

Gig Lawyers in the U.S. Economy: Realizing the Potential of Platform Markets and Bolstering Ethical Duties to Affect Change and Innovation

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INTRODUCTION

When you think of a gig worker, likely an Uber or Lyft driver comes to mind. Perhaps a TaskRabbit helped you move last weekend, or you have hired a SmartSitter to watch your children in the past. Independent workers, categorized as contractors, domestic workers, gig workers, and some part-time workers have pervaded the collective understanding of what it means to work in the United States for years.¹

According to *The Work of the Future: Building Better Jobs in the Age of Machines*, led by David Autor at the Massachusetts Institute of Technology, “the distinction between these employment categories has arguably grown more ambiguous over time, while the incentive for employers to reclassify employees as independent workers has only increased.”² In this November 2020 report, Autor and his research team concluded, “[t]here is no ready solution to this problem, but it is clear that employment policy and regulation requires innovation to keep pace with the changing structure of work.”³

Independent work is not unique or segregated to lower wage, unskilled labor. Rather, independent work has long been a part of the legal industry. This Note addresses the unique position “gig lawyers,” defined as contract lawyers that utilize platform-based technologies to find projects and assignments, hold in the U.S. economy.

Part I will argue gig lawyers are a distinctive subset of independent workers, tracing the history from traditional contract lawyering through the entrance app- and web-based platforms in the legal industry. Part II will analyze how the increased use of these types of platforms to find gig lawyers presents several complex, novel ethical issues, including issues related to confidentiality, competence, and the unauthorized practice of law. Part III will consider the future of gig

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1. See David Autor, et al., *The Work of the Future: Building Better Jobs in an Age of Intelligent Machines*, MIT (2020), <https://workofthefuture.mit.edu/wp-content/uploads/2021/01/2020-Final-Report4.pdf> [<https://perma.cc/GAU4-MDK8>] (last visited Feb. 26, 2021).

2. *Id.* at 62.

3. *Id.*

lawyers in a post-COVID-19 landscape and conclude additional guidance is needed from the American Bar Association (ABA) via the *Model Rules of Professional Conduct*. It will recommend that the *Model Rules* must be revised to bolster innovation and further economic opportunities for lawyers in the gig economy.

I. GIG LAWYERS ARE A UNIQUE SUBSET OF INDEPENDENT WORKERS

A contract lawyer is “a lawyer who engages to perform legal services for other lawyers on an intermittent or impermanent basis.”⁴ Contract lawyering is by no means a new form of independent work.⁵ It has been a part of the legal profession in the United States since at least the mid-1980’s.⁶ This subset of lawyering saw one of its greatest increases following the Great Recession, as the industry “struggle[d] from a downturn that [] produced a glut of unemployed U.S. lawyers. . . .”⁷

Contract lawyers can perform the same functions as law firm associates or in-house counsels (*i.e.*, facilitating document review, drafting contracts and settlements, preparing and conducting depositions, and executing legal research).⁸ The title can come with the allure of flexibility for the lawyer.⁹ This flexibility, however, comes at a price.¹⁰ The average contract lawyer in 2016 made \$27 per hour.¹¹ This was a forty percent decrease from 2005, when the national average rate for a contract lawyer was \$38 per hour.¹²

In 2016, the McKinsey Global Institute identified two primary types of contract lawyers: “reluctants,” who struggle to find full-time employment opportunities, and “free agents,” who enjoy the flexibility of temporary work and actively seek it out.¹³

Worcester State University Professor Robert A. Brooks has previously argued that temporary lawyering “de-professionalizes” the industry, writing in 2011:

4. See Lora Keenan, Feature: *One Gig at a Time: Contract Lawyers and the New Economy*, 78 OR. ST. B. BULL. 17, 18 (2018).

5. *Id.*

6. *Id.*

7. See Vanessa O’Connell, *Lawyers Settle . . . for Temp Jobs*, WALL ST. J. (Jun. 15, 2011), <https://www.wsj.com/articles/SB100014240527023037147045763836417529666666> [<https://perma.cc/54R8-SEL7>].

