

Nebraska Ethics Advisory Opinion for Lawyers
No. 87-1

[Opinion No. 80-1](#) Modified.

ORIGINAL [OPINION NO. 80-1](#) WAS BASED LARGELY ON AN INTERPRETATION OF R.R.S.

§ 28-922. THIS OPINION HAS GIVEN CONCERN TO CERTAIN MEMBERS OF THE DEFENSE BAR AS BEING OVERLY BROAD, BOTH IN ITS ADMONITION TO DELIVER PHYSICAL EVIDENCE AND A PER SE REQUIREMENT FOR WITHDRAWAL AFTER HAVING DELIVERED SUCH EVIDENCE. THE COMMITTEE DOES NOT INTEND TO ISSUE OPINIONS ON SUBSTANTIVE LAW. THE COMMITTEE HEREBY LIMITS THE EFFECT OF [OPINION NO. 80-1](#). SECTION 28-922 DEFINES THE OFFENSE OF TAMPERING WITH PHYSICAL EVIDENCE. VIOLATION IS A CLASS 4 FELONY. THIS COMMITTEE WILL NOT ATTEMPT TO DEFINE WHAT CONSTITUTES A VIOLATION OF § 28-922.

DR 1-102 provides in part at paragraph (A):

A lawyer shall not:

. . . .

(3) engage in illegal conduct involving moral turpitude.

. . . .

(5) engage in conduct that is prejudicial to the administration of justice.

EC 7-27 provides in part:

Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client

has a legal obligation to reveal or produce.

DR 7-109 (A) provides:

A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

If an attorney finds that he is required by statute and disciplinary rules to deliver physical evidence to the county attorney, he should consider whether he should withdraw as counsel in the case for the reason set forth in [Opinion No. 80-1](#). The Committee cannot say, however, that it would be a per se violation of the Disciplinary Rules to fail to withdraw in all cases, and any implication to the contrary in [Opinion No. 80-1](#) is hereby rescinded.

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