



PROGRAM MATERIALS
Program #3617
January 20, 2026

Navigating Rule 8.4(g): Addressing Bias and Discrimination

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Navigating Rule 8.4(g): Addressing Bias and Discrimination

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The Foundation of the Legal Profession



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What is Professionalism & Civility?

- ▶ **What is professionalism?**
 - ▶ The competence or skill expected of a professional
- ▶ **What is civility?**
 - ▶ The core of professionalism; exhibiting good behavior for the good of a community or profession; code of decency that characterizes a civilized society
- ▶ **Misconceptions - it is not:**
 - ▶ An agreement
 - ▶ The absence of criticism
 - ▶ Liking a person
 - ▶ Good manners

General Civility Initiatives

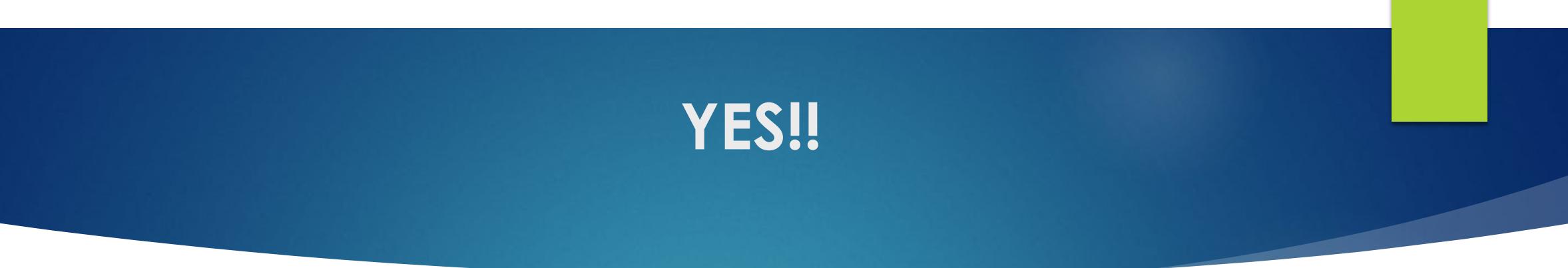
- ▶ **Civil Conduct is a Condition of Lawyer Licensing**
 - ▶ Self-governing profession
 - ▶ Fitness and Character Examinations
 - ▶ Requirement of Law License
 - ▶ Oath of Attorneys (pledge of civility) – “... abstain from offensive personality. . .”
- ▶ **Lawyer is Officer of Legal System AND Public Citizen**
 - ▶ In client dealings, court dealing, and in personal life lawyers must show respect for the legal system in his/her role as advisor, negotiator, evaluator, etc. (Preamble of Prof. Rules of Conduct)
 - ▶ Resolve conflict while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system (Preamble of Prof. Rules of Conduct)

Judicial Initiative

- Example (approx. 2002): The Sedona Conference was launched which was a think-tank to confront some of the most challenging issues facing the legal system, including developments in e-discovery retention and production and civility/cooperation among lawyers in discovery; requires oaths from attorneys in some instances and face-to-face consultations to resolve disputes prior to involving the court

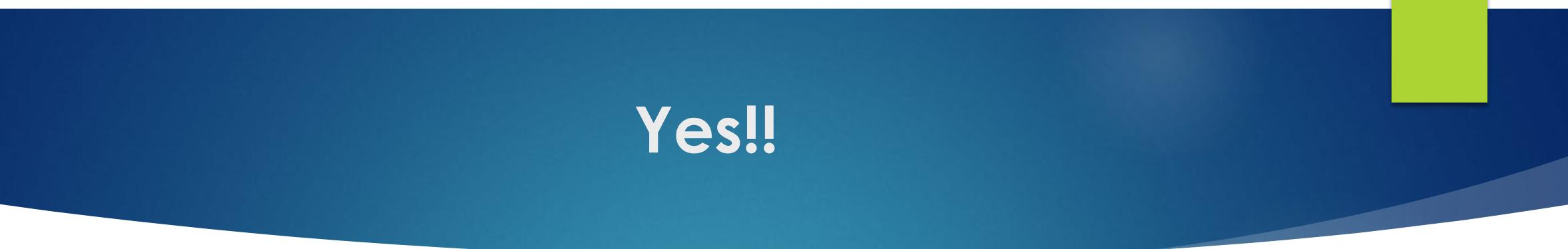
Commission Initiatives

- Example 2005: Illinois Supreme Court established the Commission on Professionalism under Supreme Court Rule 799(c), known as 2Civility. It promotes a culture of civility and inclusion, in which Illinois lawyers and judges embody the ideals of the legal profession in service to the administration of justice in our democratic society. Promotes and fosters a commitment to the elimination of bias and divisiveness within the legal and judicial systems, and ensures those systems prove equitable, efficient and effective for the resolution of problems and disputes to the citizens of Illinois.
- Other jurisdictions have also implemented professionalism and civility codes and commissions: [Professionalism Codes \(americanbar.org\)](http://Professionalism%20Codes%20(americabar.org))



YES!!

