Unpacking Law and Ethics Around Non-Disclosure Agreements in Sexual Abuse and Sexual Harassment Cases

I. PROGRAM OVERVIEW

Are nondisclosure agreements legal or illegal, and are they otherwise good or bad? A growing trend is to prohibit non-disclosure agreements within the nonprofit ministry context of child sexual abuse and sexual harassment, based on the perceived resulting harm to victims. A panel discussion among leading attorneys will share recent legal updates including "Trey's Laws" enacted in Texas and Missouri, to ban NDAs in child sex abuse cases. Additionally, the panelists will dialogue together about historical usage of NDAs, how NDAs can affect investigations and related measures, resulting impact on victims, how NDAs can also affect cases' settlement of cases. The Panel will also cover current best practices and the accompanying ethical and moral implications of NDAs. What are the pros and cons? Myriad and complex, and thus worthy of robust discourse!

II. BACKGROUND: THE NDA — ORIGINS, USES, AND MISUSES

A. What Is an NDA?

- A nondisclosure agreement (also called a confidentiality agreement) is a legally binding contract in which one or more parties agree to keep specified information confidential.
- Original and legitimate commercial uses: protection of trade secrets, proprietary business information, personnel matters, pre-litigation settlement terms (financial amounts), and sensitive corporate negotiations.
- The NDA as litigation tool: routinely included in civil settlement agreements to bind both parties to silence regarding the underlying facts of a dispute.

B. NDAs in Abuse-Related Civil Settlements: Historical Pattern

- Pre-2002 Catholic Church practice: dioceses regularly required victims or their families to sign NDAs in exchange for financial settlements, with bishops sometimes reassigning the accused priest who then abused again. Victims were legally barred from warning others.
- The Catholic Church's 2002 policy reversal: Following the Boston Globe's 'Spotlight' reporting, U.S. Catholic bishops adopted the Dallas Charter, which prohibited the use of NDAs in financial settlements unless the victim specifically requested confidentiality—while still requiring disclosure of the accused priest's identity.

- Protestant and evangelical sectors: NDAs continued as standard practice. Christianity Today reported their use by prominent organizations including Willow Creek Community Church, Mars Hill Church, Dave Ramsey Ministries, Cru, and Acts 29.
- The Ravi Zacharias (RZIM) NDA: A 2017 settlement with an abuse victim included an NDA that prohibited her from warning others. After Zacharias's death in 2020, his estate initially refused to release her from the NDA, preventing her participation in the subsequent investigation into widespread abuse.

III. THE KANAKUK CAMPS SCANDAL: A CASE STUDY IN NDAs AND INSTITUTIONAL ACCOUNTABILITY

A. Overview of Kanakuk Kamps

- Kanakuk Kamps is one of the largest Christian sports summer camps in the United States, founded in 1926 in Branson, Missouri, serving tens of thousands of campers annually from affluent evangelical families.

B. The Pete Newman Abuse and Conviction

- Peter Newman served as a long-time counselor and eventually Director of K-Kountry, Kanakuk's program for children ages 6–11.
- As early as 1999, the camp received complaints from parents about Newman's inappropriate contact with children, including documented nude activity with young boys. Newman's supervisor recommended his termination in 2003; instead, he was promoted.
- In 2010, Newman pleaded guilty to multiple counts of statutory sodomy and child enticement. He was sentenced to two consecutive life terms plus 30 years in Missouri state prison. A subsequent civil lawsuit determined he abused at least 57 underage victims.
- In April 2025, a 26-year-old woman (Jane Doe) became the first female victim to file a public civil lawsuit against Kanakuk, alleging abuse by Newman when she was 9 years old. Her suit was possible only because Missouri law provides a five-year window after repressed memories are recovered.

