

**Rule 3.1. Meritorious Claims and Contentions**

West's Alaska Statutes Annotated | Alaska Court Rules (Approx. 2 pages)

Advocate

Rules of Prof. Conduct, Rule 3.1

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A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a non-frivolous basis in law and fact for doing so, including a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding or for the respondent in a proceeding that could result in incarceration or involuntary institutionalization may nevertheless so defend the proceeding as to require that every element of the case be established.

**Credits**

[Adopted effective July 15, 1993. Rescinded and readopted by Order No. 1680 dated October 28, 2008, effective April 15, 2009.]

**Editors' Notes****COMMENT**

[1] The advocate has a **duty** to use legal procedure for the fullest benefit of the client's cause, but also a **duty** not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a **claim** or contention that otherwise would be prohibited by this Rule.

Rules of Prof. Conduct, Rule 3.1, AK R RPC Rule 3.1

Current with amendments received through 8/1/2013

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