RPC 8.4(d): *It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice.*



Yes!!

Rule 8.4(g): an attorney shall not . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of **race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.** This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

****RPC 8.4(g); and ABA Formal Opinion 493**

Title VII vs. Rule 8.4(g)

Title VII, Civil Rights Act of 1964

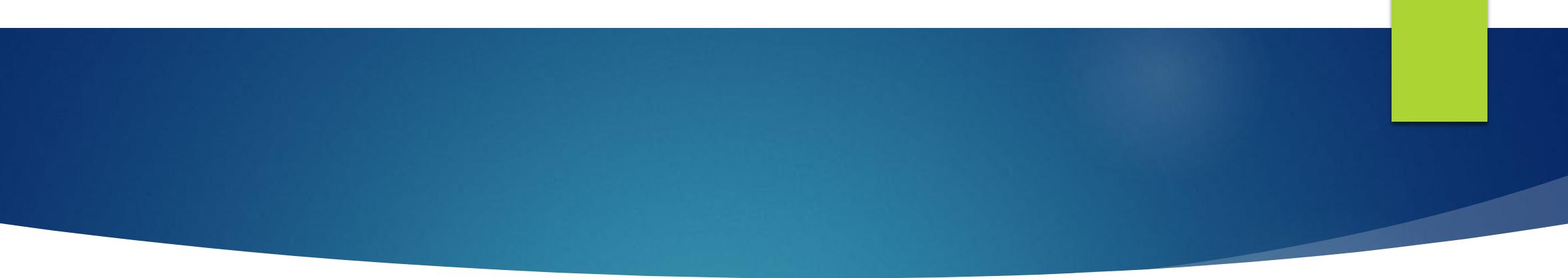
Race;
Color;
Religion;
Sex;
National Origin

Prof. Rule of Conduct 8.4(g)

Race;
Sex;
Religion;
National Origin;
Ethnicity;
Disability;
Age;
Sexual Orientation;
Gender Identity;
Marital Status; or
Socioeconomic Status

Model Rule 8.4(g), Comment 4:

- ▶ Representing Clients
- ▶ Interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law
- ▶ Operating or managing a law firm or law practice
- ▶ Participating in bar association, business or social activities in connection with the practice of law



**“It would be . . . Mostly accurate, to tell you
that 8.4(g) is dead in the water[.]”**

Do you have a bias?
Do you discriminate (even unconsciously?)

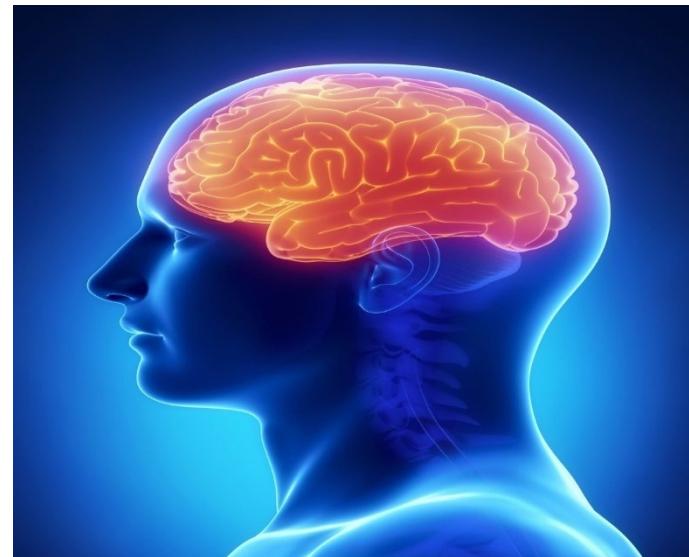


The Brain

**“If you have a
brain, you have a
bias”**

Dr. Jennifer Eberhardt

Stanford Professor of Psychology





- **Accomplished Chef**
- **Loves sports, animals and hanging out with friends**
- **Volunteers at homeless shelters**
- **Best friend is her sister Kate**
- **Loves playing bingo with her family**







Meeting Ellen

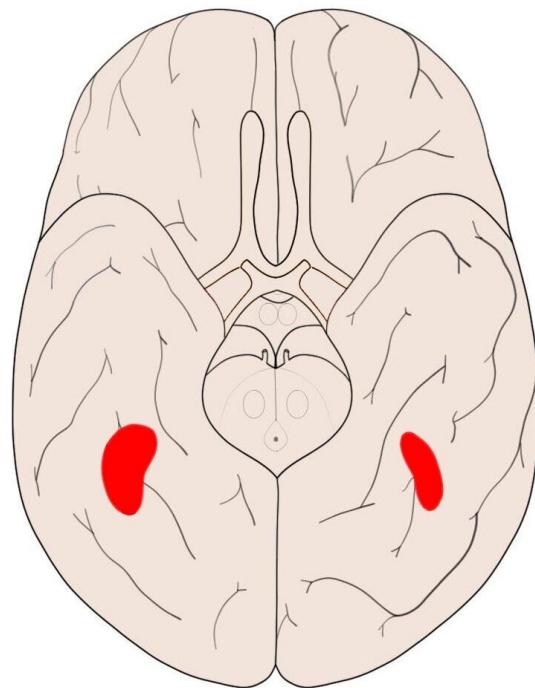
Did any of you have trouble finding Ellen?

