Rule 8.4(g) Anti-Discrimination

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How does unconscious bias relate to the legal profession?

Professionalism & Civility

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
- **<u>Misconceptions</u> - <u>it is not:</u>**
  - An agreement
  - The absence of criticism
  - Liking a person
  - Good manners

Civility Initiatives in the Legal Profession

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 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)

Can Incivility Equal Professional Discipline?

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

Rule 8.4(g) - Definitions

- **Discrimination**: Harmful verbal or physical conduct that manifests bias or prejudice towards others

- **Harassment**: Conduct that is aggressively invasive, pressuring, or intimidating, and includes sexual harassment and derogatory or demeaning verbal or physical conduct

- Requisite harm is assessed using a standard of objectionable reasonableness.

Rule 8.4(g) - Defining "Practice of Law"

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

Lack of Optimism

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

- - John Gleason, then-Chair of the ABA Center for Professional Responsibility

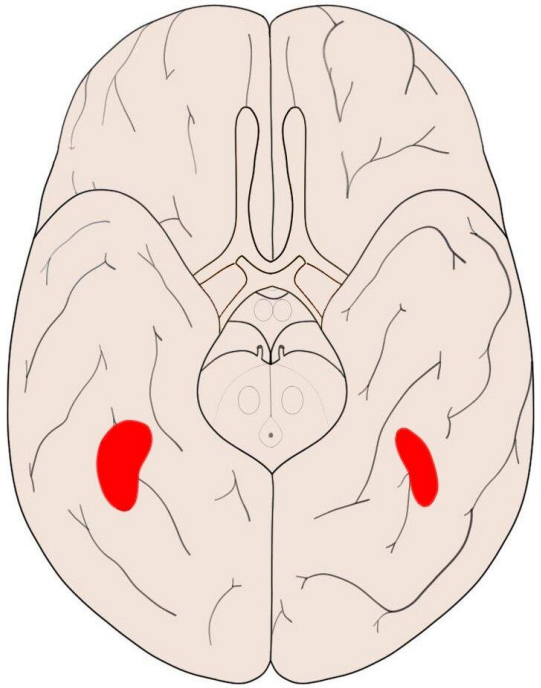
Do you have a bias?
Do you discriminate (even unconsciously?)



Results

- **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"**

The Brain

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



Dr. Jennifer Eberhardt

Stanford Professor of Psychology

Unconscious (Implicit) Bias

- Unconscious or unintentional stereotypes or processes that treat people differently

- Unintended people preferences that are formed during childhood and throughout our lives through socialization, personal experiences and representations that are put out on media (**a/k/a affinity bias**)
  - **For Example**: Constant exposure to women as primary school teachers or men as plumbers and organization leaders these associations become wired within the human brain

- Place people into social categories – often based on visual cues such as gender, race, cultural background, age, height, body size, social background, job title, religious identity, or political affiliation (not an all-inclusive list)

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



Potential “Business” Areas

Recruitment

Screening/Hiring

Work Allocation - Promotion

Discharge

Interactions with coworkers

Attendance at work related social events

Correspondence with employees and third parties

Company policies and practices

Other Work Advice/Decisions/Choices

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.


An industrial product distributor in Makati City needs the following personnel:
1. Documentation (DR, invoice) processor
Female, not above 29 years old, Single
Minimum 2 to 3 years work experience in processing DR, invoice
Accuracy in numbers is required
Must know Excel and Word operation
2. Accounting Assistant
Female, accounting graduate, 21 up to 28 years old, Single
Adept in Excel, other software
For both positions above, Email your resumé
recent photo at:
EXECUTIVE DRIVER
URGENTLY NEEDED!
Basic Qualifications:
Must be very familiar with Metro Manila streets
Can do car maintenance and troubleshooting
Physically fit, Non-smoker, No Body Tattoo
Willing to stay-in
Certificate from past employers

Customer Service - Fun young team

[redacted] - More jobs by this advertiser



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

Desktop Administrator

[redacted] ★★★★☆ 21 reviews - [redacted]

Industrial area)