C. NDAs at Kanakuk: A Contested Institutional Record

- Kanakuk's public position: The camp has stated it has never used NDAs to prevent victims from reporting abuse to law enforcement.
- Victims' and advocates' accounts: Elizabeth Carlock Phillips—whose brother Trey Carlock was abused by Newman—testified before Texas legislative committees that Kanakuk initially denied using NDAs, then claimed they were used only at victim request, and finally admitted using them at the insistence of their insurer.
- Logan Yandell, abused by Newman as a child, settled with the camp in 2010 and signed an NDA. His subsequent lawsuit (filed 2022) alleged that camp leadership had

concealed material facts about Newman's conduct, and that this concealment influenced his family's decision to settle and sign.
- The website factsaboutkanakuk.com has compiled information from 221 alleged victims of 68 different alleged perpetrators at Kanakuk-affiliated ministries dating back to 1958.

D. Trey Carlock: The Human Cost

- Trey Carlock (September 30, 1990 – 2019) was abused by Pete Newman from approximately ages 7 to 17.
- As an adult, Trey pursued civil litigation against Kanakuk and its affiliated defendants. He reached a financial settlement but was required to sign an NDA. He described it to his therapist as 'blood money' and told his therapist he felt 'controlled' and would 'never be free' from the abuse.
- Trey died by suicide in 2019 at age 28, shortly after the conclusion of his civil litigation.

E. Institutional Accountability: Ongoing Developments

- Kanakuk CEO and founder Joe White retired on May 12, 2026, amid continued criticism from survivors that his departure omitted acknowledgment of his role in the abuse scandal.
- Kansas legislation to ban NDAs in child abuse cases died in committee in 2026; advocates pledged to re-introduce it.

F. Discussion Questions for Panel

- What does the Kanakuk case reveal about the intersection of NDAs, institutional liability, insurance company directives, and child safety?
- How should attorneys advise nonprofit clients whose insurer demands NDA provisions in settlements?
- When, if ever, is an NDA in a CSA settlement ethically defensible?

IV. THE LEGAL LANDSCAPE: NDA RESTRICTIONS BY STATE

A. Overview of the Legislative Trend

What began as isolated state legislation has become a bipartisan national movement. Courts have also independently struck down some NDAs designed to hide misconduct. The common thread: NDAs remain lawful as contracts in most commercial contexts, but an emerging consensus holds that they are contrary to public policy when used to suppress facts relating to child sexual abuse.

B. States That Have Enacted Restrictions

1. California

- California enacted a law in 2016 banning NDAs in civil settlements for felony sex offenses, child sexual abuse, and sexual assault against vulnerable adults (including the elderly and persons with disabilities).
- Senate Bill 331 (2021)—the 'Silenced No More Act'—expanded NDA restrictions in workplace sexual harassment and discrimination cases under the California Fair Employment and Housing Act (FEHA), though it includes limited exceptions for negotiated settlements filed through formal channels.
- California's 'Cover-Up Accountability Act' (proposed/enacted 2025) prohibits companies from hiding sexual misconduct through NDAs and expands civil rights remedies under FEHA.

2. Tennessee

- Tennessee enacted a law in 2018 voiding NDAs in child sexual assault civil claims—one of the earliest state restrictions specifically targeting CSA settlement agreements.

3. Missouri — Trey's Law (HB 737 / SB 81, 2025)

- Missouri's version of Trey's Law (House Bill 737 and Senate Bill 81) was championed by State Representative Brian Seitz and Senator Brad Hudson and signed by Governor Mike Kehoe on June 10, 2025.
- Scope: Renders unenforceable any NDA signed after August 28, 2025, in cases of child sexual abuse. The Missouri version is limited to child sexual abuse (not adult abuse generally, unlike Texas).
- Effective date: August 28, 2025.

