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SWIPE RIGHT INTO A DISCIPLINARY HEARING: HOW THE USE OF DATING APPS COULD EARN AN ATTORNEY MORE THAN A BAD FIRST DATE

By: Zachary S. Aman*

Attorneys have been part of the American workforce since the Colonial Era, surviving as “generalists” during a time when anti-lawyer sentiments were high due to distrust in the English common law and low confidence in an attorneys’ ability to represent a client’s interests effectively.¹ Many of the Colonies prohibited practicing law at all.² However, the need for attorneys grew as the Colonies developed economically with the rise of trade.³ As the need for legal professionals grew, Colonies overcame their prejudices against the profession.⁴ Although critics of the profession feared the “lawyer class” for a half-century after the signing of the Declaration of Independence,⁵ nearly half of the

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¹ Kristopher A. Nelson, *Early Lawyering in Colonial America*, IN PROPRIA PERSONA, <https://inpropiapersona.com/articles/early-lawyering-in-colonial-america/> (last visited Apr. 3, 2023).

² *A Brief Guide to the History of Lawyers*, SMOKEBALL, <https://www.smokeball.com/blog/brief-guide-to-the-history-of-lawyers/> (last visited Apr. 3, 2023).

³ Roscoe Pound, *Legal Profession in America*, 19 NOTRE DAME L. REV. 334, 336 (1944).

⁴ SMOKEBALL, *supra* note 2.

⁵ Gerard W. Gawalt, *Sources of Anti-Lawyer Sentiment in Massachusetts, 1740-1840*,

signatories practiced law within the colonies at the time of signing.⁶ Despite the longstanding animosity toward the profession, it was codified in the United States by Article III of the Constitution, directing Congress to establish a federal court system.⁷ Congress responded by passing the Judiciary Act of 1789 – an act that not only established the federal court system but created the role of United States’ attorneys for those who would practice law before those federal courts.⁸ Today, U.S. attorneys are given a large degree of independence and discretion.⁹ One former U.S. attorney described this power as so “formidable,” that removal is the only remedy available against those who abuse it.¹⁰

This sense of professional responsibility is imputed to private attorneys as well. While professional ethics rules have guided the field since the country’s founding, an official standard by which to judge an attorney’s conduct has not always existed. The American Bar Association (ABA) was founded in 1878 as a voluntary association that would provide practical resources to attorneys and law students alike.¹¹ The ABA adopted the first national ethics standards for the field in 1908.¹² These standards were replaced by the Model Code of Professional Responsibility from 1969 to 1983, although this iteration was “little more than a restatement of canons of ethics that had been in force in most substantial respects for more than 80 years.”¹³

The Model Code of Professional Responsibility was replaced by the Model Rules of Professional Conduct (MRPC) in 1983.¹⁴ The MRPC are guidelines set forth by the ABA but are not enforceable against an attorney until the rules are codified by an individual jurisdiction.¹⁵ As of May 10, 2018, all fifty states and the District of Columbia have adopted ethics rule that are patterned after the MRPC.¹⁶ Today, attorneys in almost every U.S. jurisdiction have to show their

14 AM. J. LEGAL HIST. 283, 283 (1970).

⁶ SMOKEBALL, *supra* note 2.

⁷ U.S. CONST. art. III, § 1.

⁸ *Historical Timeline of the U.S. Attorneys*, U.S. DEP’T OF JUST., <https://www.justice.gov/usao/timeline/history> (last visited Apr. 3, 2023).

⁹ U.S. DEP’T OF JUST., BICENTENNIAL CELEBRATION OF THE UNITED STATES ATTORNEYS 6 (2011).

¹⁰ *Id.*

¹¹ *See generally* Howard Kaplan & Tiffany Willey Middleton, *Timeline*, ABA, https://www.americanbar.org/about_the_aba/timeline/ (last visited Apr. 3, 2023).

¹² *Id.*

¹³ *The Kutak Commission*, KUTAKROCK, <https://www.kutakrock.com/general-content/the-kutak-commission> (last visited Mar. 27, 2023).

¹⁴ Kaplan & Middleton, *supra* note 11.

¹⁵ KUTAKROCK, *supra* note 13.

¹⁶ Michael E. McCabe, Jr., *Seeking National Uniformity, California (Finally) Adopts New Ethics Rules*, MCCABE & ALI, LLP, <https://ipethicslaw.com/seeking-national-uniformity-california-finally-adopts-new-ethics-rules/> (last visited Mar. 27, 2023).

knowledge of the MRPC by passing the Multistate Professional Responsibility Exam before they will be accepted to that jurisdiction's bar.¹⁷ This exam is designed to ensure that those who wish to join the profession are well-versed in their ethical obligations, including diligent representation of a client, keeping client confidences, and the restraint of the attorney to not take advantage of the power imbalance between attorney and client, among others.

Technology has always had an outsized impact on the legal industry. The law usually is behind technological advancements, and technology also affects the operation of the legal industry itself. For example, technology has changed the way contracts are signed, the way legal services are advertised, and even how legal proceedings are conducted. This is especially so after the coronavirus pandemic. As technology continues to advance, it will continue to create change in the legal landscape. The ABA is aware of how advancements in technology could have an impact on the model rules; in February 2013, the ABA created the Commission on Ethics 20/20, designed to review the MRPC in light of technological advancements and global developments in legal practice.¹⁸ While the Commission provided extensive information about technology creating problems in the areas of multijurisdictional practices, client confidentiality, and client development tools,¹⁹ it was still too early to fully grasp one other area of technological advancement: the rise of dating applications for mobile phones.

The use of dating apps is still relatively new, specifically in the legal industry. Not many public disciplinary actions have arisen from the result of using a dating app. The first mainstream mobile phone application for dating was released in the fall of 2012.²⁰ Although the apps have been around for less than a decade, they have been popular for most of the life of the app ecosystem in general. Technology giant Apple first brought the App Store online in July 2008,²¹ and Google launched the Android Market in October 2008 before rebranding to Google Play Store in March 2012.²²

The rise of the use of dating apps was swift. With over 26 million users in the

¹⁷ *Jurisdictions Requiring the MPRE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mpre/> (last visited Mar. 27, 2023).

¹⁸ *ABA Commission on Ethics 20/20*, ABA, https://www.americanbar.org/groups/professional_responsibility/committees_commissions/aba-commission-on—ethics-20-20/ (last visited Mar. 27, 2023).

¹⁹ *Priorities and Initiatives*, ABA, https://www.americanbar.org/groups/professional_responsibility/committees_commissions/aba-commission-on—ethics-20-20/priorities_policy/ (last visited Mar. 27, 2023).

²⁰ Mansoor Iqbal, *Tinder Revenue and Usage Statistics (2023)*, BUS. OF APPS, <https://www.businessofapps.com/data/tinder-statistics/> (Feb. 1, 2023).

²¹ *The App Store Turns 10*, APPLE (July 5, 2018), <https://www.apple.com/newsroom/2018/07/app-store-turns-10/>.

²² John Biggs, *Android to Get Its Own App Market*, TECHCRUNCH (Aug. 28, 2008, 2:48 PM), <https://techcrunch.com/2008/08/28/android-to-get-its-own-app-market/>.

United States in 2020 alone, dating apps have become one of the leading online platforms for people to meet.²³ This growth is illustrated by the increased global revenue, reaching over \$5 billion worldwide in 2021.²⁴ While this is partially due to the coronavirus pandemic, dating apps are now a staple app for smartphone users, with an estimated 53.3 million users in the United States by 2025.²⁵ This article seeks to illustrate the potential impact on the legal field associated with the rise of dating app use. To achieve this, the article will explain the application of the Model Rules of Professional Conduct to attorney conduct in “traditional” dating relationships by illustrating several of the applicable rules. Next, it will discuss how dating apps operate, using location-based technology to match users. Finally, it will discuss the key demographics of both dating app users and the legal field.

I. THE MODEL RULES OF PROFESSIONAL CONDUCT

The Model Rules of Professional Conduct are guidelines set by the American Bar Association for each state to adopt to govern attorneys’ conduct within the jurisdiction.²⁶ The MRPC was adopted in 1983.²⁷ The rules have been updated several times since then, the most recent being in August 2020.²⁸ This update was to Rule 1.8, the rule dealing with Specific Conflicts of Interest with current clients.²⁹ It is clear that the American Bar Association is concerned with updating the rules in response to the changing legal industry in order to continuously encourage confidence in the legal profession. There are several rules that would be directly impacted by the use of dating apps by an attorney, namely Conflict of Interest, Competence, and Confidentiality.

²³ S. Dixon, *Number of Smartphone Dating App Users in the United States from 2019 to 2023*, STATISTA (Apr. 28, 2022), <https://www.statista.com/statistics/274144/smartphone-dating-app-users-usa/>.

²⁴ David Curry, *Dating App Revenue and Statistics (2023)*, BUS. OF APPS, <https://www.businessofapps.com/data/dating-app-market/> (Mar. 30, 2023).

²⁵ Statista Rsch. Dep’t, *Number of Online Dating App Users in the United States from 2017 to 2024*, STATISTA (July 5, 2021), <https://www.statista.com/statistics/417654/us-online-dating-user-numbers/>.

²⁶ *ABA Model Rules of Professional Conduct*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/ABA%20Model%20Rules%20of%20Professional%20Conduct> (last visited Apr. 2, 2023).

