

Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges. [Sorted by Commenter]						TOTAL = <u>3</u> Agree = <u>2</u> Disagree = <u> </u> Modify = <u>1</u> NI = <u> </u>
No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
3	COPRAC	A	Yes		COPRAC supports the adoption of Proposed Rule 3.10 and the Comments to the Rule.	No response required.
2	Office of Chief Trial Counsel	A	Yes		OCTC supports this rule but believes that there are too many Comments, many are too long and cover subjects and discussions best left to treatises, law review articles, and ethics opinions.	The Commission disagrees. The Comments provide useful guidance to lawyers and courts on the application of the Rule.
1	San Diego County Bar Association	M	Yes	Comment [2]	Comment [2]: replace “good faith” standard with a “probable cause” standard.	In response to comments by this bar association and others, the Commission previously deleted the language that was the basis of the commenters’ concern.

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

Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges
(Commission’s Proposed Rule – Clean Version)

- (a) A lawyer shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.
 - (b) As used in paragraph (a) of this Rule, the term “administrative charges” means the filing or lodging of a complaint with a federal, state, or local governmental entity which may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.
 - (c) As used in this Rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more parties under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.
- [2] This Rule does not apply to (i) a threat to initiate contempt proceedings for a failure to comply with a court order; or (ii) the offer of a civil compromise in accordance with a statute such as Penal Code sections 1377-78.
 - [3] Paragraph (b) exempts the threat of filing an administrative charge which is a prerequisite to filing a civil complaint on the same transaction or occurrence.

Comment

- [1] This Rule prohibits a lawyer from threatening to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute and does not apply to a threat to bring a civil action. It also does not prohibit actually presenting criminal, administrative, or disciplinary charges, even if doing so creates an advantage in a civil dispute. Whether a lawyer’s statement violates this Rule depends on the specific facts. (See, e.g., *Crane v. State Bar* (1981) 30 Cal.3d 117 [177 Cal.Rptr. 670].) A statement that the lawyer will pursue “all available legal remedies,” or words of similar import, by itself does not violate this Rule.