4. Texas — Trey's Law (SB 835, 2025)

- Senate Bill 835, championed in the Texas House by Reps. Jeff Leach (R-Plano) and Morgan Meyer (R-Dallas), and in the State Senate by Sen. Angela Paxton (R-McKinney), passed unanimously—144-0 in the House and 31-0 in the Senate.
- Governor Greg Abbott signed the bill on June 21, 2025. Effective date: September 1, 2025.
- Scope: Broader than Missouri's version—prohibits NDAs in civil cases involving sexual abuse (including adult victims), child sexual abuse, and human trafficking. Applies retroactively, voiding existing NDAs and allowing previously silenced survivors to speak publicly without legal consequence.
- Key provision: Financial settlement amounts may still remain confidential; only the underlying facts of abuse and the perpetrator's identity may not be suppressed.

5. Alabama

- Alabama lawmakers unanimously passed identical versions of Trey's Law in the state House and Senate in early 2026, with the bill heading to the governor's desk. Unlike Texas and Oklahoma versions, Alabama's bill applies only prospectively—not retroactively.

- A vocal opponent, state Sen. Albritton, argued that NDAs allow organizations to implement reforms and continue doing good in communities—a position that illustrates the ongoing legislative debate.

6. New Jersey, New York, and Pennsylvania

- These states have placed various restrictions on the use of NDAs in sexual abuse and sexual harassment contexts, though the specifics and scope differ from the Trey's Law model.

C. States with Pending Legislation (as of May 2026)

- Oklahoma — Bill introduced in early 2026 to void past and future NDAs in child sexual abuse civil cases; would apply retroactively.
- Georgia — Republican Gov. Brian Kemp announced support for Trey's Law-style legislation in his final State of the State address (January 2026).
- Kansas — Legislation died in committee in 2026 after introduction by four Republican sponsors; advocates plan to reintroduce.
- Additional states: Per the Trey's Law advocacy organization's interactive tracking map, legislation is currently pending in at least five states.

D. Federal Legislation: The TREY'S Law Bill (2026)

- U.S. Senator Ted Cruz (R-TX) introduced the federal Terminating Restrictive Enforcement of Youth Settlements Act — formally acronymed 'TREY'S Law' — in the Senate on March 3, 2026.
- Bipartisan sponsorship: Led by Cruz and Sen. Kirsten Gillibrand (D-NY), with Sens. Katie Britt (R-AL) and Eric Schmitt (R-MO) as co-sponsors.
- Effect: Would render unenforceable any NDA provision that prohibits or restricts disclosure of child sexual abuse or related facts—regardless of when the NDA was signed, whether before a dispute arose or as part of a civil settlement.
- Status: The Senate Judiciary Committee was expected to take up the bill as of early May 2026.

E. Federal Antecedent: The Speak Out Act (2022)

- The federal Speak Out Act (2022) targets preemptive NDAs in workplaces—nullifying nondisclosure clauses signed before a dispute arises in cases involving sexual assault or sexual harassment.
- Critical limitation: The Act does not apply to NDAs signed after allegations are made (i.e., post-dispute settlement NDAs). This is the gap that Trey's Law—at the state and now federal level—is designed to close.

F. Discussion Questions for Panel

- Does retroactive voiding of NDAs raise constitutional concerns (contracts clause, due process)? How have courts addressed these arguments?

- When a state bans NDAs in CSA cases, what enforcement mechanisms exist for existing NDAs that are now void?
- How should attorneys handling multi-state matters analyze which state's law governs NDA enforceability?

V. THE CATHOLIC CHURCH: AN INSTITUTIONAL POLICY SHIFT AS PRECEDENT

A. Pre-2002: NDAs as Standard Practice

- For decades, Catholic dioceses routinely required victims or their families to sign NDAs in exchange for financial settlement of clergy abuse claims. Confidentiality agreements allowed the Church to protect its institutional reputation and often enabled bishops to reassign accused priests, who then abused additional victims.
- By 2002, U.S. Catholic dioceses had paid over $1 billion in abuse settlements, many with confidentiality provisions attached. That figure has since grown to more than $5 billion, with the Archdiocese of Los Angeles alone having paid more than $1.5 billion across two major settlements.