It is OKAY to be honest!

Results

- ▶ If it was easy for you to find Ellen, there is a better chance you are of the race, gender, ethnicity, etc.
- ▶ **The “Other Race” Effect:** Difficulty distinguishing faces and characteristics of races other than our own.
 - ▶ Not just about environment and exposure – wired into our brains

Fusiform Face Area (FFA)



The FFA

- ▶ Helps us distinguish faces
- ▶ Differentiate the familiar from the unfamiliar; the friend from the foe
- ▶ More active (neurons firing more vigorously) when see faces of our own race
- ▶ Less active when see faces of other races
- ▶ Experiences are “tuning” our neurons and our unconscious bias
- ▶ Does not just stop at physical face identification but expands into other areas regarding beliefs and feelings about all sorts of social groups and people – **“Us” v. “Them”**

Where can an attorney violate Rule 8.4(g) in practice?



Potential “Business” Areas

Recruitment

Screening/Hiring

Work Allocation - Promotion

Discharge

Job Posting



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Job description

We are a full-service web design company specializing in industrial and commercial clientele. We are currently looking for a Content Writer/SEO specialist to join our dynamic team at the Concord location (near Steeles & Keele @ near York U). The position involves a number of duties:

- Writing website content for new clients
- Updating existing texts to make them SEO friendly
- Making blog posts on Facebook, Twitter and Google+
- Conversing with clientele in regards to their desired website content

The position requires that the candidate possess the following skill-set:

- Writing talent; excellent grammar and spelling expected
- Computer knowledge
- Knowledge of social media (Google+, Facebook, Twitter)
- Knowledge of SEO
- Superior organizational abilities
- Ability to work independently and in coordination with a team
- Oral and written communication skills
- Knowledge of Russian is a plus
- Please attach a copy of your resume for our review. Note that during the interview you may be asked to demonstrate your writing abilities by being assigned 20 minutes to write on a given topic.

Please note that the Position requires filling in the responsibilities of a receptionist, so female candidates are preferred.

Customer Service - Fun young team

[\[REDACTED\] - More jobs by this advertiser](#)



Customer Service - Fun young team !!!

- Dynamic, young, entrepreneurial culture
- Based in Surry Hills (5 mins walk to Central)
- Learn and grow with the business

Desktop Administrator

X

Industrial area)

Other

★★★★★ 21 reviews - C

Apply On Company Site



Provide hands-on support to the organization's end users relating to laptops desktops mobile devices and applications. Assist in basic server administration and troubleshooting.

If you're tired of 12-hour work days frequent travel and zero work-life balance this job may be just what you're looking for. At [REDACTED] we understand that our people are humans first employees second. Our work atmosphere is collaborative and informal and we pride ourselves on the quality and quantity of our accomplishments. Many positions allow occasional telecommuting days to supplement team time in the office. Our people appreciate the [REDACTED] institution that exists solely to benefit our members. [REDACTED] it's nice being one of the good guys! [REDACTED] you might imagine we provide competitive [REDACTED]

Bonus/incentives for all regular employees

401(k) with 8% company contribution

Medical dental and vision insurance for employees and dependents paid at 80%

PTO and paid sabbaticals

Tuition reimbursement

GENERAL SUMMARY: The Desktop Administrator will provide hands-on support to the organization's end users relating to laptops desktops mobile devices and applications. Assist in basic server administration and troubleshooting.

Provide first level desktop and end user support locally at HQ and across satellite offices on

Director of Operations

Barts Health NHS Trust

The closing date is 22 August 2022

Job summary

We are currently looking for an experienced, enthusiastic and compassionate Director of Operations and we are particularly interested in receiving applications from candidates who identify as female. We want you to bring your skills, expertise and innovation to our Hospital.

The role provides both challenges and development opportunities for a current or aspiring executive with a proven track record of delivery, who leads by example and encourages solutions from the front-line.

Ensuring operational teams stay informed and engaged in not only the day-to-day business but also the wider life and culture of our Trust is a priority for this post, as is harnessing innovation and ideas from the front-line.

- Native English Speaking Teacher
- Degree Holder or CE or its equivalent
- Teaching experience in ECE
- Must be able to join immediately

Please send your CV to the Principal.
Email: wpkkayyu@netvigator.com

**The Mission Covenant Church
Sister Annie's Kindergarten and Nursery
English Teacher (Part-time)**

With a loving and kind-hearted personality, teaching
experience and Caucasian
8 - 9 hours each week at HK\$250 - 280 per hour
Interested parties, please email your CV to
mccsan@mcc.org.hk

McCOOK GLASS & MIRROR INC.
is looking for hard working experienced
employees that possess responsibility
and are reliable. Must be self motivated
and have a clean driving record.

