

## **Hypothetical Five: Confidentiality Agreement**

**(Samantha Elliott)**

Winner of Hypo 4 vs. Winner of Hypo 5

For the past ten years, Armani McQueen has been a personal stylist to aging popstar/actress Ariana GooGoo through her personal production company, Lady, Inc. During their regular meetings, McQueen takes photographs of GooGoo in various states of dress to consult during the design phase. Over the years, GooGoo has shared some of her most intimate secrets with McQueen. They have grown particularly close considering the fact that he is only one of more than twenty people employed by Lady, Inc. Even though McQueen's previous experience was limited to fashion design, with GooGoo, he developed skills designing clothing with specialized functions, like a costume for a concert that hid a harness and pulley system in a skin-tight, caveman-inspired, fur dress.

Lately, gossip rags have questioned whether associating with someone as old as McQueen is bad for GooGoo's image. GooGoo's business manager has decided that it is time to let McQueen go. He has drafted a separation agreement with a generous severance package. The agreement includes the following confidentiality provision:

McQueen hereby acknowledges and agrees that in his employment with Lady, Inc., he has held a position of trust and confidence that gave him access to confidential information belonging to Lady, Inc. and Ariana GooGoo, including, but not limited to, certain designs and processes, which, if divulged or misused, would be potentially harmful to Lady, Inc. or Ariana GooGoo (the "Confidential Information"). McQueen agrees to keep confidential and not to use, divulge, publish, or post on his own, or to disclose to any third party all confidential information relating to Lady, Inc., and its affiliates, related, parent, and subsidiary companies, each of their officers, directors, employees and clients, and Ariana GooGoo and her family ("Protected Individuals"). Furthermore, McQueen agrees not to disparage, or otherwise discuss any information, relating to the Protected Individuals, with any third party. McQueen also represents and agrees that he has not and will not disclose information regarding the specific terms of this Agreement, the amount or nature of his compensation and benefits, or his separation from employment.

McQueen has asked you to review the confidentiality provision. What exceptions to confidentiality are you going to recommend because they are appropriate under the circumstances and/or legally required?

Answers:

1. Becomes generally known to the public
2. Subpoena or court order
3. Tax or legal advice
4. Family
5. Information received lawfully from third parties
6. Known prior to employment
7. Filing EEOC complaint or other protected claim
8. Residual knowledge clause