8. See generally Amanda Griffin, *What Is a Contract Lawyer and Why Do Law Firms Use Them?*, BCG Research 1, <https://www.bcgsearch.com/article/900048884/What-Is-a-Contract-Lawyer-and-Why-Do-Law-Firms-Use-Them/> [<https://perma.cc/D8ND-BXZN>] (last visited Feb. 26, 2021); Sharon Miki, *Why the Time Is Now to Become a Freelance Attorney*, CLIO, <https://www.clio.com/blog/freelance-attorney/> [<https://perma.cc/X92E-HJ8U>] (last visited Feb. 26, 2021).

9. *Id.*

10. See Michael D. Goldhaber, *Millennial Contract Lawyers: The Screwed Generation?*, LAW.COM (Feb 29, 2016), <https://www.law.com/americanlawyer/almID/1202749827031/?mcode=0&curindex=0&curpage=ALL/> [<https://perma.cc/KQ6V-GEA8>].

11. *See id.*

12. *See id.*

13. Keenan, *supra* note 4, at 18.

We expect professional work to be autonomous, collegial, and independent and to involve interesting, challenging, customized, and individualized work that serves a broader public purpose. However, powerful forces are reshaping professional work, making it more like other types of work. . . Professional work is becoming more insecure and, in some areas, is also being degraded.¹⁴

Contract lawyering has continued to mature alongside the platform economy insurgency and the widespread use of technology to secure temporary work. Gig lawyers, however, are a distinct subset of contract lawyers. This is because they utilize an additional platform as an intermediary to identify potential opportunities and are paid as independent contractors through the platform itself.

AppearMe,¹⁵ Hire An Esquire,¹⁶ and LAWCLERK¹⁷ are just three examples of U.S. app- or web-based platforms that pair potential clients (*i.e.*, supervising attorneys, businesses, or individuals) and gig lawyers together to complete client work.

A. CASE STUDY: LAWCLERK

LAWCLERK was founded in 2015 as a virtual marketplace that provides “all the benefits of being a boutique firm, but with a pool of exceptionally talented lawyers to draw from.”¹⁸ LAWCLERK allows a supervising attorney to post a project onto its portal.¹⁹ Gig lawyers, referred to as “Lawclerks,” can then apply for the project with a resume, writing samples, and reviews, or the supervising attorney can select “on-demand lawyers” to build their own team.²⁰

The supervising attorney assumes all responsibilities for the work product and conducts payment through the platform.²¹ LAWCLERK receives twenty-eight percent and the Lawclerk receives the latter seventy-two percent.²² LAWCLERK states it does not offer legal advice or services.²³

It does not claim an employer-employee relationship or attorney-client relationship with any of the parties.²⁴ With this unique business model, LAWCLERK co-founder Kristin Tyler predicts large-scale transformation in the legal industry:

14. ROBERT A. BROOKS, CHEAPER BY THE HOUR: TEMPORARY LAWYERS AND THE DEPROFESSIONALIZATION OF THE LAW 159 (2011), <http://www.jstor.org/stable/j.ctt14bt9b6.10> [<https://perma.cc/UB6S-VHFH>].

15. AppearMe, <https://www.appearme.com/about/> [<https://perma.cc/4E93-3UC2>] (last visited Feb. 26, 2021).

16. Hire An Esquire, <https://hireanesquire.com/about> [<https://perma.cc/YLM4-25DG>] (last visited Feb. 26, 2021).

17. LAWCLERK, <https://lawclerk.legal/> [<https://perma.cc/CGH6-MYK5>] (last visited Feb. 26, 2021).

18. LAWCLERK, <https://about.lawclerk.legal/> [<https://perma.cc/3UFC-64BQ>] (last visited Feb. 26, 2021).

19. LAWCLERK, <https://www.lawclerk.legal/faq-hiring-attorneys> [<https://perma.cc/PG9E-PLVY>] (last visited Feb. 26, 2021).

20. *Id.*

21. See LAWCLERK, Terms of Use and Privacy Policy (May 28, 2020), https://www.lawclerk.legal/download_compliance_pdf [<https://perma.cc/NZF3-43LZ>].

22. *Id.* at 2.

23. See *id.* at 11.

24. *Id.* at 5.