Please do not apply if you:

*Oversleep, have no alarm clock, have no car, have
court often, have no baby sitter every day, have to
give friends rides to work later than we start work,
experience flat tires every week, have to hold on to
cell phone all day, or become an expert at your job
with no need to learn or take advice after the first day.
Must be able to talk and work at the same time, must
be able to remember to come back to work after
lunch. Should not expect to receive Purple Ribbons or
Gold Stars for showing up to work on time.*

For Interview Call 345- [REDACTED]

The Resume



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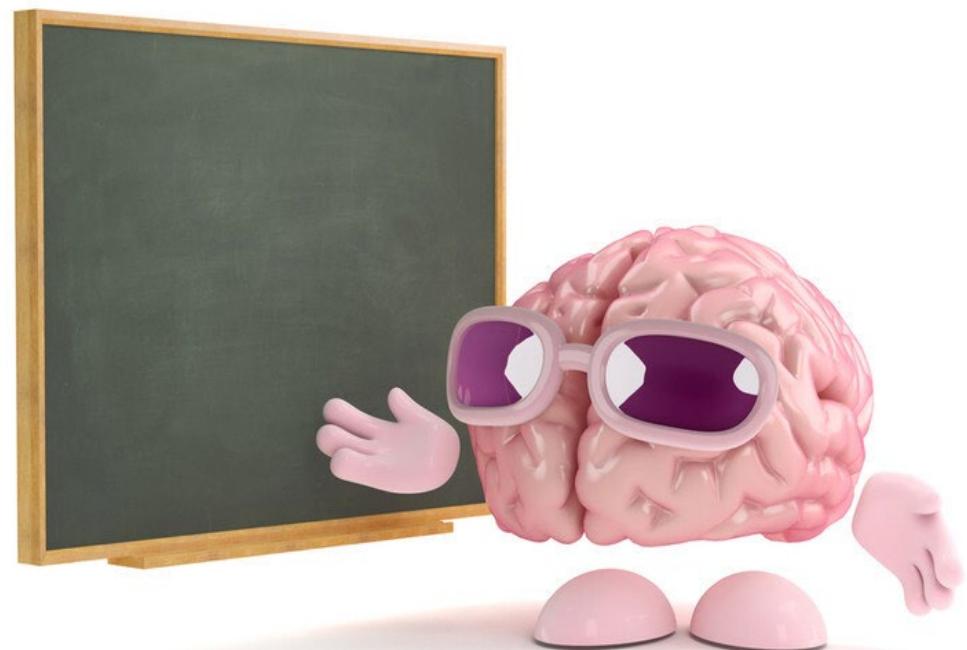
It's All In A Name

Jobs to Fill:

- ▶ CEO Fortune 500 Company
- ▶ Attorney
- ▶ Receptionist
- ▶ Custodian
- ▶ Scientist
- ▶ Teacher
- ▶ Stay at Home Parent
- ▶ Doctor
- ▶ Police Officer
- ▶ President of the United States
- ▶ Banker

Resume Names:

- ▶ Linda Allen
- ▶ Lei Li
- ▶ Jerome Chamberlain
- ▶ Betty Jones
- ▶ Samira Sharma
- ▶ Lakisha Watkins
- ▶ Mariel Lim
- ▶ John Smith
- ▶ Michael Khouli
- ▶ Ali Saeed
- ▶ Emily Johnson
- ▶ Brad Williams



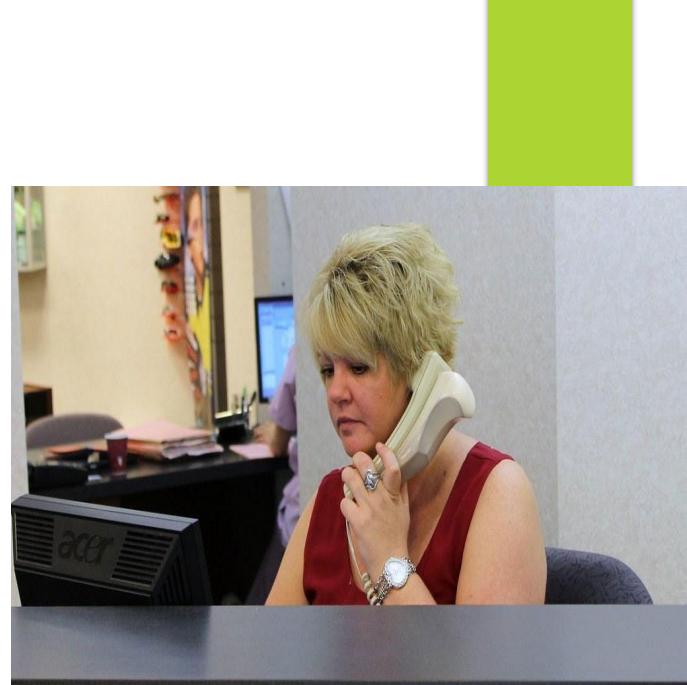
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Screening/Hiring

