

**Tackling the Silent Threat to Inclusion:
Ethical Considerations Relating to Unconscious Bias in the Legal Profession¹
November 16, 2016 - 1 hr. CLE, including .5 hr. ethics - MCLE Course Number: 901364545**

ABA Model Rule 8.4(g):

It is professional misconduct for a lawyer to:

(g) 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.

What are implicit and explicit stereotypes?

Stereotypes are the belief that most members of a group have some characteristic. Some examples of stereotypes are the belief that women are nurturing or the belief that police officers like donuts. An explicit stereotype is the kind that you deliberately think about and report. An implicit stereotype is one that occurs outside of conscious awareness and control. Even if you say that men and women are equally good at math, it is possible that you associate math with men without knowing it. In this case we would say that you have an implicit math-men stereotype.²

Implicit Bias/Bias Internet Resources:

- IAT (Implicit Association Test)
 - <https://implicit.harvard.edu/implicit/education.html>
- Information from Jerry Kang regarding how the IAT test meets rigorous standards for statistical validity.
 - <http://jerrykang.net/2015/04/12/edwards-lecture-video-online>
- Iowa Federal Judge Mark Bennett's article on implicit bias relating to criminal trials, race and *Batson*.
 - http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2011/eeo/057.authcheckdam.pdf
- The ABA 2014 Implicit Bias Initiative information, including a twenty-minute video.
 - ["The Neuroscience of Implicit Bias"](#)
- UCLA Law Review 2012- Implicit Bias in the Courtroom.
 - <http://faculty.washington.edu/agg/pdf/Kang&al.ImplicitBias.UCLALawRev.2012.pdf>
- Video from California for training court personnel to mitigate bias:
 - <http://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/implicit-bias-videos.html>
- Jane Elliott and her How Racist Are You? "training." Jane was and is a visionary and started her "training" the day after Martin Luther King Jr. was shot.
 - <https://www.youtube.com/watch?v=Nqv9k3jbtYU>

¹ The information in this handout has been compiled by the HBA's Gender Fairness Committee and not the Panelists or the Moderator to provide the audience with additional information and resources regarding implicit bias.

² Project Implicit, "Frequently Asked Questions," (accessed October 19, 2016) <https://implicit.harvard.edu/implicit/faqs.html#faq1>