B. The 2002 Dallas Charter: A Policy Reversal

- Following the Boston Globe's Spotlight investigation and the ensuing national outcry, the United States Conference of Catholic Bishops adopted the Charter for the Protection of Children and Young People ('Dallas Charter') in 2002.
- Key NDA provision: The policy prohibited dioceses from requiring victims to sign confidentiality or nondisclosure agreements as a condition of financial settlement—unless the victim specifically requested confidentiality. Critically, the policy still required disclosure of the name and assignment history of the credibly accused priest.
- Practical impact: Pre-2002 claimants remained uncertain whether their prior NDAs were still enforceable, since the policy change applied prospectively.

C. Texas Catholic Conference of Bishops: Supporting Trey's Law

- In testimony before a Texas Senate committee during Trey's Law deliberations (April 2025), Jennifer Almond, speaking on behalf of the Texas Catholic Conference of Bishops, voiced the Church's support for the bill.
- She clarified that the Church's current practice is to enter into a confidentiality agreement only at the request of a survivor who does not wish their own identity disclosed—but that the Church will still disclose the name of the credibly accused priest. This position aligns with Trey's Law's framework preserving victim-initiated confidentiality while prohibiting institutional-imposed silence about abuse facts.

D. Discussion Questions for Panel

- What lessons can Protestant and evangelical nonprofit organizations draw from the Catholic Church's 2002 reversal?

- Is victim-initiated confidentiality a meaningful exception, or does it become coercive in the context of vulnerable abuse survivors?
- What options do you present to clients when settling abuse accusations?

VI. ETHICAL AND MORAL DIMENSIONS: SHOULD CHRISTIAN ORGANIZATIONS USE NDAs?

A. The #NDAfree Movement

- The #NDAfree movement invites Christian organizations and churches to publicly pledge to be free from the use of NDAs in abuse-related matters. Proponents argue that NDAs are incompatible with the Church's calling to truth, transparency, and justice.
- The movement distinguishes between legitimate NDA uses (vendor agreements, intellectual property, proprietary financial information, genuine business confidentiality) and the weaponization of NDAs to silence abuse victims.

B. Theological Arguments Against NDA Use in Abuse Cases

- Dr. Diane Langberg, psychologist and trauma specialist, argues that NDAs in abuse contexts are fundamentally incompatible with Christian truth-telling values: an NDA 'basically says, shut up,' and using it to conceal wrongdoing done in God's name suggests that speaking the truth would 'hurt God,' which she finds theologically untenable.
- Langberg frames the issue in terms of Jeremiah 22:3 ('Administer justice and righteousness. Rescue the victim from the hand of the oppressor'), Isaiah 62:8 ('I the Lord love justice'), and 1 John 1:5-6.
- Author and attorney Anne Bachle Fifer identifies a key structural problem: if an offending leader leaves a ministry with an NDA in place, and a subsequent employer inquires, the ministry cannot disclose the real reason for departure—which may not be lying, but is not telling the truth either.

D. The Evangelical Council for Abuse Prevention (ECAP) Position

- ECAP's position: 'NDAs should never be used to silence victims, protect offenders, or help an organization avoid accountability. Christian organizations must have justice and care for survivors as a top value.'
- The National Association of Evangelicals surveyed evangelical leaders and found that 93% believe NDAs should be waived when a leader faces credible allegations of abuse.

E. The Balanced View: NDAs Are Not Inherently Wrong, But Are Fraught

- Not every accused person is guilty, and some nuance is warranted. The details in cases involving mandated reporters can be legally and factually murky, and a victim's good-faith belief may differ from what is provable.

- Practical challenge: When insurance companies pay a settlement, they frequently require NDA provisions as standard practice. Ministries may find themselves caught between insurer demands and ethical/legal obligations.

