

Lawyers Gone Viral: Should Attorney’s Social Media Activity Be Subjected to Arbitrary Corporate Rules or Left to Self-Governance?

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I. INTRODUCTION

In a slow, serious demeanor that departed from the upbeat nature of her typical beauty-centered content,¹ EniGivenSunday—Eni Popoola— explained why she left her job at a corporate law firm due to her employers growing discontent with the “outside opportunity” tied to her growing social media presence, which they perceived as a violation of “moonlighting”² policies.³ The three-minute and 38-second video⁴ detailing the workplace tension leading up to her resignation sent the internet into a frenzy, sparking both words of support for the video and even more questions. The post with the hashtags #CareerChange, #NewBeginnings, and #SelfEmployment was shared over 12,000 times on TikTok and garnered over 178,900 likes and 8,030 comments.⁵

Overall, Enigivensunday’s TikTok post of her experiences opened up a wider conversation about the responsibilities and restrictions of social media use for lawyers among young legal professionals on social media platforms, as well as non-legal influencer communities in subreddit forum discussions like r/NYcinfluencersnark, r/big-law, and r/lawschool.⁶ Attorneys and budding legal professionals contended with the possibility that their personal social media activities outside of work could breed professional conflicts depending on their specific work environment. Thus, the question arose whether there exists an irreconcilable conflict between simultaneously being a successful social media influencer and a practicing attorney. Further, many considered whether the conflict of interest between a legal influencer and an employer could be solved by fair ethical guidelines pervasively applied to all legal professionals on social media or if the true conflict of interest was a matter of social preferences of partners and bosses at one’s employer.

Since the COVID-19 pandemic, there has been a major growth in the creator economy that included lifestyle vloggers and a new class of influencers across the social and professional stratosphere. With that growth, there has been a new class of attorneys who have built a brand and “side gig” as legal influencers, sharing everything from a glimpse into the “day in the life” of a lawyer to discussing legal

1. Zuri Anderson, “Black Lawyer Resigns After Law Firm Gives Her Ultimatum Over TikTok,” BLACK INFORMATION NETWORK (March 23, 2023), <https://www.binnews.com/content/2023-03-23-black-lawyer-resigns-after-law-firm-gives-her-ultimatum-over-tiktok/> [https://perma.cc/3J7S-GTNG] (Eni Popoola is a beauty blogger who does makeup and lifestyle videos).

2. Moonlighting is having a second job or doing work outside of one’s regular employment.

3. Eni Popoola (@Enigivensunday), Life Update: Resignation from Corporate Law Firm, TikTok, <https://www.tiktok.com/@enigivensunday/video/7213015627143892267?lang=en> [https://perma.cc/4HV4-TSAB] (last visited Dec. 08, 2024).

4. *Id.*

5. *Id.* As of time of writing on Dec. 01, 2024.

6. Reddit is a forum-style social media platform where people can share content like texts, images, and videos within smaller topic-based communities called “subreddits.” Subreddits are communities where users have discussions based on a shared interest or niche topic such as law school, big law employment.

topics relevant to pop culture. This class of legal influencers, often found on TikTok and YouTube, are commonly called “lawfluencers”⁷ or law influencers within their respective groups.⁸

With the increased visibility and popularity of legal influencers has come increased scrutiny by companies and legal partners alike about the potential risks of an attorney’s social media presence. Principally, there has been robust conversation by the State Ethics boards about the use of social media as a communications device, D.C. Bar opinion 370,⁹ and as a social platform, *see* D.C. Bar opinion 371.¹⁰ While social media use is generally permitted with caution, the growing scrutiny in the legal practice calls into question the disciplinary actions that have been taken against practicing lawyers who get brand deals and endorsements through their social media platforms. *See* Mayfeild and Furman.¹¹ Some argue that influencers are educators whose content is not much different from their medical counterparts seeing that they share a similar position as “knowledge influencer,” *see* Song and Rogers.¹² While there are many broad similarities between medical and legal professionals’ responsibilities to the public, it can be argued that standard ethical considerations in the legal field set a higher bar for legal influencers who have a greater ability to warp public perceptions of the law.

This Note will argue that the crux of the ethics conversation around attorney’s social media use is whether D.C. Model Rule 1.7: Conflicts of Interest - General¹³ are consequently violated by “law influencers” or legal influencers. Particularly, this Note will employ the D.C. Model Rules and D.C. Bar Ethics Opinions to examine how state and local bar associations contribute to the regulation of attorneys within their specific jurisdiction beyond the *Model Rules of Professional Conduct* (MRPC). Furthermore, Part II of the note will discuss the current state of ethics for lawyers in D.C. regarding the use of social media. Then it will consider the role of accuracy, informed consent for current clients, and the perception that attorneys are operating on their own versus representing their company on social media. Part III of this note will comparatively explore the regulations, ethical responsibilities, and best practices for medical professionals versus legal professionals with growing social media platforms. Finally, Part IV will further examine the original purpose of the *Model Rules of Professional Conduct* and consider whether the level of scrutiny imposed on an attorney’s social media use is

7. Anthony Song & Justine Rogers, *Lawfluencers: Legal Professionalism on TikTok and YouTube*, 37 GEO. J. LEGAL ETHICS 507, 510 (2024)

8. Colloquially referred to on social media as LawTok or LawTube.

9. D.C. BAR, OP. 370 (2016).

10. D.C. BAR, OP. 371 (2016).

11. Cedra Mayfield & Aleeeza Furman, “Yes. Lawyers Can Be Social Media Influencers—But Is the Bar Behind the Times?” LAW.COM (August 16, 2023), <https://www.law.com/2023/08/16/yes-lawyers-can-be-social-media-influencers-but-is-the-bar-behind-the-times/?slreturn=20240930-33656> [https://perma.cc/E8RL-7BBB].

