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Navigating Your Licensing Case Pre-SOAH

AKA Pursuing actions or negotiations you might not had thought of

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1

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Be aware of the Rules & policy that govern settlement of your case

1. Administrative Procedures Act ("APA") – Section 2001.056
2. Disciplinary matrices
3. Previous orders
4. Non-disciplinary forms of settlement
5. TRE 408

2

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Sec. 2001.056. INFORMAL DISPOSITION OF CONTESTED CASE. Unless precluded by law, an informal disposition may be made of a contested case by:

(1) stipulation;
(2) agreed settlement;
(3) consent order; or
(4) default.

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- Sec. 2001.003. DEFINITIONS. In this chapter:

- (1) "Contested case" means a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

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- Unless an Agency's enabling statute or rules preclude certain types of settlement (be hard to imagine many scenarios where this would occur), then as a staff attorney, why aren't you utilizing this provision of the APA?
- In turn, as a defense counsel why aren't you pushing for one of these modes of settlement?

5

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Disciplinary matrices

- Many agencies have them published in their administrative rules and on their website.
- Is the proposed offer within the range of discipline for your client's violations?
- As a defense attorney, you should know the Licensing Agency's matrix, particularly when the offer exceeds the range of discipline.
- As a staff attorney, you should justify why the order exceeds the range.
- Conversely, as a defense attorney, your counter-offer must explain why your proposal is less than the minimum discipline.

6

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