Other

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 t[redacted]stitution that exists solely to benefit our member[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

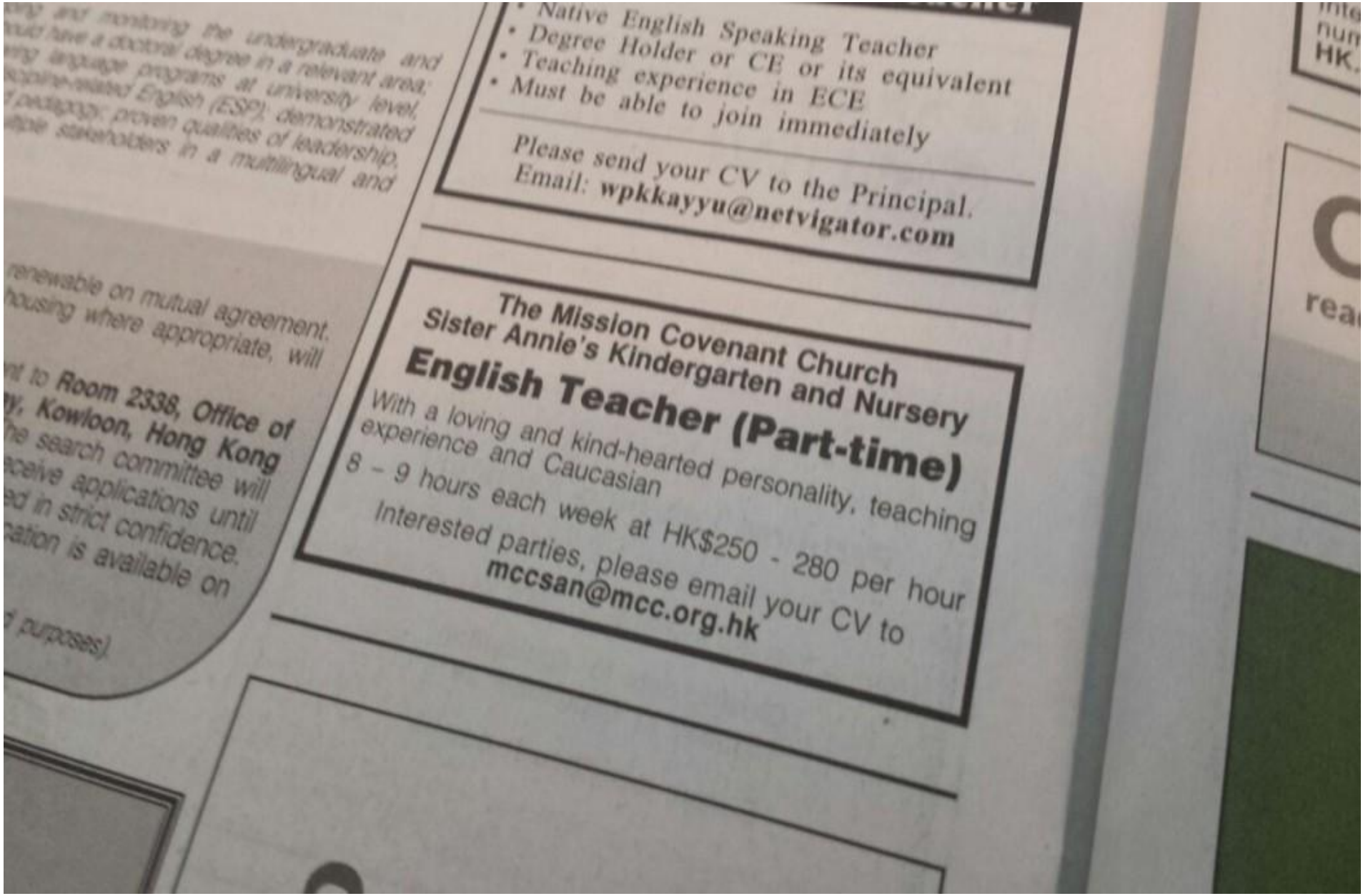
Job summary

We are currently looking for an experienced, enthusiastic and compassionate Director of Operations and we are particularlyinterested 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.