12. Song & Rogers, *supra* note 7 at 511, 516.

13. D.C. MODEL RULES R. 1.7(A).

appropriate. This Note will then suggest possible solutions to meet standard guidelines for social media usage for law influencers.

II. CURRENT RULES OF ETHICS ADDRESSING ATTORNEY SOCIAL MEDIA USE

The American Bar Association is considered the authoritative body on the ethical obligations and practices for lawyers. Nearly every important consideration concerning the ethical practice of the law is addressed by state and local bar associations in either the *Model Rules of Professional Conduct* directly or influential guidance in published opinions by bar ethics committees. Social Media use is no different. Rule 7.2(a) and (c) advise lawyers how they can advertise their legal practice¹⁴ and themselves¹⁵ while also being held to a standard of truthfulness. However, there is a gap in the ethical standards when it comes to the personal use of social media by lawyers which has left much of the restrictions and decisions regarding the social media use of attorneys to the arbitrary guidelines of their employer.

This section explores the general ethical standards of social media use set by the D.C. Bar and discusses the poignant ethical concerns law influencers may face while growing their social media platforms.

A. ETHICAL STANDARDS SET BY D.C. BAR OPINIONS ON SOCIAL MEDIA

In 2016, the D.C. Bar Ethics Program provided guidance on a few questions that arose under the D.C. rules of professional conduct regarding social media uses when advertising, *see* Opinion 370, and providing legal services, *see* Opinion 371. The D.C. Bar Ethics Program thoroughly addresses the lawyers' use of social media for "personal or professional" reasons in Opinion 370.¹⁶ They make clear that the Rules of Professional Conduct are still applicable in this case - particularly rule 7.1 on advertising.¹⁷ The D.C. Bar Ethics Program also suggests that law influencers take "affirmative steps to remain competent regarding the technology being used" and to ensure compliance with the applicable Rules of Professional Conduct.¹⁸

Furthermore, the D.C. Bar Ethics Opinion 371 (Social Media II) section F details that lawyers are able to use social media to "comment on legal issues, cases, and matters."¹⁹ (2016). These are privileges that are made available to lawyers and are limited in some respects to compliance with MRPC 1.6 client confidentiality and privileged information²⁰ as well as legal ethics rules about not

14. MODEL RULES OF PROF'L CONDUCT R. 7.2 (A) (2024).

15. MODEL RULES OF PROF'L CONDUCT R. 7.2 (C) (2024).

16. D.C. BAR, OP. 370 (D) (2016).

17. D.C. MODEL RULES R. 7.1 (A) (prohibits lawyers from making false or misleading statements about themselves or their services which cannot be substantiated).

18. D.C. BAR, OP. 370 (V) (2016).

19. D.C. BAR, OP. 371 (F) (2016).

20. D.C. MODEL RULES R. 1.6.

making statements to prejudice the client or to influence the judge or jury.²¹ This guideline from the D.C. Bar Ethics Committee seemingly supports the assertion that law influencers are within their rights to use their legal knowledge to engage in public discourse about legal issues on platforms like TikTok and YouTube.

Most notably the D.C. Ethics Opinion 371 notes that the “principles” of the opinion should be applied as social media and other technology changes in order to continually comply with the Rules of Professional Conduct.²² This guidance is very important because it will serve as preliminary guidelines for law influencers and employers alike to navigate the rise of social media use in the legal profession. Furthermore, it encourages law influencers to use their knowledge of their ethical obligations to maintain all attorney-client confidentiality while using social media.

B. IMPORTANT ETHICAL CONCERNS FOR LEGAL INFLUENCERS

Relying on the principles provided in the 2016 D.C. Ethics Opinions²³ about social media, law influencers should consider the applicable rules of professional conduct when they use social media. Being a legal influencer can take shape in many forms these days. On TikTok and YouTube, users can use specific hashtags, titles, or even the timing of the videos to attempt to reach wider audiences and increase traffic to their content. However, as legal influencers are creating content, it is important for them to consider their professional reputation and the “public perception of the legal system”²⁴ rather than falling into the guise of sensationalizing content for more followers. While it is true that part of being a successful social media influencer entails accumulating a ‘following’ to grow a social presence one can leverage for ‘commercial gain and/or cultural capital,’²⁵ law influencers should be careful and intentional about the content they produce in order to adhere to the ethical guidelines and professional responsibilities of all lawyers.