... it's really going to revolutionize the way that solos and small practitioners can practice law. I think it's going to let them operate leaner, meaner, keep their overhead low. Make them much more competitive with bigger law firms. But I also see a lot of bigger law firms looking to trim some extra expenses and use LAWCLERK.²⁵

In some instances, gig lawyering perhaps helps with democratizing information and providing legal services to those who otherwise would not have access.²⁶ Only a supervising attorney, defined as the licensed attorney responsible for the request work product, can hire gig lawyers on a platform like LAWCLERK, however.²⁷ To that end, gig lawyering could also be a way to bypass employee status and rely exclusively on independent workers.

Contract lawyering in the past has been described as a “race to the bottom.”²⁸ With the advent and widespread use of technologies like LAWCLERK, it seems possible that this will exacerbate, or perhaps accelerate, the substitution of full-time employees with lower wage, temporary work.

The average gig lawyer will no longer be a mid-career attorney enjoying flexible work hours on the beaches of Hawaii, but rather a new, entry-level lawyer with hundreds of thousands in debt and less than full-time employment status.²⁹ We have seen this story before as the price of innovation has been complete decimation of incumbents at the detriment of workers in the taxi industry by way of Uber and Lyft.³⁰

Take, for instance, an environment wherein two attorneys are completing the same or similar tasks at a U.S. law firm. One of the lawyers is an employee of the company, earning a salary and employee benefits like healthcare insurance. The other attorney, however, is classified as an independent contractor, working at significantly lower hourly pay rate with no employee benefits or guarantee of continued work beyond the contracted duration.

25. Kathryn Rubino, *LAWCLERK: Where Attorneys Go to Hire Freelance Lawyers with Kristin Tyler - Episode 22*, THE JABOT (2019), <https://allthejabot.libsyn.com/lawclerk-where-attorneys-go-to-hire-freelance-lawyers-with-kristin-tyler-episode-22> [<https://perma.cc/LB6W-MK6T>] (last visited Feb. 26, 2021).

26. See Adi Gaskell, *Is the Gig Economy Set to Disrupt the Legal Profession?*, FORBES (Oct. 14, 2019), <https://www.forbes.com/sites/adigaskell/2019/10/14/is-the-gig-economy-set-to-disrupt-the-legal-profession/?sh=ff7c2622ad6c> [<https://perma.cc/WN3L-2P3G>].

27. See LAWCLERK, *supra* note 21, at 2.

28. Goldhaber, *supra* note 10, at 2.

29. See Rubino, *supra* note 25 (discussing a LAWCLERK user).

30. See, e.g., Henry H. Perritt, Jr., *Don't Burn the Looms - Regulation of Uber and Other Gig Labor Markets*, 22 SMU SCI. & TECH. L. REV. 51, 54-55 (2019) (concluding that using traditional labor and employment law to protect gig workers is “an intellectually lazy way of adapting law to new technologies”); Katrina M. Wyman, *Taxi Regulation in the Age of Uber*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 19 (2017) (tracing the history of the U.S. taxi industry and suggesting regulation should only be adopted to address market failures); Emily C. Atmore, *Killing the Goose That Laid the Golden Egg: Outdated Employment Laws Are Destroying the Gig Economy*, 102 MINN. L. REV. 887, 907 (2017) (noting Uber as an example of the inherent tension between the “modern gig economy and outdated employment laws”).

As Autor's committee points out, "employees [are] find[ing] themselves increasingly outsourced, sub-contracted, working part-time or on demand, and with less leverage and fewer worker protections."³¹ There is reason to be cautious of these seismic shifts.³²

Perhaps what makes gig lawyers fundamentally different from Uber or Lyft drivers, however, are the stringent education and licensing requirements as well as ethical duties of the legal industry.³³ The barriers to entry are significantly higher. Even at \$27 per hour,³⁴ gig lawyers are some of the highest paid workers in the platform economy.³⁵ Gig lawyers also can hold unparalleled political and social capital not readily available amongst other independent workers.³⁶

With this framework in mind, it is clear gig lawyers have both more autonomy and agency, making them easy to distinguish from other categorical independent workers (*i.e.*, an Uber driver). For these reasons, gig lawyers are well-positioned to advocate for change for both themselves—by securing protections through the *Model Rules*—as well as transforming the platform economy for independent workers more broadly.

