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## NDA's: How Should Christians Think about Non-Disclosure Agreements?

### Abstract

"The answer to forward-looking NDAs may be for Christians to write better ones, rather than abandoning them altogether."

Posting about the pros and cons of non-disclosure agreements from *In All Things* - an online journal for critical reflection on faith, culture, art, and every ordinary-yet-graced square inch of God's creation.

<https://inallthings.org/ndas-how-should-christians-think-about-non-disclosure-agreements/>

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### Comments

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# NDA's: How should Christians think about Non-Disclosure Agreements?

Donald Roth

May 16, 2023

It's a common joke that a student needing to guess an answer in a Sunday School class should just go with "Jesus." If lawyers have their equivalent to this trope, it's to answer every question with "it depends." For human beings, who have a tendency toward all-or-nothing thinking, this sort of answer feels like equivocation. For Christians with strong moral commitments, an "it depends" can feel like the sort of wishy-washy ethic that God threatens to spit out in Revelation 3:15-16.

Setting aside whether this is a responsible reading of the relevant passage, it's a factor that gave me some trepidation when In All Things asked me to weigh in on what stance Christian organizations should take toward Non-Disclosure Agreements (NDAs). They asked me because of my legal background, but dare I give the lawyer's answer?

To quote Religion News Service: "Not every church or faith-based organization that uses NDAs has faced scandal. But of the groups that *have* faced scandal in recent years, NDAs were inevitably part of the mix. That's true for Mars Hill Church, Harvest Bible Chapel, Hillsong Church, Hillsong College, Willow Creek Community Church, Acts 29, Ravi Zacharias International Ministries and Ramsey Solutions."

The author of that same article goes on to say, "We have to face the fact that the existence of NDAs in Christian organizations is a worse witness for the church than any information that might come out in their absence. The concealment of truth and the appearance of image management are more damaging than the truth," and she cited psychologist Diane Langberg's pithy, "NDAs protect systems rather than precious humans made in the image of our God."

Powerful arguments like this have inspired movements like #NDAfree, which calls on Christians everywhere to "share publicly that you have chosen freedom from contracts of silence."

It's against this moral tide and the constraints of length requirements that resist nuance that I'm going to offer a potentially unsatisfying, "It depends." Having done that, I'll try to redeem myself by answering the question that my answer begs, "on what?"

**It depends on whether the NDA deals with a dispute**

Even #NDAfree recognizes that there are legitimate circumstances for the use of these contract provisions. They explicitly exempt NDAs that are oriented toward protecting intellectual property and personal data. Indeed, NDAs are quite common in the business world, where they are typically used to protect trade secrets, the details of important financial transactions, or any other sort of confidential information. Sites like Entrepreneur.com have dozens of articles guiding business owners through the uses and nuances of NDAs. So what can we learn from these themes, and how does it shape the way we imagine NDAs?

A non-disclosure agreement<sup>1</sup> is essentially a contractual incentive to ensure confidentiality and promote trust. Where Christian organizations are operating as a business or as a non-profit offering more commercial services, the reasons to utilize NDAs should be largely and unobjectionably similar. Of course, religion is closely bound to a higher expectation of trust, so some Christians may feel like using an NDA signals a lack of trustworthiness. However, the degree of trust that we place in other people is a matter of conscience and prudence judged individually, and I don't think Christians should be subject to automatic suspicion in these areas just for using an NDA.

Outside of commercial interests, NDAs can also serve to protect confidentiality where other legal or professional codes don't specifically do so. There are certain professions, like lawyers, doctors, and counsellors, who are mandated to maintain confidentiality by either the law or their professional licensure. Catholic priests are also bound to maintain a strict secrecy of anything told to them during confession. For most protestants, there is a similar expectation of confidentiality in pastoral matters. However, depending on a church's organizational structure, there may be no applicable professional code that protects or enforces the confidentiality of these matters. While these sorts of NDAs could be subject to abuse, their purpose is a prospective protection of privacy in the sort of space where people often desire such privacy, and I don't think they should be automatically suspect, either.

