

# Spoliation of Evidence

Spoliation of evidence is a term often used during the process of discovery. Spoliation of evidence happens when a document or information that is required for discovery is destroyed or altered significantly. If a person negligently or intentionally withholds or destroys relevant information that will be required in an action is liable for spoliation of evidence.

When a crucial document is lost by spoliation, the courts may try to infer the original information by applying spoliation inference rule. Spoliation inference rule is a negative evidentiary inference. When applying the rule, courts will review the altered document with inference against the spoliator and in favor of the opposing party. The theory behind spoliation inference is that when a party has destroyed evidence, it shows that the party had consciousness of guilt or other reasons to avoid evidence. Hence, the court will conclude that the evidence was not in spoliator's favor.

Spoliation of evidence is an act that is prohibited by American Bar Association's Model Rules of Professional Conduct, Rule 37 of Federal Rules of Civil Procedure, and Title 18 United States Code. Sanctions for spoliation are preventative, punitive and remedial in nature. Separate tort actions are also permitted.

American Bar Association Rule 3.4 prohibits a lawyer from destroying or assisting another in destroying evidence pertaining to a case. Likewise Title 18 of United States Code Sections 1503, 1510, 1512 and 1519 prohibits a party from destroying or assisting another in destroying evidence, and provides for criminal prosecution against the wrongdoer. Under Title 18 United States Code Section 1519, a wrongdoer can be fined in huge amounts and imprisoned up to 20 years.

Under Federal Rules of Civil Procedure Rule 37 possible sanctions are as follows:

- dismissal of the wrongdoer's claim;
- entering judgment against the wrongdoer;
- excluding expert testimony; and
- application of adverse inference rule.

Additionally, Rule 37 imposes fines on the wrongdoer.