II. GIG LAWYERS PRESENT COMPLEX, NOVEL ETHICAL ISSUES

An additional aspect unique to gig lawyers, as compared to independent workers generally, are the ethical obligations that arise under the ABA's *Model Rules of Professional Conduct*. Gig lawyers present several ethical challenges related to confidentiality, competence, and the unauthorized practice of law.³⁷

31. Autor, *supra* note 1, at 28.

32. See generally Keenan, *supra* note 4.

33. See generally Clifford Winston and Quentin Karpilow, *Should the US Eliminate Entry Barriers to the Practice of Law? Perspectives Shaped by Industry Deregulation*, AMERICAN ECONOMIC REVIEW: PAPERS & PROCEEDINGS (2016), 171-76, <https://www.aeaweb.org/articles?id=10.1257/aer.p20161001> [<https://perma.cc/9P3X-BDGE>] (last visited Feb. 26, 2021).

34. Goldhaber, *supra* note 10.

35. See generally Stephen Miller, *Gig Workers' Pay Varies by Classification and Industry*, SHRM (Feb. 6, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/gig-workers-pay-varies.aspx> [<https://perma.cc/DF97-L2SQ>]. An assumed rate of \$27 per hour could be comparable to a salaried lawyer making \$45 thousand per year, based on the NALP's bimodal salary distribution curve. See NALP Salary Distribution Curves, <https://www.nalp.org/salarydistrib> [<https://perma.cc/6LVU-WWAZ>] (last visited Feb. 26, 2021). This seems to suggest the rate is fair in some markets. It requires, however, an assumption that the gig lawyer would be able obtain hours comparable to a salaried individual in the first place. Even still, the gig lawyer is in a worse position because of the lack of work security beyond the contract term in addition to the lack of employment benefits.

36. See generally Kenneth Jan-Michael Sanchagrin, *Career Trajectories Among Lawyers: The Evolving Role of Social Capital*, University of Iowa (2014).

37. See, e.g., WTO Council for Trade in Services, Background Note by the Secretariat (June 14, 2010), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/gats_migrated/wto_legal_services.authcheckdam.pdf [<https://perma.cc/MGJ6-6YHU>].

A. AN OVERVIEW OF THE APPLICABLE MODEL RULES

Several *Model Rules* bear on this analysis. First, confidentiality is defined under Rule 1.6, stating in pertinent part “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent.”³⁸ Informed consent is defined under Rule 1.0(e), which “denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”³⁹

Several suggest gig lawyering presents significant confidentiality and disclosure issues because of the information asymmetries that exist between the platform, client, and gig lawyer given their short-term nature.⁴⁰ Some also query whether, and to what extent, these platforms essentially operate as “virtual law firms,” yet evade the same duties, responsibilities, and entry qualifications as their rival industry incumbents.⁴¹

Additionally, Rule 1.1 on competence requires a lawyer to have “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”⁴² While not directly on-point, comment 6 also instructs:

Before a lawyer retains or contracts with other lawyers outside the lawyer’s own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers’ services will contribute to the competent and ethical representation of the client.⁴³ The reasonableness of the decision to retain or contract with other lawyers outside the lawyer’s own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.⁴⁴

Accordingly, lawyers who contract with other, nonfirm lawyers and set forth a process of prescriptive conflicts checks as well as client acknowledgements can thus satisfy the text of and policy behind Model Rule 1.1. What is less clear, however, is whether these responsibilities can, and should, attach themselves to the gig lawyer platforms, or apps, themselves.

38. MODEL RULES OF PROF’L CONDUCT r. 1.6(a) (Am. Bar Ass’n 2020).

39. MODEL RULES OF PROF’L CONDUCT r. 1.0(e) (Am. Bar Ass’n 2020).

40. See Jing Li, *Platform Economy in Legal Profession: An Empirical Study Online Service Providers in China*, 35 UCLA PAC. BASIN L.J. 97 (2018).

41. *Id.*

42. MODEL RULES OF PROF’L CONDUCT r. 1.1 (Am. Bar Ass’n 2020).

43. See also MODEL RULES OF PROF’L CONDUCT r. 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law) (Am. Bar Ass’n 2020).