²⁷ Kaplan & Middleton, *supra* note 11.

²⁸ *Modern Rules of Professional Conduct*, ABA, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/ (last visited Apr. 3, 2023).

²⁹ *Id.*

A. Attorneys Who Engage in Sexual Relationships with a Client May Have a Conflict of Interest

The Model Rules of Professional Conduct have explicit rules governing the sexual relationship between attorneys and clients. Rule 1.8(j) states, “[a] lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.”³⁰ Prior to this rule being adopted in 2002, there was no explicit rule barring sexual relationships between attorneys and clients.³¹ The attorney-client relationship creates a fiduciary responsibility owed by the attorney to the client.³² In this relationship, the attorney is held with the “utmost reverence” and inherently unequal.³³ Fiduciary relationships are often thought of in a financial context, but a client’s interests are just as easily hurt by exploiting the client sexually as they are financially.³⁴ The Supreme Court articulated its stance on the fiduciary duty in 1850 when it stated,

There are few of the business relations of life involving a higher trust and confidence than that of attorney and client, or, generally speaking, one more honorably and faithfully discharged; few more anxiously guarded by the law, or governed by sterner principles of morality and justice; and it is the duty of the court to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence thus reposed shall not be used to the detriment or prejudice of the rights of the party bestowing it.³⁵

The relationship is almost always unequal and can result in exploitation of the client.³⁶ The American Bar Association stated in a Formal Opinion that “there is a significant possibility that the sexual relationship will have resulted from exploitation of the lawyer’s dominant position and influence and, thus, breached the lawyer’s fiduciary obligations to the client.”³⁷ It also stated that the lawyer has a “duty to exercise and maintain the utmost good faith, honesty, integrity,

³⁰ MODEL RULES OF PRO. CONDUCT r. 1.8(j) (AM. BAR ASS’N 2020).

³¹ Casey W. Baker, *Attorney-Client Sexual Relationships in the #MeToo Era: Understanding Current State Approaches and Working Towards a Better Rule*, 49 SW. L. REV. 243, 247 (2021).

³² *Id.*; see also MODEL RULES OF PRO. CONDUCT r. 1.8 cmt. 20 (AM. BAR ASS’N 2020).

³³ Abed Awad, *Attorney-Client Sexual Relations*, 22 J. LEGAL PRO. 131, 131–32 (1998); see also Iowa Sup. Ct. Bd. of Pro. Ethics & Conduct v. Hill, 540 N.W.2d 43, 44 (Ill. 1995).

³⁴ See Ky. State Bar Ass’n v. Meredith, 752 S.W.2d 786, 787 (Ky. 1988).

³⁵ Stockton v. Ford, 52 U.S. 232, 247 (1850).

³⁶ MODEL RULES OF PRO. CONDUCT r. 1.8 cmt. 20 (AM. BAR ASS’N 2020); see also McDaniel v. Gile, 281 Cal. Rptr. 242, 245–46 (Cal. Ct. App. 1991) (stating that after the client was exploited by her attorney, she became wary of being alone with men and had to enter psychological counseling).

³⁷ ABA Standing Comm. on Ethics and Pro. Resp., Formal Op. 92-364 (1992).

fairness and fidelity.”³⁸ In another example, the Pennsylvania State Bar Association said a fiduciary relationship exists when:

confidence on one side results in superiority and influence on the other side; where a special confidence is reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence; where confidence is reposed and accepted, whether the origin is moral, social, domestic, or merely personal; or where a person has knowledge and authority which he is bound to exercise for the benefit of another person.³⁹

This exploitation would be a direct violation of an attorney’s obligation to hold the client’s trust, rather than use that trust to the disadvantage of the client.⁴⁰ The American Bar Association states, “[t]he client relies on the lawyer’s special knowledge, skills and access to the courts to solve the client’s problem. The lawyer encourages this special relationship, offering to lead the client through a complex legal system.”⁴¹ Clients usually turn to lawyers in times of great stress or even despair. The more vulnerable a client, the higher the burden on the attorney to safeguard the sanctity of the attorney-client relationship.

Stephen Gillers, a law professor at New York University School of Law, has said that attorneys have a fiduciary obligation toward their clients when the professional relationship commences for three reasons: (1) the client will likely have relied on the attorney’s integrity, fairness, and judgment; (2) the attorney may have an unfair advantage in the relationships due to the nature of the information acquired by the representation; and (3) the client would not easily change attorneys.⁴² This was the case in *In re Rinella* when a client who had retained an attorney to handle a divorce agreed to have sex with her attorney because she would be unable to pay another attorney after paying the offending attorney’s retainer fee.⁴³ In a similar case that illustrates just how much power an attorney holds in the attorney-client relationship, the attorney offered to reduce their legal fees in exchange for sex.⁴⁴ Thankfully, courts and bar associations have been willing to find sanctions appropriate in cases of sexual assault or other criminal conduct.⁴⁵

³⁸ *Id.*

³⁹ Penn. Bar Ass’n Comm. on Legal Ethics, Formal Op. 97-100 (1997).

⁴⁰ MODEL RULES OF PROF. CONDUCT r. 1.8 cmt. 20 (AM. BAR ASS’N 2020).

⁴¹ ABA Comm. on Ethics and Pro. Resp., Formal Op. 92-364 (1992).

⁴² STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS 61–62 (4th ed. 1995).

⁴³ *In re Rinella*, 677 N.E.2d 909, 910 (Ill. 1997).

⁴⁴ *See People v. Crossman*, 850 P.2d 708, 709 (Colo. 1993).

⁴⁵ *See, e.g., In re Stanton*, 708 P.2d 325, 327 (N.M. 1985); *In re Bowen*, 542 N.Y.S.2d 45, 47–48 (N.Y. App. Div.), *appeal denied*, 545 N.E.2d 868 (N.Y. 1989); *In re Gould*, 164

B. Sexual Relationships with Clients Can Materially Limit the Ability of the Attorney to Represent the Client

Rule 1.8(j) leaves open the opportunity for a sexual relationship with a client only when the sexual relationship predates the attorney-client relationship. Issues regarding the exploitation of the relationship are seen to shrink when the sexual relationship begins prior to the attorney's representation of the client.⁴⁶ However, an attorney must still be aware if the sexual relationship would materially limit his or her ability to represent the client.⁴⁷ Determining if a conflict exists requires balancing the quality of representation of the client with the personal interest of the attorney.⁴⁸ Rule 1.7 pertains to "material limitation." It reads, in pertinent part, that:

[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by a personal interest of the lawyer.⁴⁹

Rule 1.7 also gives some avenues for representation even with a concurrent conflict of interest.⁵⁰ However, a sexual relationship would be nearly impossible to overcome as a conflict.⁵¹ Comments to the Model Rules of Professional Conduct state that, "a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests."⁵² The attorney's interest in continuing the sexual relationship with the client should not be allowed to affect the client's representation adversely.⁵³

Usually, conflicts may be waived through the informed consent of a client; however, in few circumstances, the conflict is non-waivable, as outlined in Rule 1.7(b).⁵⁴ This is determined by considering whether the client's interest can still

N.Y.S.2d 48, 49–50 (N.Y. App. Div.), *appeal denied*, 4 A.D.2d 174 (N.Y. 1957).

⁴⁶ MODEL RULES OF PRO. CONDUCT r. 1.8 cmt. 21 (AM. BAR ASS'N 2020).

⁴⁷ *Id.* (referencing Rule 1.7(a)(2)); *see also* ABA Comm. on Ethics & Pro. Resp., Formal Op. 92-364 (1992) (stating, "[e]motional detachment is essential to the lawyer's ability to render competent legal services.").

⁴⁸ Awad, *supra* note 33, at 172.

⁴⁹ MODEL RULES OF PRO. CONDUCT r. 1.7(a)(2) (AM. BAR ASS'N 2020).

⁵⁰ *See id.* at r. 1.7(b).

⁵¹ Awad, *supra* note 33, at 133.

⁵² MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. 8 (AM. BAR ASS'N 2020).

⁵³ *Id.* at cmt. 10.

⁵⁴ Awad, *supra* note 33, at 176 (arguing that it is unlikely that client consent to the conflict arising out of a sexual relationship with an attorney would be seen as effective by an ethics board).

be adequately protected, conflict notwithstanding.⁵⁵ It is rare for a client to truly consent to this type of conflict.⁵⁶ Even if the relationship could be seen as “consensual,” the client might still allege at a later time that they were coerced or manipulated into the relationship, or to stay in it.⁵⁷

An ABA Formal Opinion notes, “[t]he roles of lover and lawyer are potentially conflicting ones as the emotional involvement that is fostered by a sexual relationship has the potential to undercut the objective detachment that is often demanded for adequate representation.”⁵⁸ If an attorney cannot conclude that he or she would be able to give adequate representation to the client’s interests, the representation is prohibited.⁵⁹ Adequate representation includes the attorney’s ability to provide competent and diligent representation.⁶⁰ Even if the client is found to have given adequate consent and effectively waived the conflict, they may revoke that consent at any time.⁶¹

Nonlitigation conflicts – such as that of a sexual relationship – must factor the potential for a material limitation of the attorney to represent the client.⁶² Some factors include the level of intimacy of the relationship and the duration of the relationship.⁶³ Even a short-term sexual relationship can give rise to a conflict.⁶⁴ For example, in *In re Domenic Alongi*, a New York attorney was found to have violated ethics rules when he failed to disclose how his sexual relationship with a client would potentially affect his independent exercise of professional judgment when he drafted her will.⁶⁵ Although the sexual relationship only lasted “several months,” the level of intimacy was so high that the attorney violated N.Y.D.R. 1-202(A)(8) for conduct adversely reflecting on his fitness to practice law, and N.Y.D.R. 9-101 for an appearance of impropriety.⁶⁶

⁵⁵ MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. 15 (AM. BAR ASS’N).