Some common ethical concerns for legal influencers producing social media content are general principles of competency, diligence, and conflicts of interest. For example, it is important that law influencers do not create attorney-client relationships between themselves and the audience. In order to comply with the *Model Rules of Professional Conduct (Model Rules)* produced about the scope of attorney-client representation²⁶ it is imperative to draw a clear line between general legal information and legal advice.²⁷ Similarly, law influencers should be

21. D.C. MODEL RULES R. 3.5 (A).

22. D.C. BAR, OP. 371 (IV) (2016).

23. *Id.*

24. Mayfield & Furman, *supra* note 11.

25. Song & Rogers, *supra* note 12 at 511; see Susie Khamis et al., Self-Branding, ‘Micro-Celebrity’ and the Rise of Social Media Influencers, 8 *Celebrity Studies* 191, 191 (2017).

26. D.C. MODEL RULES R. 1.2.

27. *Lawfluencers opting for ‘quantity over quality,’ researchers claim*, LEGAL CHEEK (August 25, 2023), <https://www.legalcheek.com/2023/08/lawfluencers-opting-for-quantity-over-quality-researchers-claim/> [<https://perma.cc/6LE7-DE7U>].

mindful of how they attempt to game social media algorithms. A study showed that some law influencers on TikTok and YouTube attempts to give off-the-cuff legal advice led to “sub-par and even inaccurate legal information.”²⁸ This poses a risk of violating the *Model Rules* where law influencers may be giving legal advice that is outside of their level of competence, and not diligently prepared.²⁹

Furthermore, conflicts of interest are perhaps the most pertinent legal principle and ethical issue that a law influencer may face as they navigate social media and work as a legal professional. Particular conflicts of interest will often be addressed by full disclosure of possible conflicts and informed consent of both one’s employer and the other interested party.³⁰ However as more law influencers are creating sizable secondary income and lucrative partnerships with third parties, law firms have exercised their discretion to not take on the risk of conflicting interest and are generally disapproving of partnerships between law influencers (their employee) and a potential adverse party to the company or its current clients. This is where the tension of fairness and discretion within ambiguous ethical guidelines sometimes leads to termination of employment, or voluntary resignation in some cases such as TikToker Enigivensunday.

C. TENSIONS DUE TO CONFLICTS OF INTEREST BETWEEN LAWFLUENCERS AND THE FIRM

The D.C. Bar rules of professional conduct state that lawyers should not represent a client who is (1) adversely positioned to a current client or (2) if the lawyer’s “professional judgement” for the client may be adversely affected by their responsibilities to a third party.³¹ While there are few exceptions to the general conflict of interest rule, lawyers are expected to provide diligent representation and avoid “reasonably foreseeable” conflicts at the onset of representation.³² Thus, it is reasonable that a common point of tension between law influencers and their places of employment is the potential conflict of interest with current clients of the firm. Beyond the *Model Rules of Professional Conduct*, which all practicing lawyers are required to uphold, some law firms also have strict anti-moonlighting policies that are sometimes interpreted to restrict law influencers who generate an income via their social media platform. It is commonplace that more traditional law firm environments are not “side hustle friendly” and expect 100% devotion from junior and mid-level attorneys.³³ This firm culture is often

28. *Id.*

29. D.C. MODEL RULES R. 1.1.

30. D.C. MODEL RULES R. 1.7(C)(2).

31. D.C. MODEL RULES R. 1.7(B)(1)(4).

32. D.C. MODEL RULES R. 1.7(D)(1).

33. Rob Chesnut, *Employee Moonlighting Should Spur Law Firms to Review Policies*, BLOOMBERG LAW (December 16, 2024), <https://news.bloomberglaw.com/us-law-week/employee-moonlighting-should-spur-law-firms-to-review-policies> [https://perma.cc/FW9P-8JHZ]; see *Moonlighting and the Legal Industry*, LEGAL PRACTICE INTELLIGENCE (November 02, 2022), <https://www.legalpracticeintelligence.com/blogs/practice-intelligence/moonlighting-and-the-legal-industry?>

reflected in more strict anti-moonlighting policies. More generally, anti-moonlighting rules typically address employees who might do legal work representing another party and who's "privately" handled cases may compete with an employer.³⁴

Oftentimes law influencers will use social media to produce personalized content such as lifestyle content, sharing legal information, and/or general entertainment to build a niche "public personas and brands"³⁵ as opposed to providing legal services.³⁶ Thus, while one may eventually generate additional income as their social platform and influence grows, a typical law influencer social media usage does not breach any work obligations or the "implied duty of fidelity" to their employer so long as it is reported.³⁷ Furthermore, as legal professionals, law influencers adhere to standards of honesty and preemptively avoid misrepresentation, so they are often very forthcoming if they have a social media presence and promptly report their activity to their employers. For example, beauty influencer Enigivensunday disclosed her social media platform as early as the interview stage for her position as an associate attorney and was able to tie her experiences as an influencer working with brands and reading contracts to applicable skill sets.³⁸

Furthermore when law influencers disclose their social media usage to their employers there is a level of transparency that dispels the secrecy that many companies believe to be the main conflict with moonlighting or outside work activities.³⁹ This holds true in international jurisdictions where, the Labour Appeals Court has affirmed cases of termination when an employee did not disclose obvious "material activities" and "manifestly act[ed] in violation of her duty of good faith to her employer."⁴⁰ In that case the plaintiff had a clear and foreseeable conflict of interest with her employer, and was fired for having a side business as

srsltid=AfmBOorkwW4IzTUaxTI1H0GkXKCvn_I1uHc4dTwqplEoWIYqgopDy6K [https://perma.cc/PD7V-FVVV] (Law firm employment contracts usually restrict lawyers from getting paid from outside sources without the written consent of the employer).