- ▶ **Interviewers with stereotypes** in which they assume certain occupations are more “proper” for women or for men based on the burdens to be imposed, commitment to the job, and putting a female in a male environment.
- ▶ **Require high school diploma or a credential** for an essentially manual task in places where minorities statistically have had high secondary school dropout rates
- ▶ **Aptitude or intelligence tests** used to screen applicants become discriminatory when they serve to disqualify members from minority cultures who are unfamiliar with the language, concepts, and social situations used in the tests, but who are in fact fully qualified for the job.

Work Allocation: Exercise

- ▶ List out the top 5-10 people you **TRUST** - You've let into your circle of trust
- ▶ Avoid listing family members - only friends, classmates, co-workers
- ▶ For each of those people identify the following characteristics:
 - ▶ Gender
 - ▶ Race/Ethnicity
 - ▶ Age
 - ▶ Sexual Orientation
 - ▶ Education
 - ▶ Disability (Yes or No)
 - ▶ Other

Work Allocation: Exercise (cont.)

Three Levels Trust

- ▶ Outer Ring/Level 3
 - ▶ Acquaintance
 - ▶ “Hi” – “Hello” – Pleasant Manners
- ▶ Middle Ring/Level 2
 - ▶ C.O.M.F.Y Zone
 - ▶ “Come on my front yard”
- ▶ Inner Circle
 - ▶ **TRUST** Zone

- ▶ How does it look if all the inner circle is same diversity make-up?
- ▶ What does that do to hiring process?
- ▶ What does it do once someone is in the company too, e.g., promotions?

Work Allocation/Promotion

- ▶ Partners/Supervisors are more likely to assign key client projects to members of their team who they have an affinity (see next slide)
- ▶ If promotions rely on substantive recommendations of Partners/Supervisors, then Partners/Supervisors are more likely to give higher recommendations to those in which they have an affinity (see next slide)
- ▶ Partners/Supervisors are more likely to place Caucasian males on job tracks separate from minorities and women
- ▶ Seniority systems for work allocation and promotion will be discriminatory if history of only hiring Caucasian males and not minorities and women

Discharge

- ▶ Layoff policies that rely on a seniority system in which women and minorities have the lowest seniority because of past discrimination, and so considered first for discharge.
- ▶ Partners/Supervisors are less likely to discharge individuals in which they have an affinity

Other Areas Where Bias Creeps Into The Practice

Interactions with Clients

Interactions with Opposing Counsel

Courtroom Encounters

Interactions with coworkers

Email Communications

Attendance at work related social events

Other Work Advice/Decisions/Choices

Interactions with Clients

- ▶ A lawyer should exercise independent judgment and should not be governed by the client's ulterior motives, ill will, or deceit
- ▶ A lawyer should counsel a client or prospective client, even with respect to a meritorious claim or defense, about the public and private burdens of pursuing the claim as compared with the benefits to be achieved
- ▶ In advising a client, a lawyer should not understate or overstate achievable results or otherwise create unrealistic expectations

Interactions with Clients (cont.)

- ▶ A lawyer should not permit a client's ill will toward an adversary, witness, or tribunal to become that of the lawyers
- ▶ A lawyer must counsel a client against using tactics designed: (a) to hinder or improperly delay a legal process; or (b) to embarrass, harass, intimidate, improperly burden, or oppress an adversary, party or any other persons and should withdraw from representation if the client insists on such tactics
- ▶ In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable and customary under the circumstances

Interactions with Opposing Counsel



If they get to you, they win.



Smile, or better yet, ignore them – Do not engage



Always fight up, never fight down



Have compassion for them



Believe in professionalism KARMA



Keep communication open, TALK to opposing counsel

Interactions with Opposing Counsel

Outsmart

- Outsmart – Stay ahead

Prepare

- Prepare – Prepare – Prepare

Kindness

- Kill them with kindness – respect your opposing counsel

Patience

- Play the waiting game

Follow the
Rules

- Know and Follow the Rules

Check Your
Attitude

- Check your own attitude routinely

Stand Up

- Stand up to bullying in professional manner – do not stoop to the level of a bully

Tips in Dealing with Opposing Counsel

- ▶ **TIP/EXAMPLE:** if a lawyer does not provide a requested document after agreeing to do so, he/she writes: "I have called you five times. You have not had the courtesy to return my call, and I still have not received those documents."
- ▶ **TIP/EXAMPLE:** For late night faxes, notify opposing counsel that he/she will not succumb to the tactic: "In court yesterday you said you would fax to me the following documents. You did so at 11:44 p.m. Certainly you must have known that I would not be working at that hour and would have no reasonable opportunity to review them."
- ▶ **TIP/EXAMPLE:** Write memos to his/her files whenever suspect trouble. "It can be as basic as saying 'I spoke to attorney x and told him that I will not accept his 5:00 p.m. fax notices and that if he does it again, I will ask for sanctions.'" I want to memorialize it for me. If it never happens again, fine. But if it does, I know.