⁵⁶ Awad, *supra* note 33, at 133.

⁵⁷ *Id.*

⁵⁸ ABA Comm. on Ethics & Pro. Resp., Formal Op. 92-364 (1992).

⁵⁹ MODEL RULES OF PRO. CONDUCT r. 1.7(b)(1) (AM. BAR ASS’N 2020); *see also* Md. State Bar Ass’n Comm. on Ethics, Op. 9 (1984) (stating that an attorney’s professional judgement “reasonably may be affected” by a sexual relationship with a client).

⁶⁰ MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. 15 (AM. BAR ASS’N 2020); *see also* Md. State Bar Ass’n Comm. on Ethics, Op. 9 (1984) (stating that a sexual relationship between an attorney and client “tend to fall short of the higher standards of professional conduct required of attorneys and tend to reflect negatively upon the integrity of the profession.”).

⁶¹ MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. 21 (AM. BAR ASS’N 2020).

⁶² *Id.* at cmt. 26.

⁶³ *Id.*

⁶⁴ *Id.* (stating that the question is often one of proximity and degree).

⁶⁵ *In re Alongi*, 716 N.Y.S.2d 491, 492 (2000).

⁶⁶ D.C. Bd. of Pro. Resp., Bar Docket No. 339-00, Report and Recommendation of the Board on Professional Responsibility (2001), <https://www.dcbar.org/ServeFile/GetDisciplinaryActionFile?fileName=alongi.pdf> (showing that the conduct violated New York ethics rules with direct counterparts to the District of

C. Sexual Relationships with Clients Can Improperly Incentivize Attorneys to Prolong Representation, Rather Than Provide Diligent Service

Attorneys are expected to zealously advocate for their clients' interests within the adversarial system.⁶⁷ This expectation comes even when there is a personal inconvenience to the attorney.⁶⁸ While an attorney has the professional discretion to determine how to pursue their client's objectives, that does not include the discretion to prolong representation of a client for the personal benefit of the attorney.⁶⁹ A sexual relationship may change the attorney's objectivity to the point where the attorney no longer zealously pursues a client's interest for fear that the sexual relationship would end.⁷⁰ Delay that is needless from a legal standpoint can, in the least, cause the client anxiety or reduce the client's trust in the attorney.⁷¹ At worst, it can diminish a client's legal options with the passage of time by allowing the relevant statute of limitations to run.⁷²

This was the case in the District of Columbia Court of Appeals case *In re Charles W. Schoeneman*, where an attorney on three separate occasions allowed for the dismissal of clients' cases because he failed to file timely motions.⁷³ In one of those instances, the client was forced to hire successor counsel after extended times of inaction.⁷⁴ In one case, the client was not allowed to reinstate the dismissed case because too much time had passed since the initial filing.⁷⁵ Instead, they were required to initiate a new suit, essentially creating duplicate work from what the first attorney had initially performed.⁷⁶ It is not difficult to see how a sexual relationship could cloud an attorney's professional judgement to the point that the attorney would lack the requisite diligence when advocating

Columbia rules, namely Rules 1.8(b), 1.8(d), 8.4(c) and 8.4(d)).

⁶⁷ MODEL RULES OF PRO. CONDUCT Preamble & Scope cmt. 2 (AM. BAR ASS'N 2020).

⁶⁸ *Id.* at r. 1.3 cmt. 1.

⁶⁹ *Id.*; see also Alaska Bar Ass'n, Ethics Op. 92-6 (1992) (stating that, "[t]he attorneys' foremost duty must be loyalty to the client, not personal gratification.").

⁷⁰ Awad, *supra* note 33, at 173–74.

⁷¹ MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 3 (AM. BAR ASS'N 2020).

⁷² *Id.*

⁷³ *In re Charles W. Shoeneman*, No. 02-BG-1186 app. (D.C. Feb. 2, 2006) (Report and Recommendation of The Board on Professional Responsibility).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

for the client.⁷⁷

D. Sexual Relationships Can Often Blur the Line of Confidentiality and the Attorney-Client Privilege

The Model Rules of Professional Conduct also call for an attorney to maintain a client's confidences.⁷⁸ This confidentiality is related to the scope of the representation.⁷⁹ An attorney may break this confidence under very few limited circumstances, including to prevent death or substantial bodily harm, to prevent certain crimes or frauds (the crime-fraud exception), or to maintain compliance with the MRPC, among others.⁸⁰

The reason for Rule 1.6 relates back to a hallmark trait of the attorney-client relationship – trust.⁸¹ This bond of trust is used to encourage clients to be honest and forthcoming with the attorney so that the attorney can determine how best to represent the client's interests.⁸² It is especially critical with potentially damning or even merely embarrassing evidence; if a client does not feel like the attorney is trustworthy, or will fail to keep the client's confidences, the client is less likely to reveal the whole picture.⁸³ An attorney must act reasonably to prevent the disclosure of confidential information.⁸⁴ This does not mean that any disclosure is a violation of the rules, but rather the attorney could be found to have violated the rules of confidentiality if they did not take reasonable efforts to protect the information.⁸⁵

Confidentiality also means not using the client's information for an attorney's own gain.⁸⁶ The attorney in *In re Berg* used a client interview to, "ask[] detailed questions about [his client's] sex life, including frequency, details, and satisfaction, and told her the information was needed to obtain grounds for a divorce."⁸⁷ He then tried to use that information to convince the client to have

⁷⁷ ABA Comm. on Ethics & Pro. Resp., Formal Op. 92-364 (1992) (explaining that the attorney's interest in preserving a sexual relationship could cause the attorney to temper his efforts to promote the client's interests).

⁷⁸ MODEL RULES OF PRO. CONDUCT r. 1.6 (AM. BAR ASS'N 2020).

⁷⁹ *See generally id.*

⁸⁰ *Id.* at r. 1.6(b).

⁸¹ MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. 2 (AM. BAR ASS'N 2020).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at cmt. 18.

⁸⁵ *Id.*

⁸⁶ *In re Berg*, 955 P.2d 1240, 1257 (Kan. 1998).

⁸⁷ *Id.* at 1243.

sex with him.⁸⁸

A sexual relationship between attorney and client could also destroy the privilege that the normal attorney-client relationship would enjoy. Information obtained by the attorney in the course of the professional relationship is usually privileged under normal circumstances.⁸⁹ Attorney-client privilege is intended to promote candid communication between the parties, and therefore requires that an attorney be exempt from any disclosure requirements without the client's consent.⁹⁰ In other words, "[a] client holds a privilege to prevent testimonial disclosure of communications made in confidence between himself and his lawyer during the course of a *professional* lawyer-client relationship."⁹¹

When an attorney and a client have had a sexual relationship, it could be difficult to determine whether the information was obtained "professionally" or in the context of the sexual relationship.⁹² The ABA stated in Formal Ethics Opinion No. 92-364 that, "a non-professional, yet emotionally charged, relationship between attorney and client may result in confidences being imparted in circumstances where the attorney-client privilege is not available, yet would have been, absent the personal relationship."⁹³ Even if the communications regard an aspect of the legal representation, they can still be non-privileged when the communication is outside of the professional relationship.⁹⁴

Waiver of the attorney-client privilege because of a sexual relationship between the parties has been a concern for at least the last three decades.⁹⁵ California became the first state to pass a law directing its state bar association to implement rules regulating sexual relationships between attorneys and their clients.⁹⁶ Today, thirty-five of the 51 United States jurisdictions have adopted rules explicitly prohibiting sexual relationships between attorneys and their clients.⁹⁷

⁸⁸ *Id.* at 1248.

⁸⁹ 1 JOHN W. STRONG ET AL., MCCORMICK ON EVIDENCE § 88, at 322–26 (4th ed. 1992).

⁹⁰ 1 GLEN WEISSEBERGER & JAMES J. DUANE, WEISSEBERGER'S FEDERAL EVIDENCE § 501.5, at 247 (Matthew Bender ed., 7th ed. 2021).

⁹¹ 2 CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE, §§ 182–186 (5th ed. 1999) (emphasis added).

⁹² Awad, *supra* note 33, at 174–75; *see also In re Tsoutsouris*, 748 N.E.2d 856, 859 n.3 (Ind. 2001).

⁹³ ABA Comm. on Ethics & Pro. Resp., Formal Op. 92-364 (1992).

⁹⁴ *See Rubin v. State*, 602 A.2d 677, 684 (Md. 1992) (declining to apply attorney-client privilege to communications when the communications were motivated by a personal relationship).

⁹⁵ Margit Livingston, *When Libido Subverts Credo: Regulation of Attorney-Client Sexual Relations*, 62

FORDHAM L. REV. 5, 5–6 (1993).

⁹⁶ *Id.* at n.3; *see also* CAL. BUS. & PRO. CODE § 6106.8(b) (2011).

