminal proceeding or other proceeding that can result in an individual's liberty interests being constrained, or the</u></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," but has revised the rule to expressly recognize the rule applies to involuntary commitments and confinements.</p>

<sup>2</sup> 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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					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	NI		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.