Advertised By: Private
Job Type: Contract
Positions available for experienced cleaners in supermarket cleaning for night and/or morning work. Must be able to work unsupervised, to a timelimit and have an eye for detail. Must have own transport + licence and abn (australian business number). Store requires no indians or asians please. MUST SPEAK ENGLISH.
Visits: 12
Like
Tweet
+1



- 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**

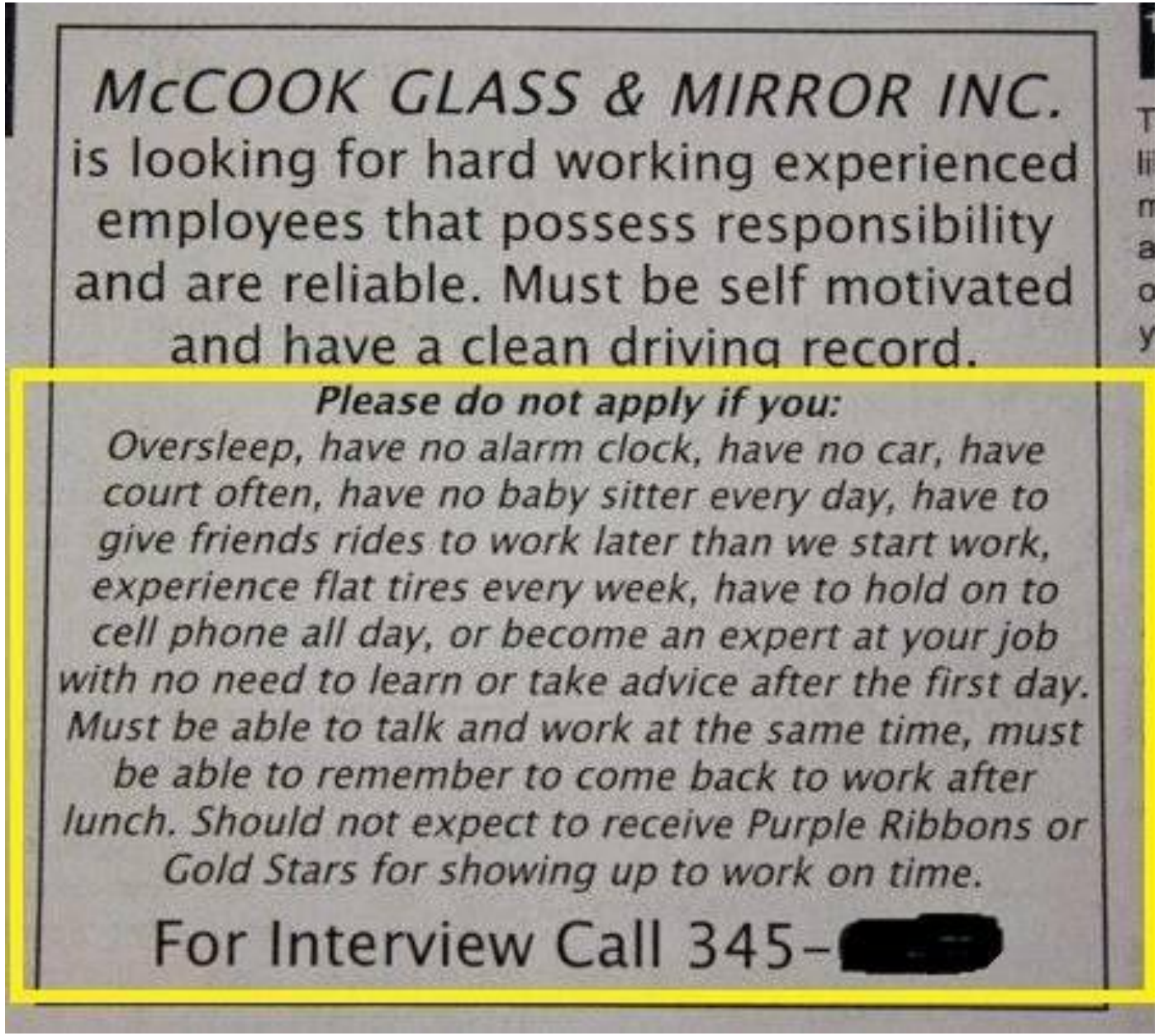
The Mission Covenant Church
Sister Annie's Kindergarten and Nursery

