

Alabama Rules of Professional Conduct

Advocate

Rule 3.1.

Meritorious Claims and Contentions.

(a) In his representation of a client, a lawyer shall not file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the lawyer's client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(b) A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

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.

The filing of an action or defense or similar action taken for a client is not necessarily prohibited merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not necessarily prohibited even though the lawyer believes that the client's position ultimately will not prevail.

Comparison with Former Alabama Code of Professional Responsibility

DR 7-102(A)(1) provided that a lawyer may not “[f]ile a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.” Rule 3.1 is to the same general effect as DR 7-102(A)(1), with the qualification that, in a criminal case, or a case in which incarceration of the client may result (for example, certain juvenile proceedings), the lawyer may put the prosecution to its proof even if there is no other basis for defense.