VII. IMPACT ON VICTIMS, INVESTIGATIONS, AND SETTLEMENTS

A. Impact on Victims

- NDAs can prevent victims from connecting with one another. Victims rights advocates argue that without knowledge that others share their experience, survivors cannot obtain support, solidarity, or corroboration.
- A 2024 Stanford University / Lift Our Voices study found that NDA agreements are often broad, confusing, and coercive; they primarily protect organizations, not individuals. Survivors reported feeling isolated; some faced barriers to new employment. The study concluded that NDAs foster a 'culture of secrecy that shields abusers, suppresses accountability, and inflicts lasting emotional and professional harm on survivors.'
- Cindy Clemishire, a survivor who was abused by future Gateway Church founder Robert Morris beginning in 1982: 'NDAs may be presented as legal formalities, but in cases like mine, they are tools that continue the abuse. They protect the abuser and keep victims in shame. They prevent the children from being protected and they make it harder to stop abuse from happening again.'
- Psychological research on trauma recovery increasingly supports the therapeutic value of narrative disclosure. NDAs that prohibit sharing one's story can interfere with a core component of trauma processing and healing.

B. Impact on Investigations

- NDAs can obstruct law enforcement and internal investigations by preventing witnesses from sharing information with investigators (though the majority of NDAs include carve-outs for mandatory reporting and cooperation with law enforcement).
- When NDAs prevent victims from speaking to each other, patterns of serial abuse may go undetected for years. The Newman case at Kanakuk is illustrative: multiple families settled with NDAs, and the pattern of 57+ victims over a decade was only fully revealed after his criminal conviction and the release of some survivors from NDA obligations.
- Attorneys' professional responsibility obligations: Model Rule 8.4(d) (conduct prejudicial to the administration of justice) and state analogs may be implicated when attorneys draft overly broad NDA provisions. See also MRPC 3.4 (fairness to opposing party).

C. Impact on Settlement Dynamics

- From the institutional defendant's perspective, NDAs have historically been assigned a 'premium' value: organizations are willing to pay more to ensure that their failures to protect children are not exposed.
- From the victim's perspective, the desire for compensation is often in tension with the desire to speak — and this tension can be exploited. Victims frequently do not fully understand at signing how NDAs will affect their emotional recovery.

- Post-Trey's Law reality: In Texas (effective Sept. 1, 2025), financial settlement terms may still be kept confidential, but the underlying facts of abuse and the perpetrator's identity cannot be suppressed. This framework preserves some institutional interest in financial privacy while eliminating the most harmful aspect of abuse NDAs.

VIII. PROS AND CONS: A BALANCED ANALYSIS

A. Arguments in Favor of Permitting NDAs in Abuse-Related Settlements

1. Privacy interests of accusers as well as the accused: Some victims genuinely prefer confidentiality and should have that option.
2. Facilitation of settlement: NDAs can reduce litigation costs and lead to earlier compensation for victims who would otherwise wait years for trial.
3. Institutional reform: One Alabama senator argued that NDAs allow institutions to implement reforms and continue doing good in communities without public exposure that could destroy their ability to operate.
4. False allegations: In rare cases, allegations are not true or are legally ambiguous; NDAs provide protection for institutions against reputational harm from unproven claims.
5. Freedom of contract: Courts have long held that parties have a right to settle disputes on mutually agreed terms, including terms of confidentiality.

B. Arguments Against Permitting NDAs in Abuse-Related Settlements

6. Enable serial abusers: When one victim is silenced, subsequent potential victims cannot be warned. This is the most-cited harm and the primary driver of Trey's Law.
7. Compound victim trauma: Requiring silence as a condition of compensation continues the abuse by stripping survivors of their voice and narrative.
8. Obstruct accountability: Institutions are permitted to avoid public scrutiny of systemic failures to protect children.
9. Contrary to public policy: A growing consensus in courts and legislatures holds that NDAs in CSA cases violate public policy and should not be enforced.
10. Power imbalance: Victims—often young adults processing childhood trauma—lack the bargaining power, legal sophistication, and psychological stability to meaningfully consent to NDA terms.
11. Insurance-driven coercion: Institutional NDAs are frequently demanded not by the institution itself but by its insurer, removing any pretense of victim consent.