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:

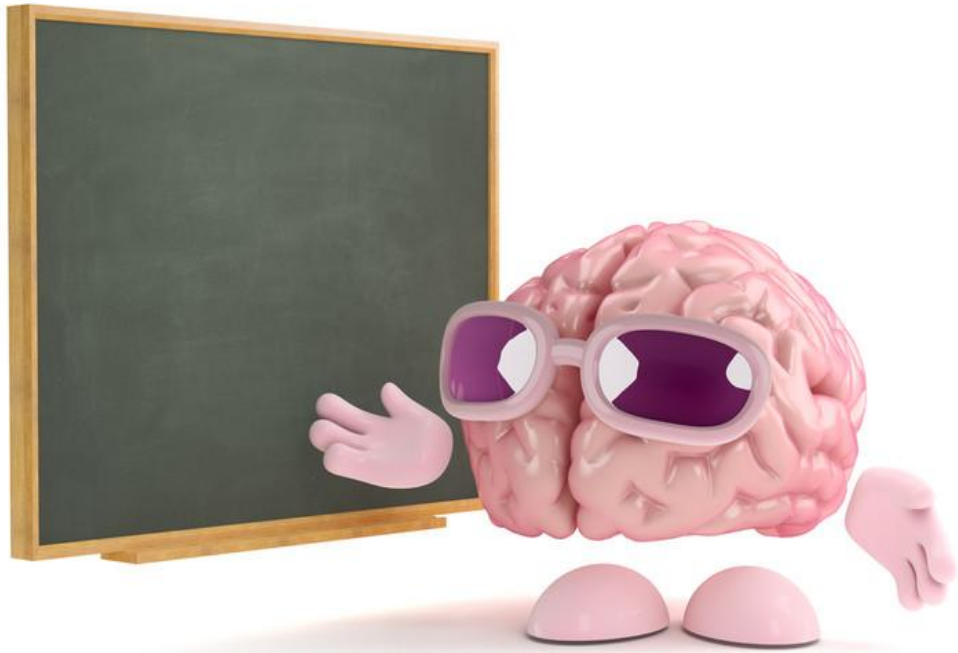
- CEO Fortune 500 Company
- Attorney
- Receptionist
- Custodian
- Scientist
- Teacher
- Stay at Home Parent
- Doctor
- Police Officer
- President of the United States
- Banker

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

Let's Go Back:

The Brain



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Screening/Hiring

- ***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.

- ***Interviewers with stereotypes (next slide example)*** - 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.

Unconscious Bias: 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

Unconscious Bias: 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 in the company too, e.g., promotions?

