I. Social Media Discovery

A. What means are available to obtain social media evidence, including but not limited to, discovery requests and subpoenas?

Attorneys in New Hampshire may seek social media discovery through all normal methods, including interrogatories, depositions, and requests to admit. In fact, according to New Hampshire’s Ethics Committee, lawyers have “a general duty to be aware of social media as a source of potentially useful information in litigation.” This duty is limited by the ethical duties of truthfulness and fairness when dealing with other parties. The general rule is that a lawyer may obtain social media discovery so long as he does not mislead, whether directly or by omission, the party from whom he seeks discovery.

A sample interrogatory is as follows:

Have you opened, used, or maintained any other social networking accounts (including, but not limited to Google+, MySpace, FourSquare, and Twitter) since [date]? If so, identify the user name and email address for all such accounts. Please preserve all such accounts so that they may be captured forensically if appropriate.

II. Limitations on Scope of Social Media Discovery

A. What, if any, limitations are imposed on a party on obtaining social media evidence from an opposing party?

No published New Hampshire decision has addressed the limitations, if any, on social media discovery. It does not appear that any trial courts have addressed the issue either. Given the Ethics Committee’s opinion, it appears that normal limitations, such as scope of discovery and relevance, would be the only limitations on social media discovery.

III. Spoliation Standards
A. What, if any, spoliation standards have been set forth on social media for party litigants?

No authorities in New Hampshire have addressed this issue.

IV. Admitting Social Media Discovery Into Evidence

A. What standards are set for getting various types of social media into evidence?

No published New Hampshire decision has yet addressed this subject.

V. Employer’s Right to Monitor Employees’ Social Media Use

A. How is an employer’s right to monitor employees’ social media use addressed?

No published New Hampshire decision has addressed this subject. However, the General Court recently passed HB 1407, 2014 N.H. Laws Chapter 305, which forbids employers from requesting that any employee or prospective employee disclose login information for any social media service. The bill also prevents employers from requiring employees to alter their privacy settings on personal social media accounts and from requiring that any employee add anyone to a list of social media contacts. The bill has been codified as RSA 275:74 [effective September 30, 2014].

VI. Limitations on Employment Terminations Related to Social Media

A. How have the courts addressed limitations on employment terminations relating to social media?

No published decision in the state or federal courts of this state has addressed this subject.