34. Carole J. Buckner, *The Ethical Implications of Moonlighting*, SAN DIEGO BAR CNTY. ASS'N: FOR THE RECORD (September 15, 2020), <https://blawg401.com/the-ethical-implications-of-moonlighting/> [https://perma.cc/RWF7-S2RV]; see *Prince, Yeates & Geldzahler v. Young*, 94 P.3d 179 (2004) (the judge made one of the attorneys disgorge fees earned from secret held cases he did as a side gig).

35. Song & Rogers, *Lawfluencers: Legal Professionalism on TikTok and YouTube*, 37 GEO. J. LEGAL ETHICS 507, 510 (2024).

36. See, e.g., *Moonlighting and the Legal Industry*, *supra* note 33 (lawyers are often moonlight in order to follow their passion outside of their profession).

37. Cf., *Moonlighting or two-timing? How should employers deal with side-hustles?*, BCLP, Employment Law Horizon Scanning, Publication #7 (Jan 31, 2023), <https://www.bclplaw.com/en-US/events-insights-news/moonlighting-or-two-timing-how-should-employers-deal-with-side-hustles.html> [https://perma.cc/4J3U-Vwww] (Individuals who do not disclose side-hustles to their employers would be considered in breach of hotter expressed contracts with their employers).

38. Anderson, *supra* note 1 (Enigivensunday let her employers know of her social media platform and even included it on her resume. She remarks on her social media platform was a talking point in her law firm interviews).

39. *Moonlighting and the Legal Industry*, *supra* note 33 (Wipro Chairman, Rishad Primji describes Moonlighting as "having a second job secretly").

40. *Fired For Moonlighting*, MACINTYRE VAN DER POST (February 28, 2022), <https://mcintyre.co.za/news/fired-for-moonlighting/> [https://perma.cc/X3LC-LJNP].

a sales agent in the same industry as her employer. Contrastingly, most legal influencers are not operating in the same legal, advisory capacity on social media as they do at work. Therefore, there is no inherent competition with their employers, nor is there any clear and foreseeable conflict that would constitute their social media use as traditional moonlighting. Nevertheless, some firms have strict policies that prohibit their lawyers from both moonlighting and outside of work activities – which in some instances include any brand partnerships on social media.⁴¹ In contrast, however, the D.C. Bar Ethics Opinion 370 generally permits lawyers personal use of social media and clearly acknowledges that social networking sites are typically used to “share daily activities and interests in various topics.”⁴² Thus, the crux of law influencer-employer tension lies with employers who diverge from the ethics guidance and rather institute harsher regulations that may lead to law influencers (employees) being restricted from growing their social media platforms.

III. DISSECTING THE OVERREGULATION OF ATTORNEY SOCIAL MEDIA USE

As employers contend with the growing presence of legal influencers there is a gap in uniformity concerning how to navigate and regulate lawyer-generated content. While some legal professionals believe that the rules of professional conduct are outdated and should be revisited by bar associations,⁴³ other legal professionals believe that the modern rules of procedures can be interpreted in a manner to reflect the current social media use similar to advertisement or public communications.⁴⁴

This section will assess how the rules of professional conduct are used to regulate lawyer generated content on social media. Then it will consider the regulation efforts of medical influencers within their professional community as a comparative “knowledge influencer” adjacent to law influencers to highlight any similarities that may exist.

A. CURRENT ISSUES REGULATING PERSONAL SOCIAL MEDIA USE OF LAWYERS

The most pronounced divide among legal professionals regarding regulation of social media use is whether the *Model Rules of Professional Conduct (Model Rules)* are sufficient to address lawyer-generated content on social media. While there are some aspects of the *Model Rules* that address public communications such as advertisement and press releases,⁴⁵ there is no clear indication between

41. Anderson, *supra* note 1 (Earning money on social media via brand partnerships was considered to be against firm’s policy on outside work activity).

42. D.C. BAR, OP. 370 (2016).

43. Mayfield & Furman, *supra* note 11 (Intellectual Law attorney and law influencer strongly believes bar rules are outdated, vague, and unhelpful in its current state).