⁹⁷ The sixteen jurisdictions that do not have an explicit prohibition are: Arkansas,

The 1993 California case *McDaniel v. Gile* is illustrative of one scenario that is a prevalent outcome when an attorney attempts to initiate a sexual relationship with his client. In the case, an attorney was retained to represent a client in a divorce proceeding.⁹⁸ The attorney's sexual advances came early in the representation when, as part of the representation, the attorney required his client to fill out a lengthy document that outlined intimate details about the client's sexual history.⁹⁹ When the two next met, the attorney continuously referred back to intimate details in the self-characterization document, including sexual problems within the client's marriage.¹⁰⁰ The attorney subsequently became physically aggressive in the representation when he pushed the client against the wall of a room in a courthouse and began to forcibly kiss her.¹⁰¹ Later that same day, the attorney made overtly sexual remarks about the client's sexual prowess when angered.¹⁰²

Unfortunately, issues between McDaniel and Gile did not stop there. On numerous occasions, the attorney would call the client at their home and workplace to make sexually suggestive comments.¹⁰³ When the client questioned if he always spoke to clients in this way, he replied, "only the sexy ones."¹⁰⁴ After the client continuously rejected the attorney's advances, the attorney improperly withheld legal services from the client.¹⁰⁵ He made it no secret it that the decline in professional services was directly related to her lack of willingness to "play the game the 'right way.'"¹⁰⁶ The client once brought a friend with her to a meeting in an attempt to dissuade the attorney from continued sexual advances; this was unsuccessful. The attorney instead began to make sexual remarks about the friend as well.¹⁰⁷ When the friend confronted the attorney about his comments and actions, the attorney replied with, "when a woman client came to him, she was extremely vulnerable, so if she went to bed

District of Columbia, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Rhode Island, Tennessee, Texas, and Virginia. See ABA CPR Pol'y Implementation Comm., *Variations of the Model Rules of Professional Conduct*, ABA, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mr-pc-1-8.pdf (last visited Apr. 2, 2023).

⁹⁸ See generally *McDaniel v. Gile*, 281 Cal. Rptr. 242 (Cal. Ct. App. 1991).

⁹⁹ *Id.* at 245.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

to get better service from him, ‘so be it.’”¹⁰⁸

The Court of Appeals of California ultimately held that “[t]he withholding by a retained attorney of legal services when sexual favors are not granted by a client and engaging in sexual harassment of the client constitute acts of outrageous conduct under these circumstances.”¹⁰⁹ It also held that when the attorney delayed and withheld legal services, and gave substandard legal services when given at all, the conduct “necessarily [fell] below the standard of care and skill of members of the legal profession.”¹¹⁰

II. DATING APPS HAVE BECOME UBIQUITOUS WITH TODAY’S MOBILE PHONE USERS

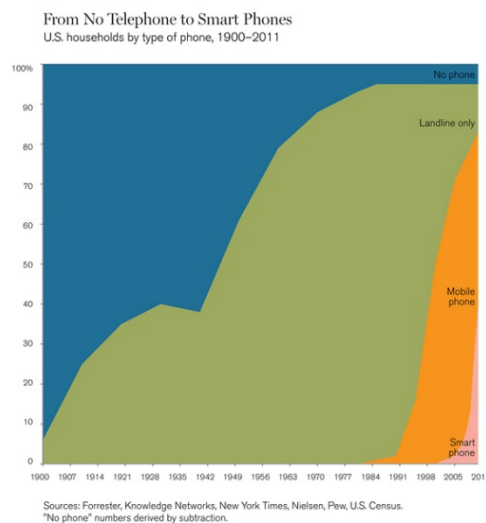


Figure 1: From No Telephone to Smartphones

The evolution of cell phones in the United States, from basic wireless options to smartphones, has drastically impacted nearly all facets of our daily lives; from how we communicate to how we obtain transportation, information, and how we may form relationships and meet new people. Prior to 2007 – when Apple released the first iPhone – only approximately 73% of adults owned a cellphone.¹¹¹ That number climbed 76% roughly a year later, and reached 97%

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 247.

¹¹⁰ *Id.* at 249.

¹¹¹ *Mobile Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

in 2021.¹¹² Smartphones made up less than 40% of the cellphone market prior to 2012, the same year that dating apps became prevalent in the app ecosystem.¹¹³ In 2021, smartphones made up 85% of the cellphones used by adults in the United States.¹¹⁴ As more people became adults, more of them turned to smartphones as their cellphone of choice. This is clear when looking at adoption rates in smartphones. Cellphones took roughly eleven years to reach a 10% market penetration; smartphones took approximately eight years to do so.¹¹⁵ See Figure 1, above.

A. The Popularity of Dating Apps is Due to Attractive User Interfaces

Many dating apps have a similar user interface. When users first register for a dating app, they generally give the same information: name, location, date of birth, gender, and sexual orientation.¹¹⁶ Users must also register with an email address or phone number in order to verify their accounts. Once this verification is completed, the app will usually offer – if not require – that users set up two-factor authentication.¹¹⁷

Two-factor authentication adds a second level of security to login to certain accounts.¹¹⁸ Two-factor authentication requires the user to have two out of three types of identification credentials: something known (such as a PIN or password), a physical object (such as debit card, key fob, or phone), or something biological (such as a fingerprint, facial scan, or voice recognition).¹¹⁹ One of the oldest, most recognized forms of two-factor authentication is simply requiring that a user input a billing ZIP code when making a purchase with a credit card.¹²⁰

Once users have verified their login information, the dating app will usually

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Michael DeGusta, *Are Smartphones Spreading Faster than Any Technology in Human History?*, MIT TECH. REV. (May 9, 2012), <https://www.technologyreview.com/2012/05/09/186160/are-smart-phones-spreading-faster-than-any-technology-in-human-history/>.

¹¹⁶ Shweta Das, *Decoding UI/EX: Quick Comparison of Tinder and Bumble*, BOOTCAMP (Apr. 4, 2021), <https://bootcamp.uxdesign.cc/decoding-ui-ux-quick-comparison-of-tinder-and-bumble-9a3cb2b76f28>.

¹¹⁷ *Security at Tinder*, TINDER, <https://policies.tinder.com/security/intl/en-gb> (last visited Mar. 31, 2023).

¹¹⁸ Seth Rosenblatt & Jason Cipriani, *Two-Factor Authentication: What You Need to Know (FAQ)*, CNET (June 15, 2015, 1:39 PM), <https://www.cnet.com/tech/services-and-software/two-factor-authentication-what-you-need-to-know-faq/>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

ask a series of questions regarding how they intend to use the app.¹²¹ This can include whether they are looking for a date, to meet new friends, or even business opportunities.¹²² Most apps allow for a user to select their sexual orientation and who they are interested in; some ask for a basic “I am interested in men/women/everyone” while others list selections across the broad sexual orientation spectrum.¹²³ See Figure 2, below. Still, other apps were created specifically for users with certain sexual orientations.¹²⁴

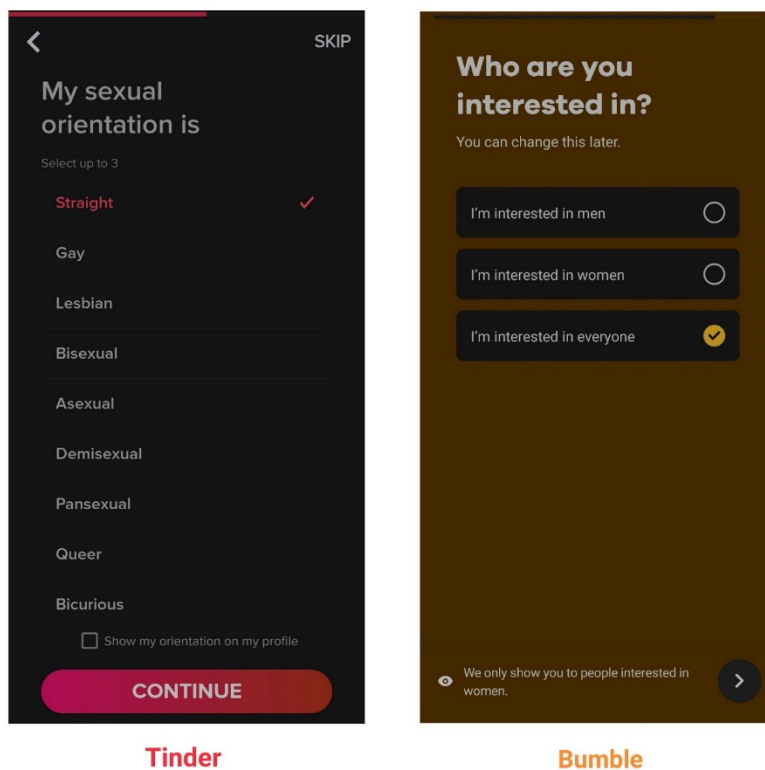


Figure 2: Setup of a Dating App Profile

¹²¹ See Das, *supra* note 116.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Grindr is a dating that app that was originally marketed primarily to gay men before expanding to include all members of the LGBTQ+ community. Bumble was created as a direct competitor to Tinder, with its differentiator being that in heterosexual matches, a conversation would only start if the woman initiated it within twenty-four hours. Tinder has since developed “My Move,” which allows women on the app to initiate a conversation with their matches, like Bumble’s core feature. See *generally* Das, *supra* note 116.