Courtroom Encounters

- ▶ A lawyer should abstain from rude, disruptive, and disrespectful behavior. The lawyer should encourage clients and support personnel to do the same.
- ▶ A lawyer should be civil and courteous in all situations, both professional and personal and avoid conduct that is degrading to the legal profession
- ▶ A lawyer must always behave in a courteous and formal manner in hearings, depositions, and trials and should refrain from seeking special consideration from a judge or juror

Courtroom Encounters

- ▶ A lawyers should refer to all parties, witnesses, and other counsel by their last names during legal proceedings
- ▶ A lawyer should request permission from the court before approaching the bench and submitting any document
- ▶ A lawyer should state only the legal grounds for an objection unless the court requests further argument or elaboration

Courtroom Encounters

- ▶ A lawyer should inform clients and witnesses that approving and disapproving gestures, facial expressions, or audible comments are absolutely prohibited in legal proceedings
- ▶ A lawyers should abstain from conduct that diverts the fact-finder's attention from the relevant facts or causes a fact-finder to make a legally impermissible decision.
- ▶ A lawyer should address objections, requests, and observations to the judge
- ▶ A lawyer should attempt to resolve disagreements before requesting a court hearing or filing a motion to compel or for sanctions

Courtroom Encounters

- ▶ Jurisdictions are removing the word “zealous” advocacy
- ▶ Oath of Attorneys

Electronic Communications

- Best practices for email, video conferencing, and other digital communication tools
- Maintaining professionalism in virtual settings, including hearings and depositions
- The growing role of social media in legal practice and ethical considerations
- Ensuring clear, respectful, and effective communication in written and oral formats

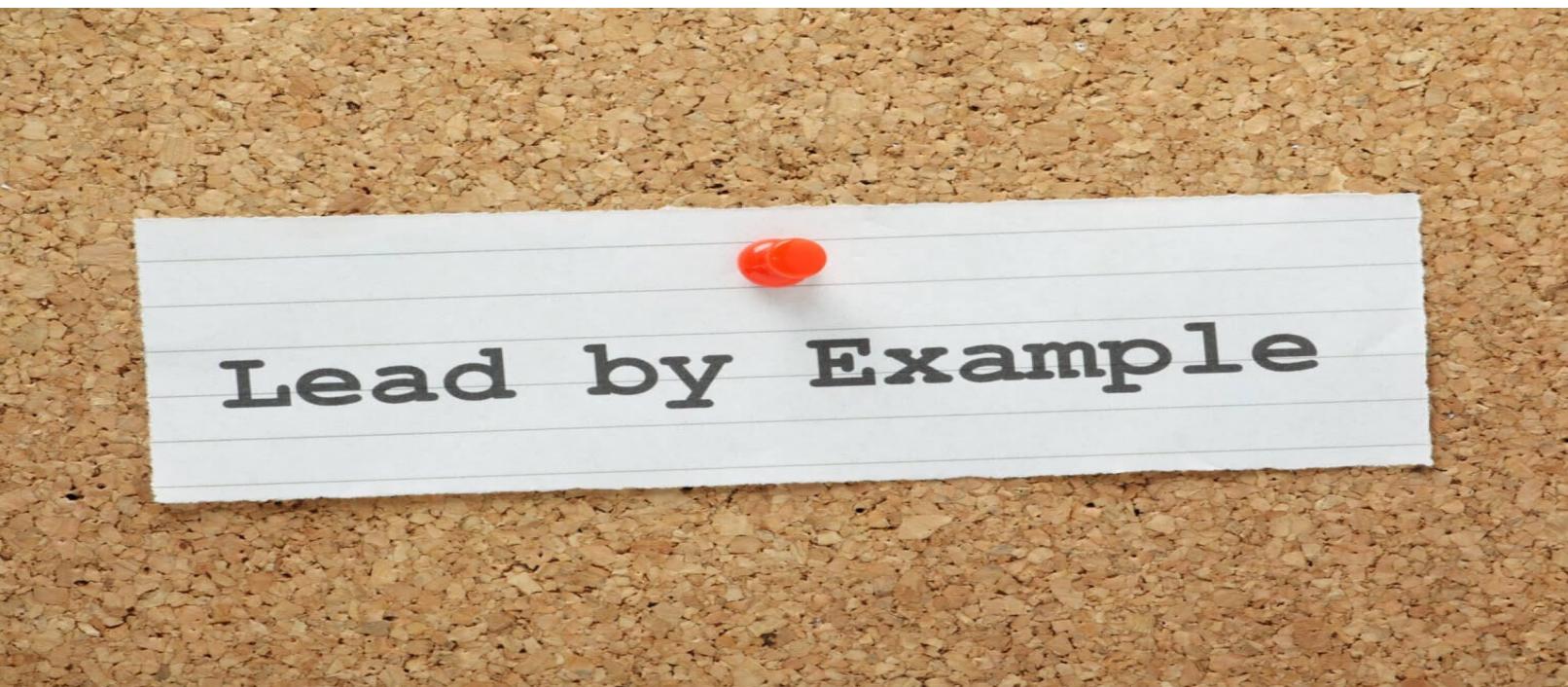
Attendance at Work Related Social Events