IX. CURRENT BEST PRACTICES FOR COUNSEL

A. Advising Nonprofit Ministry Clients

- Audit existing NDAs: Boards of trustees should identify all current NDAs and assess whether they remain enforceable under applicable state law, particularly in Texas, Missouri, California, Tennessee, and Alabama.
- NDA policy development: Establish a written policy limiting NDAs to legitimate confidentiality purposes (financial terms, donor information, proprietary ministry operations) and prohibiting their use to suppress abuse facts.
- Insurance coordination: Proactively address NDA requirements with insurers before a claim arises. Negotiate policy language that permits compliance with applicable state NDA prohibitions.
- Mandatory reporter obligations: Ensure that any settlement agreement or NDA explicitly preserves mandatory reporting obligations and cooperation with law enforcement.
- Survivor-centered approach: Implement procedures that prioritize survivor needs over institutional reputation, consistent with ECAP guidelines and the NAE's 93% consensus position.

B. Advising Survivors

- Counsel survivors regarding NDA enforceability in the applicable jurisdiction before any settlement is executed.
- In Texas (effective Sept. 1, 2025) and Missouri (effective Aug. 28, 2025): Advise that NDA provisions suppressing abuse facts are unenforceable, and that retroactive provisions in Texas void prior agreements.
- Preserve reporting rights: Ensure any settlement agreement does not purport to prohibit cooperation with law enforcement, mandatory reporting, or disclosures required by law.
- Psychological impact disclosure: Consider whether your client fully understands the long-term emotional consequences of confidentiality restrictions before agreeing to them.

C. Ethical Duties of Attorneys

- Review applicable state rules of professional conduct regarding settlement agreements that restrict reporting (see, e.g., ABA Model Rule 5.6; some state analogs restrict agreements that limit a lawyer's practice; related provisions may address agreements restricting client rights).
- Consider Model Rule 8.4(d) when drafting NDA provisions that could obstruct justice or silence mandatory reporters.
- In-house counsel at ministries: Duty of candor to the organization includes advising leadership when an NDA practice is contrary to applicable law, public policy, or the organization's own stated ethical commitments.

X. CONCLUSION AND DISCUSSION

Summary of Key Takeaways

- NDAs remain legally valid in most commercial contexts, but multiple states now prohibit their use to suppress facts in CSA (and, in some states, adult sexual harassment and sexual abuse) civil cases.
- Texas and Missouri enacted Trey's Law in 2025. Federal legislation is pending in the Senate Judiciary Committee as of May 2026.
- The Catholic Church's 2002 Dallas Charter established a precedent for institutional NDA reform that Protestant and evangelical ministries have been slow to follow.
- The Kanakuk case is the most prominent recent example of how NDAs in CSA contexts can enable serial abuse, compound victim harm, and eventually produce catastrophic institutional and legislative consequences.
- Best practice for attorneys advising Christian nonprofit organizations is to advise clients limit NDAs strictly to legitimate confidentiality purposes and to never require them as a condition of abuse-related settlement.

Open Panel Discussion Questions

12. Will federal Trey's Law pass? What are the constitutional and policy obstacles?
13. How should multistate ministries build NDA-compliance frameworks across a patchwork of state laws?
14. When an insurer demands an NDA provision as a condition of payment, what are the attorney's options and obligations?
15. Does the retroactive voiding of existing NDAs under Texas law raise contractual or constitutional challenges that courts are likely to sustain? Should we be proactively advising the organizations to prepare?
16. What obligations do we have as counsel to advise to the reputational risk of including broad NDAs?

— END OF OUTLINE —

This outline is provided for CLE educational purposes and does not constitute legal advice. Attorneys should conduct independent legal research to verify all citations and confirm current statutory status before advising clients.