After users have set up their preferences, they are required to populate their account with personal information. In addition to their name and phone number, users are required to upload a photograph.¹²⁵ Sometimes, multiple photos are required to complete the profile.¹²⁶ Physical attraction is a major factor that informs users about whom to “swipe right,” or match with.¹²⁷ Users may add additional information to attract matches, such as linking the user’s Instagram profile, Spotify playlist, and writing a small biography about the user.¹²⁸ Another major factor is race.¹²⁹ Most of these decisions are made in less than one second.¹³⁰ Surprisingly, other factors such as personality, openness to unrestrictive sociosexuality – preference for casual sex – or preference for a short- or long-term relationship weighed very little in the decision on which direction to swipe.¹³¹

After the profile is completed, users are asked to allow location services enabling on the user’s device.¹³² Location-based matching is one feature that has led to the popularity of dating apps.¹³³ The location-based services allow users to see other users within a certain geographic location. Most users set a radius to “no more than 10 to 20 miles” to avoid matching with people that are “too far away.”¹³⁴ Some dating apps now allow users to pay for extra features. For example, Tinder created “Tinder Passport” as a paid subscription that allows users to match with other users anywhere in the world, not just within their geographic location.¹³⁵ Tinder registered more than one billion swipes a day in 2015, and matched around 12 million people a day.¹³⁶ In March 2020, when the

¹²⁵ Das, *supra* note 116.

¹²⁶ *Id.*

¹²⁷ Liz Schondelmayer, *Online Dating: Super Effective, or Superficial?*, MICH. STATE U. (Mar. 5, 2021), <https://msutoday.msu.edu/news/2021/online-dating-super-effective-or-superficial>.

¹²⁸ Das, *supra* note 116.

¹²⁹ Schondelmayer, *supra* note 127.

¹³⁰ William J. Chopik and David J. Johnson, *Modeling Dating Decisions in a Mock Swiping Paradigm: An Examination of Participant and Target Characteristics*, 92 J. OF RSCH. IN PERSONALITY (June 2021).

¹³¹ Schondelmayer, *supra* note 127.

¹³² Das, *supra* note 116.

¹³³ Molly Wood, *Led by Tinder, a Surge in Mobile Dating Apps*, N.Y. TIMES (Feb. 4, 2015), <https://www.nytimes.com/2015/02/05/technology/personaltech/led-by-tinder-the-mobile-dating-game-surges.html>.

¹³⁴ Chad Burrows, *I Changed the Distance Setting on My Dating App and Instantly Found Love*, ELITEDAILY (July 30, 2016), <https://www.elitedaily.com/dating/distance-setting-dating-app-find-love/1567174>.

¹³⁵ *Passport*, TINDER, <https://www.help.tinder.com/hc/en-us/articles/115004490423-Passport-> (last accessed Nov. 26, 2021).

¹³⁶ Wood, *supra* note 133 (stating that Tinder has surpassed the billion swipes per day mark over one-hundred times since then).

coronavirus pandemic locked down the world, Tinder recorded three billion swipes in a single day, a record high.¹³⁷ Other dating apps saw increases in use as well; Bumble saw its video call feature increase in use by seventy percent.¹³⁸ Last April, Tinder made Passport free for all users due to the pandemic.¹³⁹ It saw a twenty-five percent increase in traffic, matching a record number of 55 million people on April 24, 2020.¹⁴⁰ The overall increase in the use of dating apps during the pandemic lockdowns gave dating apps much more user information to feed into their respective algorithms.¹⁴¹ For example, Tinder reported not only that app use had increased in swiping and matches (forty-two percent), but also reported that conversations on the app were on average thirty-two percent longer than they had been before lockdown.¹⁴² These algorithms are the main feature that has led to growth in popularity since entering the market.

B. Success of Dating Apps is Dependent on An Algorithm to Match Users

The underlying algorithm is what creates a successful dating application. The more successful an app can accurately pair users together, the more likely the app is used. Understanding how dating app algorithms are geared toward physical appearance will better illustrate the risk an attorney using the dating app might encounter an ethics violation.

When Tinder was first released, it matched its users by utilizing the Elo rating system.¹⁴³ Created by Hungarian-American physics professor Arpad Elo, this

¹³⁷ *Activity on Dating Apps Has Surged During the Pandemic*, FORTUNE (Feb. 12, 2021), <https://fortune.com/2021/02/12/covid-pandemic-online-dating-apps-usage-tinder-okcupid-bumble-meet-group/>.

¹³⁸ *Id.*

¹³⁹ *Tinder Makes Passport Free for All Users Globally*, HTECH (Mar. 31, 2021), <https://tech.hindustantimes.com/tech/news/tinder-makes-passport-free-for-all-users-globally-71617188350279.html>.

¹⁴⁰ *Id.*

¹⁴¹ Caitlin Chin and Mishaela Robison, *This Cuffing Season, It's Time to Consider the Privacy of Dating Apps*, BROOKINGS INST. (Nov 20, 2020), <https://www.brookings.edu/blog/techtank/2020/11/20/this-cuffing-season-its-time-to-consider-the-privacy-of-dating-apps/>; see also Mary Meisenzahl, *These Charts from Match Group Show More People Are Turning to Online Dating During the Pandemic*, BUS. INSIDER (Aug. 5 2020), <https://www.businessinsider.com/tinder-hinge-match-group-dating-apps-more-users-coronavirus-2020-8>.

¹⁴² Rani Molla, *Tinder Data Shows How Pandemic Dating Was Even Weirder Than Regular Dating*, VOX (Mar. 25, 2021), <https://www.vox.com/recode/22348298/tinder-data-video-online-dating-pandemic>.

¹⁴³ Kaitlyn Tiffany, *The Tinder Algorithm, Explained: Some Math-Based Advice for Those Still Swiping*, VOX (Mar. 18, 2019), <https://www.vox.com/2019/2/7/18210998/tinder->

rating system is used to rank “skill levels of players in zero-sum two-player games.”¹⁴⁴ It is predominately associated with ranking chess players, after adoption by the U.S. Chess Federation in 1960 and the International Chess Federation in 1970.¹⁴⁵ However, the Elo rating system is used today to score a variety of competitions, including NBA games,¹⁴⁶ NFL games,¹⁴⁷ and esports tournaments.¹⁴⁸

In the Elo rating system, players’ ranks are inferred from wins, losses, and draws.¹⁴⁹ A player’s rating would depend on the opponent’s respective rating, and the outcome of the matches against that opponent.¹⁵⁰ Any points added to the winner’s rank are deducted from the loser’s rank.¹⁵¹ The number of points added and subtracted would depend on the difference of the players’ respective rankings before the match.¹⁵² The assumption is that a player’s performance over their lifetime would change slowly over time, allowing for an average rating that fell along a bell-curve.¹⁵³ While a player might drastically under, or over-perform in one match, the rankings generally provide an accurate predictor of a match’s outcome.¹⁵⁴ One important point to note about the Elo rating system is that the ratings are only good within the pool of players that established the rating; rankings from one pool are not used to compare rankings to player rankings of a separate pool.¹⁵⁵

Tinder initially used the same ranking system internally.¹⁵⁶ Users would

algorithm-swiping-tips-dating-app-science.

¹⁴⁴ Raghav Mittal, *What Is an ELO Rating?*, MEDIUM (Sept. 11, 2020), <https://medium.com/purple-theory/what-is-elo-rating-c4eb7a9061e0>.

¹⁴⁵ *Chess Terms*, CHESS.COM, <https://www.chess.com/terms/elo-rating-chess> (last visited Jan. 22, 2023) (noting Arpad Elo was a chess master himself; he calculated the score of 2230 as his best five-year average).

¹⁴⁶ Nate Silver and Reuben Rischer-Baum, *How We Calculate NBA Elo Ratings*, FIVETHIRTYEIGHT (May 21, 2015), <https://fivethirtyeight.com/features/how-we-calculate-nba-elo-ratings/>.

¹⁴⁷ Neil Paine, *NFL Elo Ratings Are Back!*, FIVETHIRTYEIGHT (Sept. 10, 2015), <https://fivethirtyeight.com/features/nfl-elo-ratings-are-back/>.

¹⁴⁸ Melany Moncav, *What Is Elo? An Explanation of Gaming’s Hidden Rating System*, DOT ESPORTS (Mar. 6, 2020), <https://dotesports.com/general/news/elo-ratings-explained-20565#:~:text=Professor%20Elo%20spotted%20the%20flaws,matches%2C%20their%20rating%20goes%20down>.