Work Allocation - Promotion

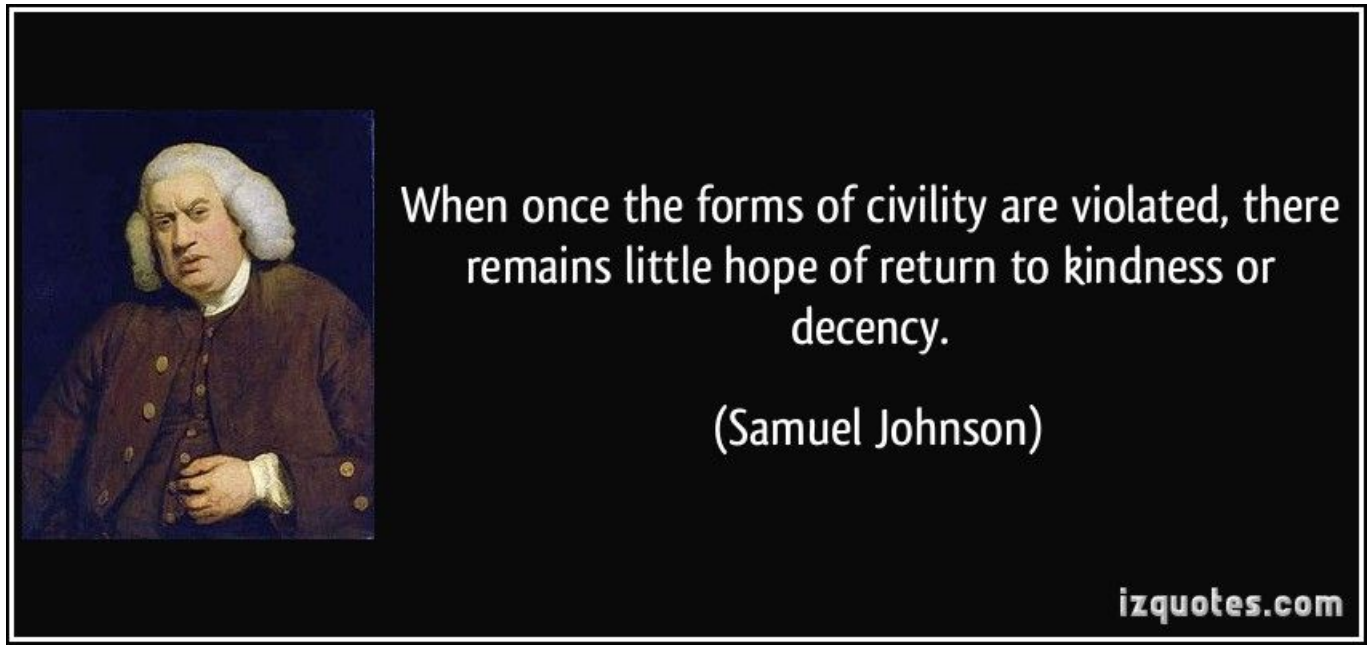
- Partners/Supervisors are more likely to assign key client projects to members of their team who they have an affinity (see next slide)
- If promotions rely on substantive recommendations of Partners/Supervisors, then Partners/Supervisors are more likely to give higher recommendations to those in which 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

Civility in Communications with Difficult Clients



Unreasonable Client Demands

- Incumbent on lawyers to explain benefits of civility (which often include a lower legal bill)
- Knowing when to say enough is enough

Dealing with Uncivil Opposing Counsel

Knowing What You Are Up Against:

Helpful Hints of How to Deal with Uncivil Attorneys

- 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

Knowing What You Are Up Against:

Helpful Hints of How to Deal with Uncivil Attorneys

- Outsmart – Stay ahead
- Prepare – Prepare – Prepare
- All communications be placed in writing
- Kill them with kindness – respect your opposing counsel
- Play the waiting game
- Know and Follow the Rules
- Check your own attitude routinely
- Stand up to bullying in professional manner – do not stoop to the level of a bully