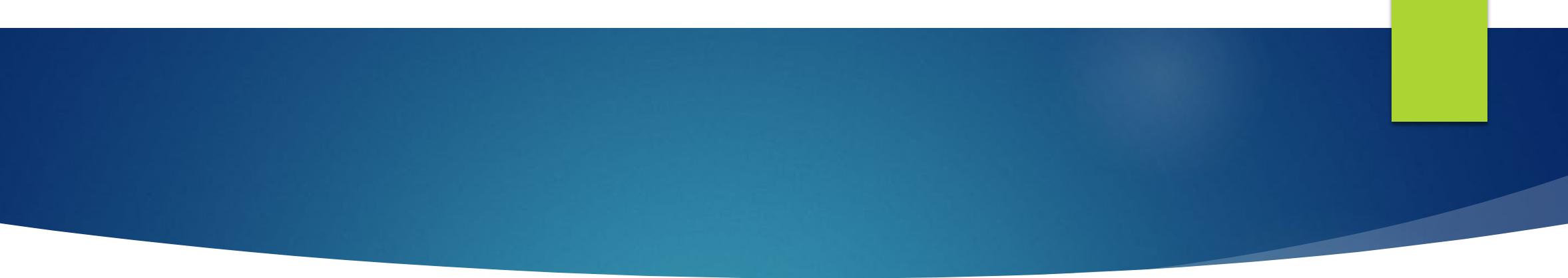
Bias and incivility have no “off-switch” for after hours

Other Work Advice/Decisions/Choices





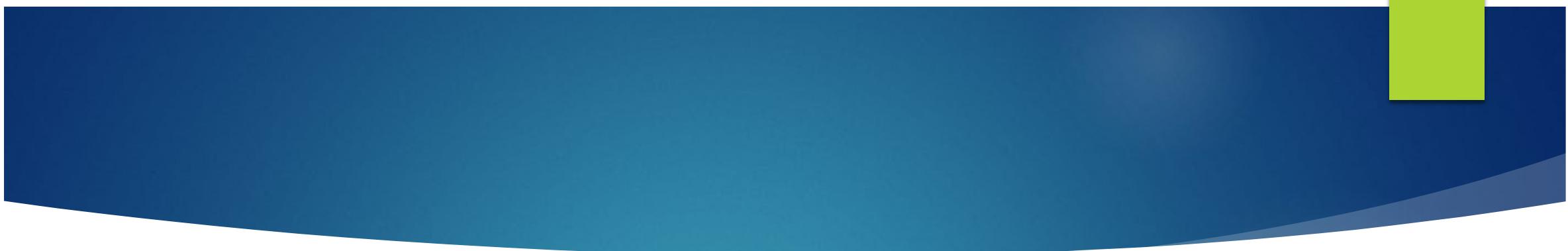
Lead by Example



Robert E. Abrams, Esq. represented a married couple to file a construction contract lawsuit against a former builder. Abrams developed a negative opinion of the judge presiding over the case. In an email to his clients, Abrams referred to the judge using derogatory slur that exhibited bias or prejudice based on sexual orientation. Clients reported him to disciplinary board.

Suspended 3 months

People v. Robert E. Abrams, 459 P.3d 1228 (Colo. O.P.D.J. 2020).



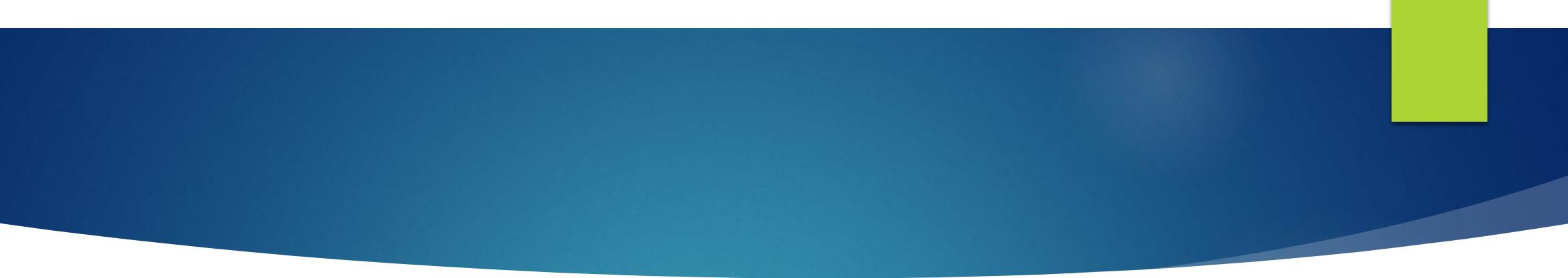
Lawyer, McCarthy, represented a title company, was involved in a dispute regarding a cloud on a title of property, the agent representing the seller of that property had his secretary send an e-mail to McCarthy to arrange a meeting of all involved.