¹⁴⁹ Mittal, *supra* note 144.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Joe Duncan, *Understanding the Tinder Algorithms for Dating Success in 2021*, MEDIUM (Jan. 3, 2021), <https://medium.com/acid-sugar/understanding-the-tinder->

swipe right and left on one another based on what they saw in the other user's profile.¹⁵⁷ The more people that would swipe right on a user, the higher the user's internal score would climb.¹⁵⁸ More left swipes would lower the internal score.¹⁵⁹ Similar to chess players' rankings, users of a dating app would have their internal score adjusted in relation to the swiping users' score.¹⁶⁰ Tinder would then show users the profile of other users with similar internal scores; the idea being that two users who had similar internal scores, as decided by the crowd, would be "in approximately the same tier of . . . 'desirability'."¹⁶¹

In March 2019, Tinder announced an update to this algorithm, calling the Elo ranking system "old news."¹⁶² Rather, Tinder updated its algorithm because Elo was "outdated," for use in dating apps, and its "cutting-edge technology no longer relie[d] on it."¹⁶³ This update changed its algorithm to what many other dating apps had been using at the time.¹⁶⁴ Tinder said the new algorithm prioritized users actively using the app – while weeding out stagnant profiles – saying that using the app helps "pick better potential matches," while limiting required identifying information to location, age, and preferences.¹⁶⁵ According to Tinder:

Our algorithm doesn't track social status, religion or ethnicity. We don't believe in stereotypes. So whether members are celebrating Diwali, Carnival, Eid Al-Fitr, or Pride, we think the party gets better when great people from all walks of life can get together. Our algorithm is designed to be open and we love the results.¹⁶⁶

The new algorithm is similar to the Gale-Shpley algorithm.¹⁶⁷ The algorithm "was created in 1962 by two economists who wanted to prove that any pool of people could be shifted into stable marriages."¹⁶⁸ The algorithm was

algorithms-for-dating-success-in-2021-69fb08d94b3d.

¹⁵⁷ Tiffany, *supra* note 143.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Powering Tinder® - The Method Behind Our Matching*, TINDER, <https://www.tinderpressroom.com/powering-tinder-r-the-method-behind-our-matching/> (Jul. 11, 2022).

¹⁶³ *Id.*

¹⁶⁴ Duncan, *supra* note 156; This change occurred after Match Group Holdings, LLC – Tinder's parent company – purchased rival Hinge in February 2019. Hinge already used an algorithm like what Tinder announced in the blog post. Match Group Holdings, LLC also owns other dating apps and websites such as: Match, Meetic, OkCupid, Pairs, PlentyOfFish, and OurTime. Match Group, Inc., Annual Report (Form 10-K) (Feb. 24, 2021).

¹⁶⁵ TINDER, *supra* note 162.

¹⁶⁶ *Id.*

¹⁶⁷ Duncan, *supra* note 156.

¹⁶⁸ Tiffany, *supra* note 143.

traditionally used to map problems in business and economics, such as matching students to universities, doctors to hospitals, and even organ donations.¹⁶⁹ See Figure 3. This algorithm is more predictive than the Elo rating score.¹⁷⁰ This is because the algorithm takes into consideration which users like/dislike other users and make recommendations based on similar information.¹⁷¹ So, if a user has swiped right on three specific people and a second user has also swiped right on those same three people, in addition to others, the algorithm may suggest to the former, those whom the second user has shown an interest in.¹⁷²

Even with the use of updated algorithms, dating apps still heavily rely on physical appearance and geographical proximity to create matches for their users.¹⁷³ It is no surprise that dating apps make a user's photo the most prominent factor on their profile; users make split-second decisions on which way to swipe, based on superficial characteristics.¹⁷⁴ Some users report deliberating changing their profile photos to be more sexual, in order to attract more matches.¹⁷⁵ Others have specific characteristics they look for in a profile, even without being able to articulate those characteristics.¹⁷⁶ This can include having little to no text in the profile, the person wearing accessories such as sunglasses or a hat, or only posting photos of groups of people.¹⁷⁷ Making snap decisions on physical appearance also creates opportunity for swipes, left or right, based on historically superficial or biased reasons, such as skin color or body type.¹⁷⁸

The fact that the user experience is predicated on snap decisions that are physical appearance-based allows opportunity for harassment on the respective platforms. According to the Pew Research Center:

Six-in-ten women under the age of 35 who have used online dating sites or apps say someone continued to contact them after they said they were not interested, compared with 27% of men in this age

¹⁶⁹ Alvin E. Roth & Lloyd S. Shapley, *Stable Matching: Theory, Evidence, and Practical Design*, ROYAL SWEDISH ACAD. OF SCI. 1–4, <https://www.nobelprize.org/uploads/2018/06/popular-economicsciences2012.pdf> (last accessed Dec. 1, 2021).

¹⁷⁰ Duncan, *supra* note 156.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Johnathan Dunlap, *App-ily Ever After – Self Presentation and Perception of Others on the Dating App Tinder 3* (2018) (Master's Thesis, University of Central Florida) (on file with STARS, University of Central Florida).

¹⁷⁴ Janelle Ward, *What Are You Doing on Tinder? Impression Management on a Matchmaking Mobile App*, 20 INFO., COMM., AND SOC. 1644, 1644, 1652 (Nov. 6, 2016), <https://www.tandfonline.com/doi/pdf/10.1080/1369118X.2016.1252412?needAccess=true>.

¹⁷⁵ *Id.* at 1654.

¹⁷⁶ *Id.* at 1652–53.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 1653.

range. Younger female users are also about twice as likely as their male counterparts to say someone on a dating site or app has called them an offensive name (44% vs. 23%) or threatened to physically harm them (19% vs. 9%). Other encounters that young women describe are more overtly sexual: 57% of female online dating users ages 18 to 34 say someone has sent them a sexually explicit message or image they did not ask for. This compares with 28% among male users in the same age range.¹⁷⁹

Features designed to reduce this type of harassment have only a small impact in reducing the number of harassing messages sent.¹⁸⁰ Match Group Holdings has shown that their “Are You Sure” feature – designed to make users think twice about sending potentially unwanted messages – has only reduced the amount of those messages by roughly ten percent.¹⁸¹ This feature was used to counter Tinder’s “Does this Bother You” reporting system.¹⁸² When a user “unmatched” with someone they had matched with, this feature allowed the user to choose from a list of reasons why they are unmatching with that person.¹⁸³ This is sometimes as simple as, “no mutual interest between the users,” but it is also offered as a feature to report abuse; options included reporting physical harm, abusive behavior, fake accounts, underage accounts, or nudity.¹⁸⁴ The practice of reporting and unmatching for abusive behavior explains the other ninety percent of attempted reduction of harassing behavior on the respective platforms.¹⁸⁵

III. A MAJORITY OF NEWLY-LICENSED ATTORNEYS BELONG TO THE SAME DEMOGRAPHIC GROUPS AS A MAJORITY OF DATING APP USERS

Courtship, in general, has changed over time in the United States.¹⁸⁶ Many people used to get married in their early twenties, and therefore most of the

¹⁷⁹ Monica Anderson & Emily A. Vogels, *Young Women Often Face Sexual Harassment Online – Including on Dating Sites and Apps*, PEW RSCH. CTR. (March 6, 2020), <https://www.pewresearch.org/fact-tank/2020/03/06/young-women-often-face-sexual-harassment-online-including-on-dating-sites-and-apps/>.

¹⁸⁰ Arit John, *Harassment is the Status Quo on Dating Sites. This Woman is Trying to Change That*, L.A. TIMES (Aug. 19, 2021), <https://www.latimes.com/lifestyle/story/2021-08-19/how-one-woman-boosting-safety-match-tinder-hinge>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Roberto A. Ferdman, *How Well Online Dating Workings, According to Someone Who Has Been Studying it for Years*, WASH. POST, (Mar. 23, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/03/23/the-truth-about-online-dating-according-to-someone-who-has-been-studying-it-for-years/>.

courtship done at the time was with the goal of finding a long-term relationship.¹⁸⁷ In the mid-1950s, women, on average, were married at twenty years old, while men were married at twenty-two. In the year 2018, these averages had climbed to age twenty-eight for women and thirty for men.¹⁸⁸ This increase in the average age of first marriage paired with the rise of technology – particularly smart-phone technology – created opportunity for young adults to participate in short-term courting for casual sexual relationships, rather than solely focusing on finding a long-term partner.¹⁸⁹ Dating apps create a wider list of options to choose from when selecting a romantic partner. While some may think that making snap judgments based on physical appearance will make people more superficial, that is usually not the case.¹⁹⁰ Michael Rosenfeld, a sociologist from Stanford University, instead found that that dating apps are superficial because the idea of courtship itself is superficial.¹⁹¹ After conducting his study, Mr. Rosenfeld said of dating apps:

[They're] kind of superficial. But [they're] superficial because we're kind of superficial; [they're] like that because humans are like that. Judging what someone else looks like first is not an attribute of technology, it's an attribute of how we look at people. Dating, both modern and not, is a fairly superficial endeavor. When you walk into a room, whether it's a singles bar or a church, you're making these same sorts of judgments, the same kind of subconscious evaluations. It's not the technology that makes people superficial. How someone else looks is important to us — it always has been. The visual cortex of our brain has a very powerful hold on how we interact with the world around us. There's nothing wrong or really new with prioritizing that.¹⁹²

In other words, dating apps are not driving an increase in those looking for either long- or short-term relationships, but they are instead a tool used by those looking for the relationships to find them. While some people use dating apps because they make it easier to find something very specific in a long-term partner, the use of dating apps also makes it easier for people to find partners

¹⁸⁷ *Id.*

¹⁸⁸ Krista K. Payne, *Median Age at First Marriage, 2017*, NAT'L CTR. FOR FAM. & MARRIAGE RSCH. (2019), <https://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/payne-median-age-first-marriage-FP-19-06.pdf>.

¹⁸⁹ Ferdman, *supra* note 186.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*; see also Michael Rosenfeld, *How Couples Meet and Stay Together*, Soc. Sci. Data Collection, STAN. UNIV. (Sept. 22, 2009), <https://data.stanford.edu/hcmst#download-data>.