44. MODEL RULES OF PROF’L CONDUCT R. 7.2 (C) (2024) (Communications concerning a lawyer’s services).

45. MODEL RULES OF PROF’L CONDUCT R. 7.2 (A)(C-D) (F).

advertising for a company and the growth of one's personal business. With these ambiguities attorneys may run into similar issues as Tom Bosworth—a litigator in Pennsylvania—who was fired from a personal injury firm because of his TikToks, despite applying the same standard as typical legal communications and press releases detailed in the *Model Rules*.⁴⁶ Regardless of the varying ambiguities, many legal professionals maintain that the *Model Rules* are sufficient and need not be “revamped” due to “heightened social media and AI usage in the legal profession.”⁴⁷ Rather, legal professionals like the Georgia Court of Appeals Judge Stephen Dillard suggest that state and local bar associations think of adding commentaries to the *Model Rules* as a form of guidance to help lawyers avoid particular pitfalls of social media and AI use.⁴⁸

On the other end of this debate are legal professionals who insist that there is a need for updated rules to address many advancements in the legal profession including social media usage. An example of this need is evidenced in the *Model Rules* and D.C. Bar opinions not making much of a distinction between social media use for lawyers who are employees of a firm versus lawyers who are self-employed. This is particularly important for many lawyers starting their own firm, like Ryan Stygar, who uses social media to “cast a wider net for potential clients.”⁴⁹ While the state and local bar rules surrounding social media usage remain untouched, and what some consider “vague and unhelpful,” leaving the rules unspecified poses a threat for other lawyers to challenge the ambiguity of the *Model Rules* and potentially “ruin [social media usage] for everybody.”⁵⁰ Thus, it is imperative for a clear ethical standard to be set in the legal community that is rapidly growing in the technical domain.

B. THE ROLE OF THE KNOWLEDGE INFLUENCER: COMPARING LAW INFLUENCERS TO MEDICAL INFLUENCERS

Being a law influencer requires one to master the role of digital technology and “self-presentation skills” in order to share their lifestyle or knowledge and acquire a following.⁵¹ In the broader landscape of influencers, legal professionals operate as “knowledge influencers” – which Song & Rogers describe as persons who share “technical information and expertise to lay audiences interwoven with personal posts or . . . anecdotes about professional life” to intentionally build a brand that is both knowledgeable, relatable, and personal.⁵² The community of knowledge

46. Mayfield & Furman, *supra* note 11.

47. *Id.*

48. *Id.*

49. *Id.* (Attorney, Ana Juneja sharing her strong opinions on the bar associations not keeping up with anything and remaining outdated).

50. *Id.* (Ryan Stygar encouraging others to use ABA rules on signage in lieu of the “platform specific” guidance for social media.).

51. Song & Rogers, *Lawfluencers: Legal Professionalism on TikTok and YouTube*, 37 GEO. J. LEGAL ETHICS 507, 513-14 (2024).

52. *Id.* at 515-16.

influencers is rising in the legal field but is also prominent in many other professional fields like medicine, finance, and dentistry.⁵³

As knowledge influencers, lawyers are taking a step away from the inherent “exclusivity” of the legal tradition which upheld barriers to entry based such as gender, race, social status, knowledge, expertise and access to the government to maintain the “objectivity and predictability” of the law and the profession’s perceived “trustworthiness.”⁵⁴ In the modern day, all lawyers are held to ethical standards and professional conduct by the public which provides an ability for law influencers to provide more access to the law by peeling back the curtain of the legal profession through various forms of self-generated content.

Law influencers operate as “knowledge influencers” by providing a mixture of educational content and personal content that includes but is not limited to legal educational videos, legal news and commentary, and personalized video logs (aka vlogs).⁵⁵ Law influencers may include various knowledgeable legal professionals and can span from lawyers to jurists like the Presiding Judge Stephen Dillard, who is a daily social media user with over 35,000 followers on Twitter.⁵⁶ While judges have more strict guidelines than lawyers, Judge Dillard is a great example of being “intentional and thoughtful” when leveraging your social media platform to “educate the public about the inner workings and culture of the Court,” give advice to young aspiring lawyers, and directly engage with civil constituents.⁵⁷ A common way law influencers accomplish the balance between the personal and professional is by creating content explaining the law in general terms and describing the legal field in a “clear, accessible way.”⁵⁸ For example, Angel Nwachukwu and Samanta Simpson have amassed a loyal target audience of 17,900 followers on YouTube⁵⁹ by producing vlogs and short videos explaining their law school journey and chronicling their legal careers throughout the years.

One major consideration with knowledge influencers is the “platforms” or algorithm that personalizes users’ experiences and ultimately shapes the kind of content influencers put out.⁶⁰ One way law influencers navigate the whims of social media algorithms is by producing vlogs and personal content that captures some of the common social trends of the platform. Despite law influencers sharing more personalized content, there are plenty of things that aren’t shared by

53. *Id.* at 516.

54. *Id.*

55. *Id.* at 518.

56. @JudgeDillard following on X as of time of writing on Jan. 08, 2025.

57. Mayfield & Furman, *supra* note 11; *See generally* Legal Cheek, *supra* note 27 (a popular social media trend of lawyers and law students to give careers advice for aspiring lawyers is helping expand the access to the field of law).

58. Song & Rogers, *Lawfluencers: Legal Professionalism on TikTok and YouTube*, 37 GEO. J. LEGAL ETHICS 507, 518 (2024).

59. @sistersinlaw followers as of date of writing Mar. 10, 2025.