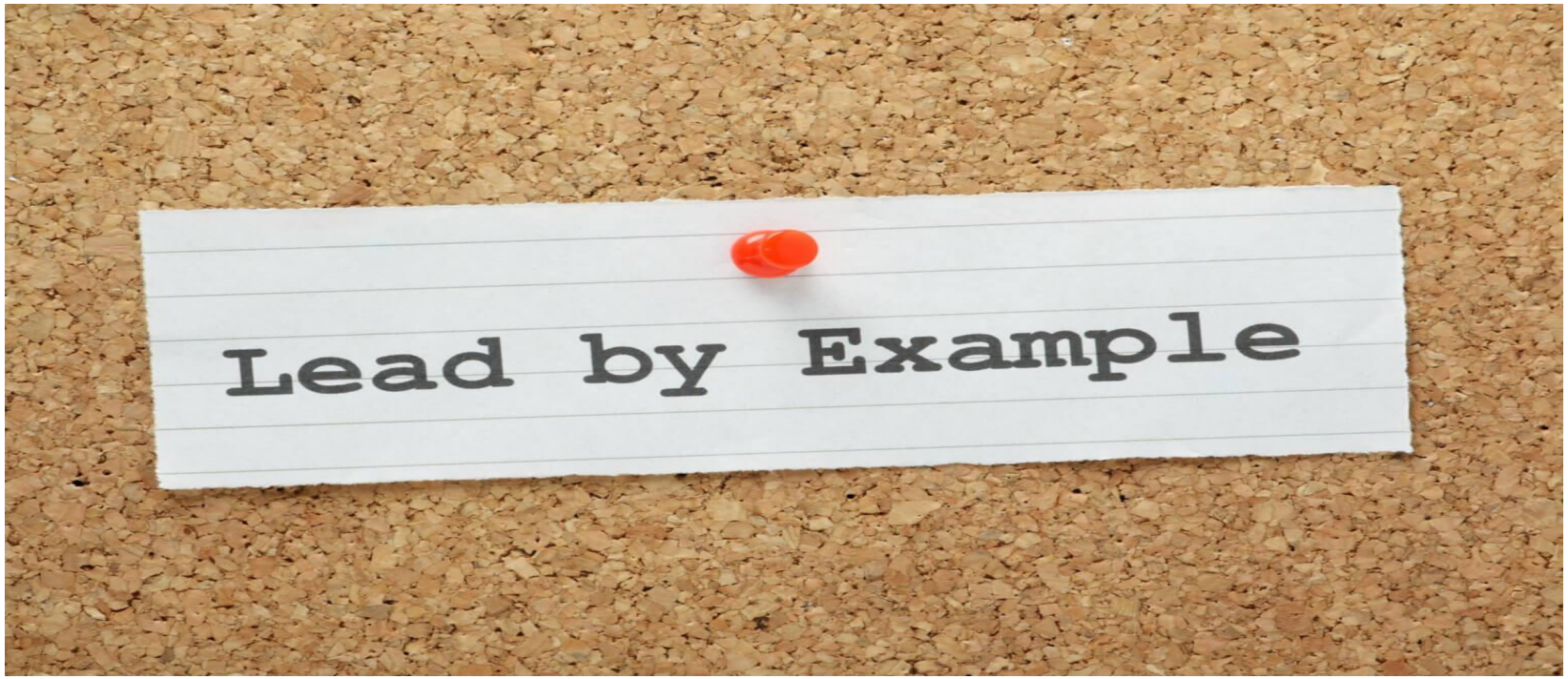
Proving Incivility - TIPS

- **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.

Interactions Coworkers, Opposing Counsel, Third Parties, Correspondence, Etc. . .



Sexual Discrimination
Hostile Work Environment

Glenn Robinson, Esq. engaged in sexual behavior with current and former clients. One of the clients included a paperclip incident and masturbation – creating a hostile work environment tantamount to sexual harassment. Also quid pro quo sexual harassment conditioned on offer of employment to a client upon submitting to unwanted sexual advances.

Suspended 2 years

***In re Glenn Robinson*, 2019 Vt. 8 (Feb. 22, 2019).**

Bias or Prejudice on Sexual Orientation

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).**

Robo-Calls / Telemarketers

Stacy L. Kelley, Esq. claimed to be her husband's attorney when she called a telemarketer who had been trying to reach someone else with her husband's name. While on the phone with the telemarketer, she asked the representative if he was "gay" or "sweet" because she thought the male representative had a feminine-sounding voice.

Public Reprimand

***In the Matter of Stacy L. Kelley*, No. 49S00-0910-DI-438 (Ind. 2010).**

Tone/Civility is Important

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).**

Twerking Lawyer

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

Learn to Bite Your Tongue

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?

Racial Comments

Dorothy J. Thomsen, Esq. represented a husband in a divorce proceeding in 2003. The wife had a friend that was African-American. During the bench trial, Ms. Thomsen referred to the friend as "the black guy" and "the black man". The man's race was irrelevant to the case.

Public Reprimand

In *the Matter of Dorothy J. Thomsen*, No. 49S00-0502-DI-36 (Ind. 2005).