¹⁹² Ferdman, *supra* note 186.

who mutually enjoy casual sex that does not lead to a relationship.¹⁹³ Keeping this information in mind, it so happens that the majority of dating app users belong to the age group we see being newly licensed to practice law.

A. Dating App Users are Majority Millennial and Gen Z

Today, individuals use dating apps for a variety of reasons. In February 2021, over one-third of all people in the United States had used at least one dating app or website within the previous six months.¹⁹⁴ This is a vast increase in users since 2013, when only one in ten Americans were using dating apps or websites,¹⁹⁵ and in 2016, when only fifteen percent of adults reported using them.¹⁹⁶ While dating apps or meeting someone online was once considered taboo in society, it is no longer surprising or uncommon to hear people say that they met their significant other or romantic partner on a dating app.¹⁹⁷ Jess McCann, a relationship coach, put it this way: “[w]e’ve gotten used to the internet, and since we now shop, bank, buy, sell, read, write, work, and play online, why wouldn’t we date online as well?”¹⁹⁸ A plurality of dating app users (twenty-nine percent) try out a dating app because they are curious.¹⁹⁹ Thirty-five percent of users try them because they want something convenient or they are bored. Roughly five percent of users are looking to move on from the recent end of a previous relationship.²⁰⁰ Ultimately, most users do not exclusively log on because of one factor, but are driven by a combination of factors to download the app.²⁰¹

In 2019, the overwhelming majority of dating app users were ages eighteen to fifty.²⁰² By and large, the increase in dating app and website usage is

¹⁹³ *Id.*

¹⁹⁴ Toby A. Cox, *Swiping Right in 2020: How People Use Dating Apps*, MANIFEST (Feb. 5, 2020), <https://themanifest.com/app-development/swiping-right-how-people-use-dating-apps>.

¹⁹⁵ Rebecca Borison, *How The Endless Quest For Love Is Sparking Massive Growth In Dating Apps*, BUS. INSIDER (July 23, 2014), <https://www.businessinsider.com/search-for-love-sparks-dating-app-growth-2014-7>.

¹⁹⁶ Aaron Smith, *15% of American Adults Have Used Online Dating Sites or Mobile Dating Apps*, PEW RSCH. CTR. (Feb. 11, 2016), <https://www.pewresearch.org/internet/2016/02/11/15-percent-of-american-adults-have-used-online-dating-sites-or-mobile-dating-apps/>.

¹⁹⁷ Cox, *supra* note 194.

¹⁹⁸ *Id.* (quoting Jess McMann).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Share of Adults in the United States Who Have Used Online Dating Sites or Apps as of October 2019, By Age*, STATISTA (Feb 2020), <https://www.statista.com/statistics/309461/us-adults-online-dating-site-usage-age/>.

attributable to the Millennial and Gen Z generations.²⁰³ Millennials accounted for eighty percent of Tinder users in 2015.²⁰⁴ For better or worse, dating apps in the mid-2010s became known as “hookup” apps.²⁰⁵ Even though the apps were marketed as being “designed to be deleted,” users of dating apps were not using the apps to find long-term relationship like their website predecessors; rather they were looking for short-term, casual sexual relationships.²⁰⁶

That stigma is disappearing, thanks in part to the coronavirus pandemic.²⁰⁷ That stigma is smallest in the Millennial age group, with twenty-seven percent of Millennials reporting that they do not feel positively about dating online.²⁰⁸ Gen Z is not far behind at thirty percent negative feelings response rate.²⁰⁹ Millennials and Gen Z have a net positive feeling about dating apps and websites, at twenty-seven percent and fifteen percent, respectively.²¹⁰ Both groups together are more likely than older generations to have met a partner – of any length of time – online or on a dating app.²¹¹ In fact, more Americans know someone who has started a relationship by meeting their partner through a dating website or app than they did as recently as 2018.²¹² Not only are more people using dating apps than before, those users are using the apps at a greater rate than they have in previous years.²¹³ This applies to those who are looking for long-term relationships, as well as those who are seeking something more casual.²¹⁴ Dating apps have evolved to include more than just dating relationships, either short- or long-term. Apps such as Tinder, Bumble, and Match have been used by Millennials and Gen Z-ers to find platonic friends or business partners as well as romantic interests.²¹⁵ Bumble was one of the first

²⁰³ *McDaniel v. Gile*, 230 Cal. App. 3d 363, 369 (1991).

²⁰⁴ Mike Brown, *Is Tinder a Match for Millennials*, LENDEDU (Apr. 6, 2020), <https://lendedu.com/blog/tinder-match-millennials/>.

²⁰⁵ Alyssa Meyers, *Spurred On by COVID-19, Millennials Lead the Way in Destigmatizing Online Dating*, MORNING CONSULT (Feb. 11, 2021), <https://morningconsult.com/2021/02/11/online-dating-stigma-amid-pandemic/>.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Ray A. Smith, *Looking for a Friend? Try Match, Bumble, and Tinder*, WALL ST. J. (July 7, 2021), <https://www.wsj.com/articles/looking-for-a-friend-without-benefits-try-match-bumble-and-tinder-11625675336>.

dating apps to add a separate platform for meeting new friends.²¹⁶ Many apps followed and created their own platform to separate dating from friendships, but for those who haven't, users have updated their dating profiles to become platonically-focused.²¹⁷

B. Newly Barred Attorneys Belong to the Millennial or Gen Z Generation

In 2019, the median age of attorneys was forty-seven years old.²¹⁸ The reason for this is that not many attorneys are younger than the age of 25, while some attorneys work beyond age 65.²¹⁹ This shows that the legal profession tends to skew older because of education and licensing requirements, and more attorneys are postponing retirement.²²⁰ According to the American Bar Foundation, fifteen percent of attorneys today are over the age of 65; that number was only ten percent in 1991.²²¹ Nineteen percent of attorneys are under the age of 35.²²²

The legal industry has seen much growth over the past decade. The attorney population in the country has outpaced the growth of the nation's population as a whole.²²³ According to the 2020 Census, attorney population grew 10.4% since 2010, while the rate of the overall population only grew by 6.3%.²²⁴ Since 2000, the number of attorneys increases at a rate of 1.5% per year.²²⁵ Several states have seen large growth in the same time period. For example, Florida has the fastest growing attorney population in the nation since 2010 at twenty-six percent.²²⁶ Texas, Georgia, and New York all grew by a rate of at least seventeen

²¹⁶ See *Bumble, But for Besties? Yes! Here's How to Use Bumble BFF*, BUMBLE, <https://bumble.com/en-us/the-buzz/what-exactly-is-bumble-bff> (last accessed Mar. 24, 2023).

²¹⁷ Curtis Abney, *Why We Meet Friends on Tinder*, MEDIUM (Apr. 21, 2020), <https://medium.com/change-becomes-you/why-we-meet-friends-on-tinder-ce9a278a8dc3>; Margaret Eby, *I Tried It: 'Tinder for Friendship'*, EXPERIENCE MAG. (Mar. 13, 2019), <https://expmag.com/2019/03/i-tried-it-tinder-for-friendship/>.

²¹⁸ *ABA Profile of the Legal Profession*, A.B.A. (2020) at 36, <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

²¹⁹ *Id.* at 35.

²²⁰ Nicole Black, *Survey Results: Lawyer Demographics in 2020*, MYCASE, <https://www.mycase.com/blog/survey-results-lawyer-demographics-in-2020/> (last accessed Mar. 25, 2023).

²²¹ *ABA Profile of the Legal Profession*, A.B.A. (2020) at 35, <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

²²² *Id.*

²²³ *Id.* at 30.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at 31.

percent.²²⁷ The District of Columbia has the highest number of attorneys per capita, with one per every 25 residents.²²⁸ Women are also making up more of the population of attorneys than ever before. From 2010 to 2020, the number of women in the industry climbed to thirty-seven percent, up from thirty-one percent a decade ago.²²⁹ The split between women and men in law school classes is roughly fifty percent.²³⁰

The United States Bureau of Labor Statistics predicts that attorney employment will grow ten percent by the year 2031.²³¹ This prediction is based on the expectation that there will be a need to replace those who either leave the industry or exit the labor force altogether.²³² Each year, the number of Baby Boomer and Gen X attorneys will decrease while Millennials and Gen Z will replace them. The same generations that have grown up either using or aware of dating app usage are the future generation of attorneys.

Although young attorneys are reaching the traditional courtship age, more of them are delaying traditional life events. Student loan debt for attorneys grew from 2016 to 2020, further driving attorneys to postpone major life events, such as having children or buying homes.²³³ Nearly half of new attorneys surveyed by the ABA Young Lawyers Division said that they have either postponed or decided against having children because of student loan debt.²³⁴ Nearly thirty percent have done the same with respect to marriage.²³⁵ Over half have decided not to buy a house – either now or ever – because of debt, and some have said they have moved back in with their parents due to their student loans.²³⁶ Other major life decisions that student loan debt has effected includes taking a job that pays more rather than is a job they are interested in, foregoing purchasing a car for transportation, and avoiding taking vacation or time away from work for their mental health.²³⁷ Even though today's young attorneys are putting off these major life events such as getting married or starting a family, they still belong to the generations that actively use dating apps the most. This creates an atmosphere where today's young attorneys – who are not actively looking for

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Black, *supra* note 220.

