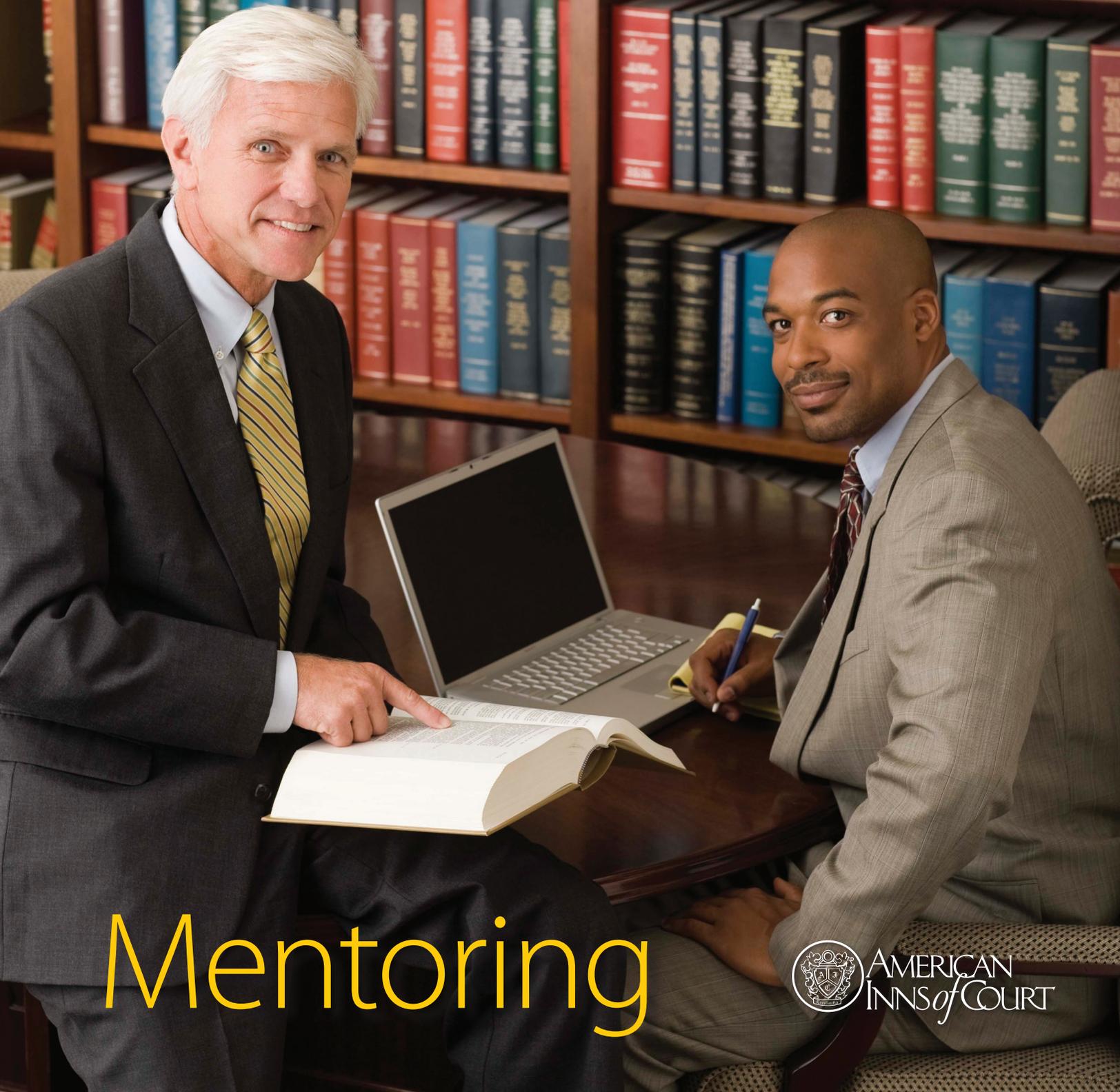


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# Mentoring



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## Is Mentoring on Legal Ethics Pointless If the Mentee Is Over Age Five?

**S**igmund Freud believed personality is formed by about age five and that the “Superego” (the moral part of us) forms at that time. Robert Fulghum believes all you really need to know you learned in kindergarten.

So, is mentoring on legal ethics pointless if the mentee is over age five? I don’t believe so, for three reasons.

First, we are not done becoming who we are or can be by age five. Although early years are terribly important, personality is not necessarily fixed by age five, as modern research has shown. See, e.g., C. Seligman & E. Rider, *Life-Span Human Development*, p. 319 (Wadsworth Publishing 2008).

Second, legal ethics rules are complicated and are not always derived from first principles. The lawyer is a complicated moral actor both because of his or her unique role as a zealous advocate for the client (see, e.g., American Bar Association Model Rule of Professional Conduct Preamble [2] and Rule 1.3, Comment [1]), and because, while a lawyer as counselor may choose to give moral as well as legal advice, the lawyer must respect the autonomy of the client and the client makes the ultimate decisions about the objectives of the representation within legal limits (see, e.g., ABA MRPC 1.2, 2.1, and my column in the Nov/Dec. 2003 *The Bench*). Moreover, while many principles of legal ethics are based directly on morality, others are based on professionalism and practical experience. For examples, the requirement of candor toward a tribunal (see, e.g., ABA MRPC 3.3) lines up fairly directly with basic moral notions, but the limitations on commingling a lawyer’s and a client’s funds (see, e.g., ABA MRPC 1.15) reflect practical experience and are designed to avert financial mistakes and the placing of temptation in our paths.

Finally, good values alone are not a substitute for knowledge or experience, and a lawyer may learn not only from their own life, but also from the advice and the example set by a good mentor. Sometimes a moral compass is not enough, and it even may lead to snap judgments that are wrong. During a baseball game, a fan was booed for keeping a foul ball he caught rather than handing it to a child of another family sitting nearby. After the game, a player was asked to comment, with the reporter expecting criticism of the fan. The player said the booing was wrong, because the crowd did not know the fan’s circumstances, and the fan might have wanted to bring the ball home to his own child who could not attend the game.

I often say there are three kinds of mentors for lawyers: those who help you do your job better, those who help you advance your career, and those who set good examples and help you learn how to become a positive force in the profession and the community. Finding a single mentor who can serve all three of those roles is rare. Still, a mentor who is knowledgeable about legal ethics may help the mentee do their job better (for example, helping a new litigator understand the limits of which personnel of an entity may be contacted under the “represented person” rule (see, e.g., AB MRPC 4.2)), which, one hopes, would help their career. Moreover, a legal ethics mentor may help the mentee not only to “do the right thing,” but also to avoid “traps for the unwary” that may ensnare those who rely only on their moral compass or who do not have the knowledge and experience to recognize the ethical risks and requirements of a particular situation. ♦

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