

1 **13-1650. Spoliation of evidence.**

2 _____ (*name of plaintiff*) says in this case that _____
3 (*name of defendant*) intentionally [disposed of, destroyed, mutilated or significantly altered]
4 evidence relevant to a [potential lawsuit] [lawsuit]. In order to prove intentional spoliation of
5 evidence, _____ (*plaintiff*) must prove each of the following:

6 1. There was [a lawsuit] [the potential for a lawsuit];

7 2. _____ (*defendant*) knew there was [a lawsuit] [the potential for a
8 lawsuit];

9 3. _____ (*defendant*) disposed of, destroyed, mutilated or
10 significantly altered potential evidence;

11 4. By [~~its~~ defendant's] conduct _____'s (*defendant's*) sole intent was
12 to disrupt or defeat a potential lawsuit;

13 5. The destruction or alteration of the evidence resulted in _____'s
14 (*plaintiff's*) inability to prove [~~his~~ [~~her~~] plaintiff's] case;

15 6. _____ (*plaintiff*) suffered damages as a result of the destruction
16 or alteration.

17 USE NOTES

18 This instruction is to be used when the plaintiff brings a claim for intentional spoliation of
19 evidence.

20 [Approved, effective March 21, 2005; as amended by Supreme Court Order No. S-1-RCR-2025-
21 00126, effective for all cases pending or filed on or after December 31, 2025.]

22 **Committee commentary.** — The elements of the tort of spoliation of evidence were discussed in
23 *Coleman v. Eddy Potash, Inc.*, 1995-NMSC-063, 120 N.M. 645, 905 P.2d 185[~~(-1995)~~].

1 In *Torres v. El Paso Electric Co.*, 1999-NMSC-029, 127 N.M. 729, 987 P.2d 386, the court
2 discussed wrongful activity occurring prior to the filing of a complaint, and suggested that
3 spoliation, "at least spoliation discovered prior to trial, should be tried in conjunction with the
4 underlying claim, rather than in a bifurcated or separate trial". The court in *Torres* indicated that
5 the tort seeks to remedy acts taken with the sole intent to maliciously defeat or disrupt a lawsuit.
6 Practitioners should note that the trial court may independently impose sanctions for destruction
7 of evidence ranging from dismissal, or imposition of liability to instructing the jury regarding an
8 inference arising from spoliation. See *Segura v. K-Mart [~~Corporation~~Corp.]*, 2003-NMCA-013,
9 133 N.M. 192, 62 P.3d 283.

10 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]