44. MODEL RULES OF PROF’L CONDUCT r. 1.1 cmt. 6 (Am. Bar Ass’n 2020).

For instance, it is unclear whether the use of a human intermediary on some platforms (i.e. the individualized, human analysis that results in pairing one consumer and one gig lawyer) can constitute the unauthorized practice of law and whether that is distinguishable from a purely algorithmic pairing (i.e. no human required).⁴⁵

Unauthorized practice of law is defined under Model Rule 5.5, which states in pertinent part that “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”⁴⁶ Comment 5 is also perhaps instructive, stating:

There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts.⁴⁷

It is unclear if “platform matchmaking,” as described above, that pairs skills demand and skills supply⁴⁸ constitutes the type of temporary work contemplated by the *Model Rules* because there is no “single test” to determine whether a lawyer is providing work on a temporary basis.⁴⁹ Moreover, additional guidance is needed from the ABA on this issue.

B. AN ATTEMPT TO DISTINGUISH NONLAWYER WORK

One may argue that gig lawyers are working in paralegal or traditional law clerk, (i.e., non-licensed capacities) as opposed to exercising their duties as lawyers. When it comes to nonlawyer work, Rule 5.3 is directly on-point. It provides:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.⁵⁰

45. See Li, *supra* note 40 (noting “substantial legal judgement” required on Chinese platforms Pocket Lawyer and Dianjilv).

46. MODEL RULES OF PROF’L CONDUCT r. 5.5(a) (Am. Bar Ass’n 2020).

47. MODEL RULES OF PROF’L CONDUCT r. 5.5 cmt. 5 (Am. Bar Ass’n 2020).

48. The concept of “match matching” platforms is discussed further by Tilburg University (the Netherlands) Law Professor Jing Li. See Li, *supra* note 40. There, Li examined a data set of 130 Chinese providers. *Id.* While not beholden by the same legal and ethical boundaries as China, perhaps this foreshadows the direction of the U.S. legal market.

49. MODEL RULES OF PROF’L CONDUCT r. 5.5 cmt. 6 (Am. Bar Ass’n 2020).

50. MODEL RULES OF PROF’L CONDUCT r. 5.3(a)-(b) (Am. Bar Ass’n 2020). See also ABA Ethics Opinion 08-451 (2008) (finding there is nothing inherently unethical about outsourcing legal and nonlegal work under Rules 1.1, 5.3, and 5.5).

Work such as making appearances and conducting depositions, typically falls outside of a nonlawyer's role and requires a lawyer admitted to practice to the jurisdiction.⁵¹ If the gig lawyer is admitted to practice in the jurisdiction, this presents potentially no issues under the *Model Rules*.⁵² It is less clear, however, whether the gig lawyer must be admitted to every jurisdiction they accept work in, even if they are not working in a nonlawyer capacity.

Moreover, the platforms themselves, particularly those using human match making, need more guidance from the ABA on whether they bear any ethical duties under the *Model Rules*.⁵³ The ABA has yet to affirmatively clarify whether platform match making constitutes an exercise of legal judgement bearing on the *Model Rules*.⁵⁴

This Note does not make any assumptions of any one particular platform. Rather, what is clear is that we should remain skeptical of third parties that insert themselves into lawyer-client relationships. We should also be questioning to what extent gig lawyering platforms invite opportunities for gamesmanship, or bad faith match making, at the expense of clients.⁵⁵

There is also growing need to reconcile the heightened potential for protectionist incumbents to impermissibly block new entrants into the legal industry with the possibility that new entrant, bad actors could fast-track market failure.⁵⁶ This too could be accomplished through revision to the *Model Rules*.

As University of Berkley Professor Henry W. Chesbrough notes in his book *Open Innovation: The New Imperative for Creating and Profiting from Technology*, in today's globalized economy, "the only constant is change, the task of managing innovation is vital for companies of every size in every industry."⁵⁷ Indeed, what is missing is affirmative guidance from the ABA on the validity of these types of platforms and how the *Model Rules* should be applied.