McCarthy sent an e-mail response stating, ***"I know you must do your bosses [sic] bidding at his direction, but I am here to tell you that I am neither you [sic] or his n-----. You do not tell me what to do. You ask. If you ever act like that again, it will be the last time I give any thought to your existence and your boss will have to talk to me. Do we understand each other?"***

The Supreme Court order stated, "The hearing officer found that the word n---- is a derogatory racist insult, that Respondent's use of the term was not simply a historical reference to slavery but rather manifested racial bias, that he was acting as an attorney when he sent the email, and that his use of the term was not connected to legitimate advocacy," the order stated.

30 Day Suspension WITHOUT automatic reinstatement

In the Matter of Daniel C. McCarthy, No. 41S00-0910-DI-437 (Ind. 2011).



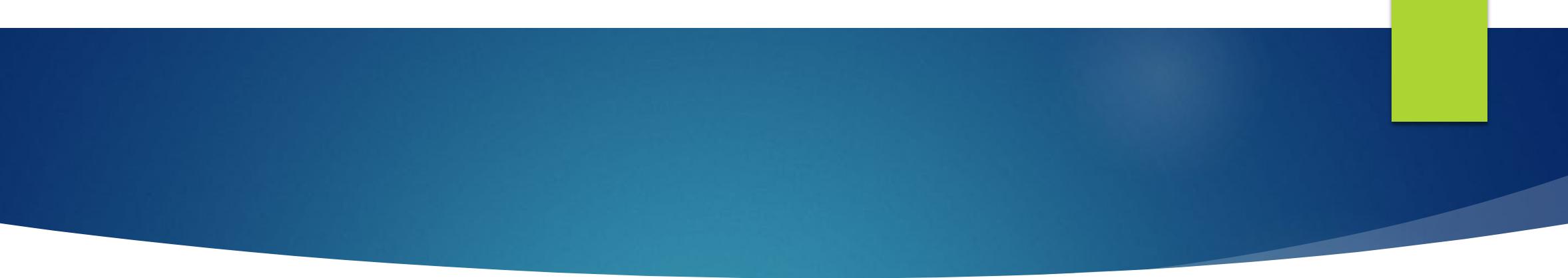
During a mediation, lead defense counsel for a large company “shook his butt” at plaintiff’s counsel while uttering profanity such as “do you want to F*** me?” and “You have a ponytail haircut, I figured you wanted to F*** me.”

The conduct was described as “lascivious gyrating of the lower fleshy extremities”. Plaintiff filed for sanctions (monetary), and defense counsel (unfortunately) responded to the court that he wanted to “put this unfortunate episode in the rearview mirror”.

Judge found no sanctions and said “he has suffered enough”

National Attention/Terminated from Case

Texas Rule 8.04(4) - prejudicial to the administration of justice



Plaintiff Lawyer stopped a deposition to duck her head under the conference room table. Why?

When opposing counsel asked what she was doing, she indicated that she was **“looking to see if there was anything between [his] legs.”**

Ms. Leonhardt later apologized for her conduct, and stated she lost her composure from being “chronically and persistently exposed to condescending behavior by [the opposing counsel].”

Could this be a violation of Rule 8.4(g) in Connecticut?

- ▶ Attorney made faces at opposing counsel, stuck out his tongue at her, and told her that she was a “stupid idiot” and should “go back to Puerto Rico”. *Florida Bar v. Martocci*, 2001 Fla. LEXIS 843 (public reprimand, 2 – year probation).
- ▶ “I don’t have to talk to you, little lady,” “Tell that little mouse over there to pipe down,” “Be quiet, little girl,” and “Go away, little girl.” – *Principe v. Assay Partners, HRO Int’l Ltd.*, 154 N.Y. Misc. 2d 702 (Sup. Ct. N.Y. County, 1992).
- ▶ “Just get your foul, odious body on the other side,” and “Don’t use your little sheeny, Hebrew tricks on me.” – *In re Williams*, 414 N.W.2d 394 (MN. 1987) (suspension from the practice of law).

Company Policies/Initiatives



- ▶ Awareness and acceptance
 - ▶ Develop self-awareness
 - ▶ Slow down – avoid “snap” decisions
 - ▶ Widen your circle for cultural competence
- ▶ Practice curiosity of people/cultures that are different than you
 - ▶ Remove bias from decision-making
 - ▶ Speak up if you notice bias in the workplace
 - ▶ Be accountable

QUESTIONS?



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