Citizenship / Immigration

Vincent M. Campiti, Esq. represented a father at a child support hearing. Mr. Campiti repeated disparaging references to the facts that the mother was not a U.S. citizen and was receiving legal services at no charge. These facts were irrelevant to the issues being considered at the hearing.

Public Reprimand

***In the Matter of Vincent M. Campiti*, No. 71S00-0807-DI-400 (Ind. 2009)**

Various Conduct

- 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



Policies/Initiatives

- Eliminate in recruitment process
  - Expand reach of recruiting process
  - Monitoring coded language in job descriptions
  - Blind resume review
- Eliminate in screening process
  - Agree on subjective and objective candidate criteria
  - Offering multiple types of interviews and interview training
- Eliminating bias through employee resource groups

Policies/Initiatives

- Eliminate bias through training and workshops
  - Providing creative outlets to address and discuss bias
  - Emphasize the importance of bias education from start to finish
  - Training in civility, tone of emails, sexual harassment, etc. . .
- Eliminating bias by celebrating diversity and listening to concerns
- Eliminating bias through pay equity

Generally:
Combatting Unconscious Bias

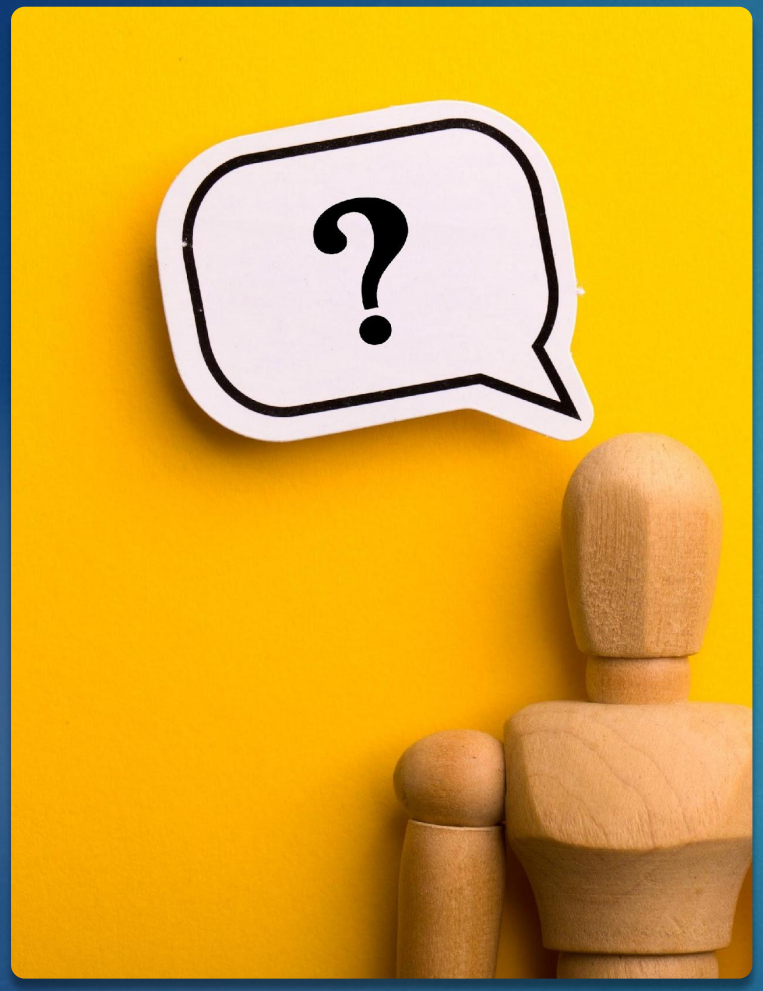
- Awareness and acceptance
- Develop self-awareness
- Slow down – avoid "snap" decisions
- Widen your circle for cultural competence
- Practice curiosity of people/cultures that are different than you
- Remove bias from decision-making
- Speak up if you notice bias in the workplace
- Be accountable

Combatting Unconscious Bias

We can only combat unconscious bias if we are honest about it.

Social Unrest

Do you think social unrest and/or social events affect how companies respond to and/or pay attention to unconscious bias?



QUESTIONS?