60. Song & Rogers, *supra* note 7, at 514, 526.

attorneys because of the nature of their employment and the public perception.⁶¹ Another way lawyers engage with trendy pop culture and political topics is by establishing themselves as an “authority” and trusted voice when they engage in “news driven content” and give their personal takes on prominent popular trials.⁶²

Generally, the positives far outweigh the potential negatives of the growth of lawyers as knowledge influencers on social media sites. For example, having lawyers in the social media space enables them to fill a “niche” role of bringing legal knowledge and entertainment to larger audiences.⁶³ With law influencers operating as “knowledge influencers” there is an opportunity to “promote civility and professionalism”⁶⁴ to their peers and broader audience. As social networking sites like TikTok and YouTube continue to reach wider, global audiences there is also growing potential for more lawyers to become self-employed and make “considerable amounts of money” as law influencers.⁶⁵ For example, Intellectual Property attorney Ana Juneja was able to start her own practice in 2021 after leaving her traditional law firm in Chicago.⁶⁶ As a law influencer, Juneja is able to create valuable educational content and teach other lawyers how to generate an income on social media as well.⁶⁷ This highlights the continuous learning that is a core value shared by many law influencers who are able to “exchange ideas,”⁶⁸ network, and increase community of like-minded “personal or business acquaintances.”⁶⁹

Like lawyers, many doctors use social media for personal and professional objectives. Medical influencers share an array of content as “knowledge influencers” such as health awareness and spreading information on important health topics.⁷⁰ Many medical influencers are young doctors and medical students who grew up accustomed to social media use and are now becoming medical influencers to “generate interest in topics, brands, or products.”⁷¹ Nevertheless, medical influencers are held to the same standards of honesty and integrity as lawyers in order to avoid professional risks. Thus, medical influencers must avoid conflicts of interest when advertising products and services like protein supplements, beauty products, fitness apps, alcoholic drinks, childcare products to their audience.⁷²

61. Anderson, *supra* note 1. (Beauty blogger Eni Popoola remarked how she was “afraid” to share about her experience but could have “more candid conversations” after quitting her corporate law firm job).

62. Song & Rogers, *supra* note 7, at 519—20; *see* Cecillia Xie, How TikTok Can Revolutionize Your Legal Practice, 94 N.Y. STATE BAR ASS’N J. 28, 29 (2022).

63. Song & Rogers at 510.

64. Mayfield & Furman, *supra* note 11.

65. Song & Rogers, *supra* note 7, at 510.

66. Mayfield & Furman, *supra* note 11.

67. *Id.*

68. *Id.* (Georgia court of appeals judge remarks on the networking abilities for both lawyers and judges on social media).

69. D.C. BAR, OP. 370 (2016).

70. Beth Walker, *Medical influencers – be aware of the pitfalls*, MEDICAL PROTECTION (March 2, 2021), <https://www.medicalprotection.org/uk/articles/medical-influencers-be-aware-of-the-pitfalls> [https://perma.cc/H2Y8-YBMV].

71. *Id.*

72. *Id.*

Medical influencers also have legal considerations that shape the landscape of their social media usage and messaging in particular. Principally, in 2019 the Federal Trade Commission (FTC) released guidance around disclosures and endorsements for social media influencers.⁷³ From these guidelines medical influencers are held to a strict standard where they must disclose “material connections” to the brand (such as a personal, family, job, or financial interests).⁷⁴ The disclosure of any sponsored content from medical influencers is also required to be “clear” and “conspicuous” using tags like #ad or #sponsored for example.⁷⁵ Furthermore medical influencers must heed the Food and Drug Administration (FDA) regulations regarding the labels and advertisements for drugs and medical devices.⁷⁶

In addition, medical influencers, much like law influencers, have an ethical standard of confidentiality for their clients (patients). For medical professionals, doctor-patient confidentiality is governed and protected by the Health Insurance Portability and Accountability Act (HIPAA). It is best practice for medical influencers who are sharing personal content to use “hypothetical case studies” or composite students for any client data shared.⁷⁷ For medical influencers, personal content and marketing a product actually may require a level of sophistication with legal rules and regulations due to the risks that advertising medical products or pharmaceuticals pose.⁷⁸ Healthcare attorneys like David Holt suggest that medical influencers put in place sustainable “strategies and safeguards” to successfully build a social media platform such as (1) consulting with a healthcare lawyer, (2) developing lean policies and procedures for patient information and confidential matters, (3) thoroughly training staff on HIPAA and FTC regulations, and (4) regularly reviewing social media content and advertisements to make sure its compliant with the law.⁷⁹ Many of the strategies medical influencers

73. *Disclosures 101 for Social Media Influencers*, FEDERAL TRADE COMMISSION (2019), https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf [https://perma.cc/46J6-LUK9] [hereinafter *Disclosures 101*].

74. *Id.*

75. Brendan Quinn, *Hey influencers! The FTC is talking to you - new guidance from the FTC*, HOGAN LOVELLS (2019), <https://digital-client-solutions.hoganlovells.com/influencer/tool/influencers-tool-regulatory-and-litigation-hey-influencers-the-ftc-is-talking-to-you-new-guidance-from-the-ftc> [https://perma.cc/T6XC-KG9E].