²³⁰ *Id.*

²³¹ U.S. BUREAU OF LAB. STAT., OCCUPATIONAL OUTLOOK HANDBOOK: LAWYERS (SEPT. 8, 2021) <https://www.bls.gov/ooh/legal/lawyers.html>.

²³² *Id.*

²³³ *ABA Profile of the Legal Profession*, A.B.A. (2020) at 24, <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

long-term relationships – are using dating apps designed, in part, to cater to finding short-term, casual relationships. These casual, unrestricted social-sexual relationships can leave attorneys at risk for potential ethics and professional conduct rules violations.

V. TRADITIONAL RULES SHOULD BE APPLIED TO MODERN SEXUAL RELATIONSHIPS BORNE OUT OF THE USE OF TECHNOLOGY

It does not take much thought to consider some instances where the issues listed above could arise in the use of a dating application. The attorney could say something disparaging about a client through the app. They could make sexually explicit requests that are unique to online dating, such as asking the client to send nude photographs. While there might be some cases where the photograph would be necessary for the representation of the client – such as a medical malpractice case – there would never be the case where a dating app was the proper channel for receiving that information. The Arizona Bar Association said in *Ethics Opinion 09-04* that, “[a]s technology advances occur, lawyers should periodically review security measures in place to ensure that they still reasonably protect the security and confidentiality of the clients’ documents and information.”²³⁸

Model Rule of Professional Conduct 1.6(c) requires that attorneys, “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”²³⁹ It is unreasonable to ask a client to forward sensitive information through a dating app, even if for the sole purpose of representation. Additionally, access to a nude photograph for the purpose of representation is arguably unauthorized when using a dating app, as the client would not reasonably think that the attorney would conduct business by using a dating app. Therefore, any such photograph transmitted through a dating app would be very unlikely to be for the representation of the client and would likely be seen as a violation of the Rule as it would be unauthorized access to sensitive material and would have no basis for asserting attorney-client privilege.

Similar to the *Gile* case, an attorney could use a dating app to make aggressive sexual advances toward a client. The attorney could send sexually explicit text through the app, and the sexually explicit text could be unwanted by the client.²⁴⁰

²³⁸ ARIZONA BAR ASS’N, ETHICS OPINION 09-04: CONFIDENTIALITY; MAINTAINING CLIENT FILES; ELECTRONIC STORAGE; INTERNET (2009).

²³⁹ MODEL RULES OF PRO. CONDUCT r. 1.6(c) cmt. (AM. BAR ASS’N 2020).

²⁴⁰ Emily A. Vogels, *10 Facts About Americans and Online Dating*, PEW RSCH. CTR. (Feb. 6, 2020), <https://www.pewresearch.org/fact-tank/2020/02/06/10-facts-about-americans-and-online-dating/> (stating that 46% of women and 26% of men said that they received a sexually explicit text or image that they did not ask for. These figures increase to

Cyber-flashing has also become an increasing risk online, driven higher by the COVID-19 pandemic.²⁴¹ Cyberflashing is the act of sending non-consensual explicit images to an unsuspecting person using the AirDrop feature between iPhones, social media apps such as Instagram or a messaging application such as text messages, WhatsApp, or dating apps on any type of smartphone.²⁴² This is either for the purpose of receiving “sexual gratification or to cause the receiver humiliation, harm, or distress.”²⁴³

Nearly half of millennial-aged women have been Cyberflashed, with forty-three percent of women ages 18-34 having received a photo of a man’s penis.²⁴⁴ Of those who received the photo, eighty-nine percent received the photo without asking for it.²⁴⁵ While it is possible to turn off the AirDrop feature, it is harder to prevent unsolicited photographs being received once a connection has been made through a messaging app or dating app. While some dating apps have begun to add artificial intelligence to combat explicit messages, it can easily be overridden by the user.²⁴⁶ Cyberflashing is intended to be a gender-neutral term and is not dependent upon the sexualities of the attorney or client, although the issue primarily arises much as it did in the *Gile* case - with a heterosexual male attorney and a heterosexual female client.²⁴⁷

Law firms and other organizations that employ attorneys should update their compliance policies to include information regarding the use of dating apps. A simple ban on dating app use will be untenable especially when employees use

57% of women and 28% of men ages 18-34, the key age group that are becoming barred).

²⁴¹ Davey Winder, *Smartphone Users Your Time Is Up: Cyber-Flashing To Become A Sex Crime*, FORBES (Sept. 13, 2020), <https://www.forbes.com/sites/daveywinder/2020/09/13/smartphone-perverts-your-time-is-up-cyber-flashing-to-become-a-sex-crime/?sh=4c6a53436e0b>.

²⁴² Rachel Thompson, *Cyberflashing to Become Illegal in England and Wales*, MASHABLE (Mar. 14, 2022), <https://mashable.com/article/cyberflashing-illegal-uk>; Jade Biggs, *So Many Women Have Been Sent Unsolicited Dick Pics, Now Cyberflashing is Finally Being Made Illegal*, COSMOPOLITAN (March 14, 2022), <https://www.cosmopolitan.com/uk/reports/a38148523/cyberflashing/>; *Cyberflashing*, CAMBRIDGE ADVANCED LEARNER’S DICTIONARY & THESAURUS (2022).

²⁴³ Sophie Gallagher, *Cyber Flashing Will Soon Be a Crime, It Needs To Be More Than ‘Whack-A-Mole’*, HUFFINGTON POST (Feb. 15, 2022), https://www.huffingtonpost.co.uk/entry/cyber-flashing-law-wont-go-far-enough_uk_620a2b1fe4b0ccfb3e581222.

²⁴⁴ Matthew Smith, *Four in Ten Female Millennials Have Been Sent an Unsolicited Penis Photo*, YOUgov (Feb. 15, 2018, 7:00 PM), <https://yougov.co.uk/topics/politics/articles-reports/2018/02/15/four-ten-female-millennials-been-sent-dick-pic>.

²⁴⁵ *Id.*

²⁴⁶ Anna Iovine, *Tinder Releases ‘Are You Sure?’ Feature to Stop Harmful Messages Before They Happen*, MASHABLE (May 20, 2021), <https://mashable.com/article/tinder-are-you-sure>.

²⁴⁷ Smith, *supra* note 244.

their own devices. “Bring Your Own Device” (“BOYD”) programs have become even more prevalent in today’s workforce to keep up with the pace of technological advancements.²⁴⁸ While BYOD policies can improve an organization’s bottom line, it also could create new risks for compliance officers to take into account.²⁴⁹ Attorneys who use their own devices, rather than employer-provided devices, could feel more comfortable to engage in risky behaviors on that device.²⁵⁰ During a potential investigation, attorneys may be hesitant to turn over their devices for fear of their employer gaining access to personal information, whether about the alleged sexual conduct or otherwise.²⁵¹ They also would likely not be thrilled with their employer forbidding them from using their own devices as they see fit, especially when the use is personal.²⁵²

Instead, compliance officers should include information about dating apps in their onboarding process. It should be clear that those attorneys who wish to use their own devices must take training specifically tailored to the issues identified above.²⁵³

VI. CONCLUSION

With the rise of dating apps, the potential to violate several of the Model Rules of Professional Conduct has grown. While the Model Rules of Professional Conduct are not binding on attorneys, all jurisdictions have adopted at least one rule that could be implicated in the use of dating apps. Traditionally, determining if an attorney’s conduct has violated any ethics rules derived from the Model Rules of Professional Conduct has been a straightforward affair. A tribunal must determine if the attorney’s conduct was so sexual in nature as to potentially harm the attorney-client privilege, potentially corrupt or taint the attorney’s professional judgment, or destroy faith in the legal profession. Acts such as engaging in a sexual relationship with a client are simple to determine. Harassment of a client would most likely be seen as a violation, and even flirtatious or promiscuous words or acts are enough to raise an inquiry.

When dating apps are introduced into the equation, the analysis is further

²⁴⁸ Paul G. Lannon & Phillip M. Schreiber, *BYOD Policies: What Employers Need to Know*, SHRM (Feb. 1, 2016), <https://www.shrm.org/hr-today/news/hr-magazine/pages/0216-byod-policies.aspx>.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*; see also Crystal N Lowery, *How “Bring Your Own Device” Policies Increase Privacy Concerns*, INSIDE COMPLIANCE, LOYOLA U. CHICAGO SCH. OF L. (Sept. 17, 2018), <http://blogs.luc.edu/compliance/?p=1843>.

²⁵² Mike Chapple, *How to Manage BYOD Security Policies and Stay Compliant*, TECHTARGET (Oct. 2015), <https://www.techtarget.com/searchsecurity/tip/How-to-manage-BYOD-security-policies-and-stay-compliant>.

²⁵³ *Id.*

complicated. A comment made through a dating app that is known for its hookup culture might read more salaciously than something said in-person. The context of a message might be misread by a particularly vulnerable client. The anonymity of interacting online may embolden an attorney to send or request a nude photograph, when no such exposure would be contemplated in a face-to-face setting. The Model Rules of Professional Conduct are designed to protect attorneys, clients, and the legal profession in general. It does not always take a specific act to violate the Rules, but the mere appearance of impropriety could be enough to cause the attorney to face issues in his or her practice. Attorneys would do well to remember that they might get more than they bargained for by swiping right.