III. GIG LAWYERS IN A POST-COVID LANDSCAPE REQUIRE MORE ABA GUIDANCE

The U.S. Bureau of Labor Statistics estimated 55 million independent workers in the United States in 2017, which was a little over a third of the workforce.⁵⁸ As

51. See MODEL RULES, *supra* note 43.

52. *Id.* See also Rubino, *supra* note 25 (discussing types of work produced by Lawclerks).

53. See Li, *supra* note 40 (noting "a consumer cannot easily judge the substantive quality of the lawyer that is matched to him/her.").

54. See also Li, *supra* note 40 (taking similar issue with the Chinese market and general lack of oversight).

55. *Id.*

56. *Id.*

57. See Henry W. Chesbrough, *Open Innovation: The New Imperative for Creating and Profiting from Technology*, HARVARD BUSINESS SCHOOL PRESS (2017), at p. xvii.

58. Matthew Lavietes and Michael McCoy, *Waiting for Work: Pandemic Leaves U.S. Gig Workers Clamoring for Jobs*, REUTERS Oct. 19, 2020), <https://www.reuters.com/article/us-biggerpicture-health-coronavirus-gigw/waiting-for-work-pandemic-leaves-u-s-gig-workers-clamoring-for-jobs-idUSKBN2741DM> [<https://perma.cc/YG3H-MXYW>].

COVID-19 shuttered hundreds of thousands of workers, half of which were still unemployed six months later, many more have turned to the gig economy for work.⁵⁹

The pandemic continues to cause unprecedented⁶⁰ panic and disruption in the legal industry.⁶¹ At the beginning of the pandemic, almost half of the largest 100 law firms in the United States mandated pay cuts and furloughs.⁶² Some also required equity partner payment reductions or delays.⁶³ As business ramps up in the new fiscal year and lawyers return to their offices, there will ostensibly be an added incentive to build back “leaner and meaner” by utilizing even more gig lawyers as opposed to full-time associates, particularly in smaller offices and markets.⁶⁴

A. REVISING THE MODEL RULES

In order for gig lawyering to keep pace with this need, the *Model Rules* must be revised to reflect the realities of the growing industry. University of Tennessee Law Professor Lucille A. Jewel argues Model Rules 5.4(a) and (d) should be modified to make room for “egalitarian business models grounded in both commerce and community.”⁶⁵ She notes two particular barriers to innovation:

First, overly broad ethics rules tend to dampen innovation in legal services markets. Second, ethics rules tend to harm the business of solo practitioners while simultaneously reinforcing hierarchy in the profession. Ethics rules help maintain law’s professional hierarchy because they allow elite lawyers (who do not need to directly solicit clients, for instance) to continue to look down on solo practitioner lawyers whose livelihoods are constricted by these rules.⁶⁶

Jewel is referring to the “indie lawyer of the future,” which she describes as a solo practitioner that mainly focuses on transactional needs that arise out of a community.⁶⁷ Gig lawyering, by comparison, accounts for a larger subset of lawyers, not all of which are looking at community needs. The barriers to entry that

59. Kim Parker, et al., *Economic Fallout From COVID-19 Continues to Hit Lower-Income Americans the Hardest*, Pew Research Center (Sept. 24, 2020), <https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/> [<https://perma.cc/2RSQ-VJFX>].

60. Case Western Law Professor Peter M. Gerhart noted in 1995 how the external forces of specialization, segmentation, and globalization may affect the legal industry. See Peter M. Gerhart, *Riding the Whirlwind*, 67 N.Y. ST. B.J. 13, 13-14 (1995).

61. See, e.g., Meghan Tribe, *Nearly Half of Big Law Firms Made Pay, Other Cuts in Pandemic*, BLOOMBERG LAW (July 21, 2020), <https://news.bloomberglaw.com/business-and-practice/law-firm-pay-cuts-to-continue-as-pandemic-worsens-in-u-s> [<https://perma.cc/HR2Z-PCKH>].

62. See *id.*

63. See *id.*

64. Rubino, *supra* note 25 (stating law firms will have the added incentive to rebuild “leaner and meaner”).

65. Lucille A. Jewel, *The Indie Lawyer of the Future: How New Technology, Cultural Trends, and Market Forces Can Transform Them Solo Practice of Law*, 17 SMU SCI. & TECH. L. REV. 325, 378 (2014).