76. *Influencers in the pharmaceutical and medical device industry*, HOGAN LOVELLS (2024), <https://digital-client-solutions.hoganlovells.com/influencer/tool/influencer-tool-influencers-tool-guides-for-your-industry-influencers-in-the-pharmaceutical-and-medical-device-industry> [https://perma.cc/P7A7-H87D].

77. David Holt, *What are the legal requirements for Healthcare Influencers when doing business online?* HOLT LAW (June 20, 2024), <https://djholtlaw.com/what-are-the-legal-requirements-for-healthcare-influencers-when-doing-business-online/#:~:text=The%20Federal%20Trade%20Commission%20> [https://perma.cc/S4KL-9U4C].

78. *Id.*

79. *Id.*

use to navigate social media regulation and ethics can help inform best practices for law influencers as well.

IV. DISCUSSING SOLUTIONS AND RECOMMENDATIONS

Given the gap between the current ethical opinions from state and local bar associations and employers' arbitrary regulations of lawyers' social media platforms, this section will provide a few solutions to address the need of alignment within the legal profession. The first solution will propose adhering to the precedent of self-regulation within the existing *Model Rules of Professional Conduct*. Next, the second solution is centered around the best practices of social media use.

A. RECOMMENDATION 1: ALLOW LAWYERS TO SELF-REGULATE SOCIAL MEDIA USE WITHIN EXISTING D.C. BAR PARAMETERS

To determine whether the current level of scrutiny imposed on some attorney's social media platform is appropriate, it is important to first consider the original aims of the rules of professional conduct. The D.C. Bar defines the *Rules of Professional Conduct* (Rules) as "rules of reason" that include imperative rules, like "shall" or "shall not," and permissive rules "may."⁸⁰ Compliance with these rules is primarily based on a voluntary self-regulation that hinges on the proper "understanding" of the rules and reinforcements from peers, the public, and disciplinary action where necessary.⁸¹

While the rules of professional conduct are not exhaustive for all the situations a lawyer may encounter they are intended to be detailed enough to "provide a framework for the ethical practice of law."⁸² Specifically, the D.C. Rules of Professional Conduct instructs that "specific rules" like Rule 1.7 – which addresses conflicts of interest—that shall "control the general [rules]" in order to determine the outcome of any conduct that is closely addressed by said specific rule.⁸³ Applying this principle to law influencers, scrutiny over layers of social media platforms should first be addressed under specific rules of professional conduct which it may violate such as Rule 1.7 Conflict of Interest: General Rule over a more general rule that could be "arguably applicable" like ABA Rule 7.2 Communication Concerning Lawyer Services.

Furthermore, when you consider the variability of conflicts of interest rules that are wrapped under employers' anti-moonlighting policies, it can be argued that the D.C. Rules of Professional Conduct is the "specific rule" that should regulate law influencers social media conduct over the more general anti-moonlighting rule. Many lawyers have opined that the *Model Rules* are more than specific enough as a guiding basis for law influencers. The main point of tension and

80. D.C. MODEL RULES SCOPE (1).

81. D.C. MODEL RULES SCOPE (2).

82. *Id.*

83. D.C. MODEL RULES SCOPE (5).

confusion of varying regulation of law influencers' social media platforms can be solved by relying on the existing pervasive ethical standards set forth in the *Model Rules* and state and local bar ethics boards. Lawyers are expected to self-regulate their public conduct and client work via the parameters of the *Model Rules of Professional Conduct*. Just because a lawyer is engaging with advanced technology or social media platforms does not alter their ethical duties of professional conduct.⁸⁴ Therefore the proper solution is to expect lawyers acting as law influencers to apply "the principles" of state and local model rules and ethics opinions to the continuously changing social media and technological landscape to maintain the precedential practice of self-regulation of ethical practices typical of the legal profession.⁸⁵

B. RECOMENDATION 2: ESTABLISH BEST PRACTICES ENABLING LAW INFLUENCERS TO CONTINUE TRADITIONAL LEGAL PRACTICES

Many lawyers argue that the *Model Rules of Professional Conduct* are too "vague," "completely outdated," and ineffective because they do not adequately address advances in technology such as AI or social media.⁸⁶ It is evident that a lawyer's ethical obligation remains unchanged despite their engagement on social media with different technologies. However, the general ambiguities of what inherent ethical conflicts should be addressed by law influencers is a major cause for concern. Moreover, the growing segment of lawyers leveraging social media platforms these days suggests that the regulation of lawyers' social media platforms should be standardized. This would require the American Bar Association to assemble a "practical set of guidelines" detailing the specific best practices for law influencers.⁸⁷

Generally, seasoned lawyers and jurists operating as law influencers are mindful of the need to be both "intentional and thoughtful" of the content produced on their social media platform.⁸⁸ Some law influencers believe their practical experiences can be valuable to advise bar associations that are characteristically slow to acknowledge technological advancements and provide guidance.⁸⁹ The main goal of such guidelines are to address the pitfalls and concerns that may arise for law influencers on social media without being "overly restrictive."⁹⁰ This can be accomplished in part by examining the best practices of social media influencers as discussed by practicing law influencers such as:

84. Mayfield & Furman, *supra* note 11.

85. *See* D.C. BAR, OP. 371.

