The Ten Commandments of Mental Capacity and the Law

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 shalt 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.