

THE TEN COMMANDMENTS OF MENTAL CAPACITY AND THE LAW

By Charles P. Sabatino
ABA Commission on Law and Aging

- I. Thou shalt presume capacity.
- II. Thou shalt talk to the client alone.
- III. Thou shalt take steps to maximize capacity.
- IV. Thou shalt not worship any one standard for capacity.
- V. Thou shalt not covet the mini-mental status exam.
- VI. Thou shall not end any query with only the word "capacity."
Yea, the proper query shall be, "Capacity to Do What?"
- VII. Thou shalt seek the big picture, with all its variability,
intermittency, and nuance.
- VIII. Thou shalt honor thy client's own considered or habitual
standards of behavior and values, not standards and values held
by you or others.
- IX. Thou shalt honor thy client's confidentiality and autonomy
even in the face of incapacity.
- X. Thou shalt plan ahead for incapacity to ensure that one's wishes
are respected.