Further, Joe Carter, an associate pastor at McLean Bible Church, offers quality guidance about how these privacy-oriented NDAs could be improved. He recommends that NDAs for Christian organizations include conciliation clauses that route a potential violation an outside Christian mediation process before the organization pursues enforcement. In this way, a neutral third party could judge whether the violator was acting unbiblically or in fact bearing witness by blowing the whistle on abuse. In other words, the answer to forward-looking NDAs may be for Christians to write better ones, rather than abandoning them altogether.

## **It depends on what the real status of the dispute is**

While there were these sorts of prospective NDAs at issue in a number of cases of alleged abuse, the most concerning NDAs are retrospective. These are non-disclosure agreements that are included as part of a settlement between accused and accuser. As a settlement, it is quite common that the accused party will be spared an admission of wrongdoing at the cost of some financial payment, while the accuser will receive some compensation for their claim at the cost

of waiving their right to sue over the matter. An NDA is often added to this to prevent the accuser from instead prosecuting their case in the court of public opinion. While both parties benefit from being saved the costs of litigation, the concern over villainization or vindication is often more substantial, and the accused is always the primary beneficiary there.

These are the sorts of NDAs at the heart of the #NDAfree movement, and they generate some outrage outside of the church, too, as NDAs were a key part of Harvey Weinstein's tactics of abuse that eventually led to the birth of the #MeToo movement. To the extent that NDAs can be used to cloak systemic abuse, it's quite understandable that there is such a powerful public push to abandon them altogether. That said, I stand by my "it depends" even in cases where there are serious allegations at issue.

A number of attorneys and other advocates in this area have noted that abandoning NDAs altogether may not align with the interests of either party. For one, it is quite common that victims will want privacy in these matters, too. Additionally, there is significant stigma in many Christian circles against filing lawsuits in the first place. While we should not allow abusers to escape justice, a #NDAfree pledge that amounts to a pledge not to settle could also unnecessarily force traumatized people into another traumatic experience. Yes, litigation is almost always traumatic.

Finally, and I say this with some trepidation because it runs counter to the dominant societal narratives today, but not every person accused is guilty. While it is rare for someone to lie about something like sexual abuse, it does happen. Further, if allegations deal with mandated reporters or other legal questions that center around what people knew or should have known, the details tend to be muddied. A victim may have a good faith belief that a person or organization fell short, but what seems obvious to a victim living in the shadow of oppression may be far less clear to those on the outside.

## **It depends on both people and institutions**

In the end, I want to circle back to Diane Langberg's quote from the beginning. Her opposition to NDAs creates a neat dichotomy between people and institutions (entailed by "systems"), and she seeks to place Christ clearly on the side of people. This reduces the complexity of life and actually plays into societal narratives rooted in individualism that are far from benign in today's world.

At the simplest level, institutions are made up of people, but that then means that there are people on both sides of a dispute. For all of the real value that has come from shifting public awareness, the reality is that the court of public opinion is not a fair playing field. While there is a platform for the aggrieved, we tend to end up hearing only one side, and it's too easy to form opinions based on what we assume, rather than what happened. While there are victims cowed into silence, there are also the lives of alleged abusers that have been ruined by hearsay. Mob justice is rarely God's justice, and Christian love demands that we not settle for ruining the lives

and reputations of one side just because we consider management to be a particularly baneful “them.”

Finally, a division that discards institutions in favor of individuals is itself sub-biblical. It captures the reality that God loves and directs His concern toward each of us individually, but it fails to capture the concern God shows for our collective action, as well. That is, our choice is not between the well-being of people *or* institutions; it should entail people *and* institutions. The Bible is not shy about calling the institutions of the day to account. Kingdom, church, family, and more are criticized for their abuses, yet God uses each of these as a particular image of how He relates to the world.

Faithful institutions are life-giving, and not just because of whatever instrumental benefit they provide to individuals. The image of a triune God is reflected in the unity of a diverse body of people of different talents, abilities, and expertise in ways that individuals alone cannot reflect. Langberg’s quote is sub-biblical because it does not account for this fuller reality of institutions, even institutions made up of fallen people. Christians have a calling to be on the side of both individuals and institutions. This requires careful discernment in each case where one or the other (or both) may be in the wrong, and it’s why I side with “it depends” over #NDAfree.

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1. an NDA