86. Mayfield & Furman, *supra* note 11.

87. *See id.*

88. *Id.*

89. *Id.*

90. *Id.*

- (1) **Disclosing Your Social Media Platform:** it recommended that any “outside work activities” are disclosed in writing.⁹¹
- (2) **Be Transparent:** It is recommended to err on the side of transparency with your employer. It is good practice for lawyers to have open discussions when their employer asks more questions about the nature of their social media work.⁹²
- (3) **Keep Content Within Ethical Boundaries of the Profession:** This self-regulation or ‘mindfulness’ of lawyer-generated content accounts for both the lawyer’s “reputations and the public’s perception of the legal system.”⁹³
- (4) **Create Boundaries Between Legal Practice and Influencer Work:** It is important for lawyers to have some separation between their legal practice and social media platform whenever possible. Some law influencers suggest lawyers use disclaimers that you are not providing formal legal advice for law related content produced.⁹⁴

In addition, it may be helpful to establish general guidelines that address law influencers’ content and messaging. Regulatory boards might look to include similar ethical standards across knowledge influencers regarding (1) providing accurate and reliable information,⁹⁵ (2) using disclaimers in content specifically stating it is for entertainment purposes, and (3) disclosing financial interest and any personal interest in products or services promoted, as influencers are typically required to do by the FTC.⁹⁶ Many of the proposed best practices above can be simply integrated to the general practices of employers regulating law influencers, because they relate to ethical obligations of “honesty” and “trustworthiness” that reflect the fitness of a lawyer.⁹⁷

In general, it is important for legal professionals to continue the dialogue aimed at clarifying ethical standards for advanced technology and social networking sites—especially as the class of law influencers continues to grow. A common place of tension between law influencers and employers is the ambiguity of the rules that may lead to unreported side endeavors like beauty influencing or paid reviews.⁹⁸ Having state and local bar associations establish clear guidelines around lawyer’s social media use and content will hopefully reduce the scrutiny law influencers face from various employers and eliminate ambiguity. Furthermore, standardizing professional conduct

91. *Fired For Moonlighting*, *supra* note 40.

92. *Moonlighting or two-timing?*, *supra* note 37.

93. Mayfield & Furman, *supra* note 11.

94. See generally Legal Cheek, *supra* note 27.

95. *Social Responsibility and Ethics in Influencer Marketing: The Role and Impact of Content Creators*, INFLUENCITY.COM (June 25, 2024), <https://influencity.com/blog/en/social-responsibility-and-ethics-in-influencer-marketing> [<https://perma.cc/2VHE-BD6L>]; See also Legal Cheek, *supra* note 27.

96. *Disclosures 101*, *supra* note 73; See Quinn, *supra* note 75.

97. D.C. MODEL RULES R. 8.4 (B) Misconduct.

98. Mark Bassingthwaighe, “For Lawyers, Is Moonlighting Worth It?” ALPSINSURANCE (Jul 17, 2024), <https://www.alpsinsurance.com/blog/for-lawyers-is-moonlighting-worth-it> [<https://perma.cc/6PVW-ZAA7>] (lawyers have faced suspensions, termination, mandated disgorgement of fees, disbarment due to breaching moonlighting reporting policies).

rules for social media usage across the legal industry may be a catalyst to update professional conduct rules that have “existed for decades” in some cases.

V. CONCLUSION

As the digital landscape continues to evolve, more methods of public communication will be used more broadly each day. Today, legal influencers are uniquely conflicted between their professional obligations as lawyers and their personal social brands on social media. The current landscape of arbitrary guidelines and regulations that vary from employer to employer is not sustainable. Rather, the manufactured dilemma between the personal and professional constrains access to the legal field and inhibits a lawyer’s ability to meaningfully participate in the growing public communication forum. Legal professionals have an important role in our society and are innately held to a higher standard of ethics, truth, and diligence than the average person. As the role of “knowledge influencers” continues to evolve, law influencers’ presence on social media platforms increases access to the legal field and positively improves the standards of practice and integrity among the influencer community.

Legal influencers have an ability to both socially influence their social media audience and faithfully uphold the value of the integrity of the legal profession, as evidenced throughout the *Model Rules of Professional Conduct*.⁹⁹ Those ethical values like integrity, truthfulness, and avoiding conflict of interests¹⁰⁰ are not innately antithetical to the growing sector of law influencers who actively maintain social media platforms adjacent to their professional work as a lawyer. Rather, law influencers can uphold the value of integrity of the profession in the manner that aligns with the tradition of self-regulation for professional conduct. The balance between influence, knowledge dissemination, and ethical practice of the law will not look the same for every lawyer. Yet practicing said balance can be managed by clear best practices that address the professional and ethical responsibilities of a lawyer to their client, the public, and their employer. Moreover, as the format of technology use and public communication platforms continue to advance throughout the years, these best practices should be revisited as needed to assess potential conflicts of interest and develop adequate guidelines concerning technology use among practicing lawyers.

99. See D.C. MODEL RULES R. 8.4 (A-C); D.C. MODEL RULES R. 4.1 (A).

100. See D.C. MODEL RULES R. 8.4 (A-C); D.C. MODEL RULES R. 4.1 (A); D.C. MODEL RULES R. 1.7 (A).