

# Kluwer Mediation Blog

## Time for a Mediator's Hippocratic Oath?

Michael Leathes (Corporate counsel & author) · Tuesday, August 19th, 2014

It is one of the defining characteristics of professions whose stakeholders invest great trust in their practitioners. Doctors make the Hippocratic Oath. Accountants, lawyers, police officers, elected officials, social workers, veterinarians and others in a position of trust also make various forms of oaths. Almost always there is a code of professional conduct and disciplinary process to back up the oath.

Yet mediators do not make an oath, even though mediators are invariably taken into parties' trust. Many mediators do not visibly subscribe to a specific code of ethics that is governed by any kind of disciplinary process.

Should mediators make a Hippocratic-style oath? To mobilize debate on this core question, it is useful to envisage what a Mediator's Oath might say. Here is one suggestion:

I promise to uphold the highest standards of professionalism, to possess and maintain the competence in knowledge and skill I profess to have as a mediator, and to abide by the following fundamental principles:

1. I will advise parties, before the mediation begins, which code of professional ethics will govern my conduct as their mediator, state what process will apply in the event of complaint, and provide links to both.
2. I will not accept an appointment as mediator without first disclosing anything within my knowledge that may be, or may be seen to be, a conflict of interest or in any other way materially affect my independence, neutrality or impartiality. I will maintain this duty to disclose as a continuing obligation throughout the mediation process. If at any time I feel unable to conduct the mediation in an independent, neutral and impartial way, I will express that concern to the parties and will offer to withdraw from the mediation.
3. I will keep confidential all information acquired by me in the course of a mediation except in the limited circumstances permitted under my code of professional ethics. I will maintain this duty of confidentiality as a continuing obligation throughout the mediation process and after my appointment as mediator ends.

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Arguments are expressed both for and against such a Mediator's Hippocratic Oath.

Opponents often maintain they are already qualified in a related profession, that mediation is merely an extension of their related professional practice, that their conduct as a mediator is covered by their existing ethics code and that a new oath for mediators is naïve and meaningless. They say that they don't hear any concern from parties about ethics, so most do not even feature their ethical code on their websites. They add that subscribing to a code of ethics, or even being a member of an ADR institution, is not a universal legal requirement for practicing as a mediator, so an oath does not make much sense. It may sound noble and be symbolic, but is neither relevant nor meaningful. This is a non-issue, so why kick a sleeping dog that may only serve to invite malpractice claims against mediators?

Proponents consider that mediation needs to be seen by potential users as an independent professional practice, and that necessarily includes high visibility of ethical, as well as practice, standards. They point out that trust and recognition are major issues in today's world, particularly following banking and business scandals, and that other fields are actively thinking about this question – mentioning the [MBA Oath](#) already signed by over 6,000 MBA graduates and supported by most business schools worldwide. In a [2013 survey of litigation counsel working in-house in over 75 companies](#), over three quarters of respondents agreed that mediators and arbitrators should belong to an ADR professional institution that has a rigorous and public code of ethics that is backed up by a disciplinary process.

Is it time for a Mediator's Hippocratic Oath? If so, what should the Oath say?

All contributions to this debate will form the basis of a follow-up article reflecting the opinions and ideas received. Please send your suggestions and comments to us at [Michael.Leathes@IMImediation.org](mailto:Michael.Leathes@IMImediation.org).

**Michael Leathes and Deborah Masucci**

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