66. *Id.* at 372.

67. *Id.* at 363-365.

exist for indie lawyers, however, also exist for gig lawyers. Both struggle under rules that prioritize a market-based approach at the expense of large-scale, open innovation that allows for more one-to-one connections between clients and lawyers.⁶⁸

In addition to Jewel's suggestions, *Model Rules* 1.1,⁶⁹ 5.3,⁷⁰ and 5.5⁷¹ also require revision, or at minimum, additional guidance. New rules, or alternatively, updated guidance, must reflect the gig lawyer's reliance on the matchmaking functions of website- and app-based platforms.

These functionalities will only continue to evolve, as should the rules and ethical duties that regulate the space. Furthermore, the *Model Rules* could permit certain forms of direct solicitation⁷² and allow for some transactional practice across jurisdictional borders⁷³ because it would unlock latent, untapped markets.⁷⁴

B. CRAFTING ADDITIONAL PROTECTIONS FOR GIG LAWYERS AND INDEPENDENT WORKERS AS A WHOLE

Gig lawyering also presents additional challenges outside of the *Model Rules* framework as independent worker status conveys neither the benefits nor protections of full-time employment.⁷⁵ Autor notes, the United States must "rebalance the desire of employers for low-cost, minimal commitment, and maximal flexibility, with the necessity that workers receive fair treatment, reasonable compensation, and a measure of economic security."⁷⁶ This is particularly true in the post-COVID job market.

Gig lawyers are uniquely positioned to understand the relationship between emerging technologies and the future of work. Gig lawyers can utilize their autonomy and agency as well as relationships with legislative, regulatory bodies, and other lawyers to shape the public discourse and legislative priorities around what it means to be an independent worker in the United States.

There is a real opportunity here for gig lawyers specifically to take the lead on communicating the need for portable benefits and a flexible unemployment system.⁷⁷ University of Oxford Professor Jeremias Prassl importantly notes:

68. *Id.* at 373.

69. MODEL RULES OF PROF'L CONDUCT r. 1.1 (Am. Bar Ass'n 2020).

70. MODEL RULES OF PROF'L CONDUCT r. 5.3 (Am. Bar Ass'n 2020).

71. MODEL RULES OF PROF'L CONDUCT r. 5.5 (Am. Bar Ass'n 2020).

72. *But cf.* Model Rule 7.3(b) which states, "[a] lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain." MODEL RULES OF PROF'L CONDUCT r. 7.3(b) (Am. Bar Ass'n 2020).

73. *But cf.* Model Rule 5.5(b) which states, "[a] lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." MODEL RULES OF PROF'L CONDUCT r. 5.5(b)(1)-(2), (Am. Bar Ass'n 2020).

74. *See* Jewel, *supra* note 65.

75. *See generally* Autor, *supra* note 1.

76. Autor, *supra* note 1, at 5.

77. *See* Stephen F. Befort, *The Declining Fortunes of American Workers: Six Dimensions and an Agenda for Reform*, 70 FLA. L. REV. 189, 218 (2018).

[I]t is important to avoid the lure of technological exceptionalism: the technology powering the platform economy is novel and exciting – but the underlying business model is not. As a result, there is ample space to meet the platform economy and its operators within the realm of collective voice.⁷⁸

CONCLUSION

For these reasons, gig lawyers will always be a part of the legal industry and globalized economy at large. COVID-19 has exacerbated the existing conditions in the legal industry, indicating the use of gig lawyers will continue rise as firms rebuild their infrastructures and rethink talent needs.

Importantly, the current landscape poses additional opportunities for gig lawyers to refocus the conversation on access to worker benefits, affecting change for independent workers at large. Moreover, as the use of platform technologies to match consumers and gig lawyers increases, this presents several unanswered ethical questions, which can be reconciled with revisions to the *Model Rules*.

78. Jeremias Prassl, *Collective Voice in the Gig Economy: Challenges, Opportunities, Solutions*, UK LABOUR LAW (Oct. 22, 2018), <https://uklabourlawblog.com/2018/10/22/collective-voice-in-the-gig-economy-challenges-opportunities-solutions-jeremias-prassl/> [<https://perma.cc/KAN5-3ZYW>].