



The State Bar of California

OPEN SESSION AGENDA ITEM 5.7 MAY 2025 BOARD OF TRUSTEES

DATE: May 22, 2025

TO: Members, Board of Trustees Sitting as the Regulation and Discipline Committee

FROM: Catherine Ongiri, Program Director, Office of Professional Competence
Christina Gates, Senior Program Analyst, Office of Professional Competence

SUBJECT: Arbitration Advisory 2025-01 (Superseding Arbitration Advisory 1998-03):
Determination of a “Reasonable” Fee – Request for Approval for Publication

EXECUTIVE SUMMARY

In 1998, the Committee on Mandatory Fee Arbitration issued Arbitration Advisory 1998-03: Determination of a “Reasonable” Fee. In 2018, the Supreme Court of California in *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59 concluded that “an attorney contract that has as its object conduct constituting a violation of the Rules of Professional Conduct is contrary to the public policy of this state and is therefore unenforceable”. (Id. at 74.) This agenda item seeks approval for publication of proposed Arbitration Advisory 2025-01 to supersede Arbitration Advisory 1998-03 as updated by the Committee on Professional Responsibility and Conduct (COPRAC) to now incorporate the *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* decision.

RECOMMENDED ACTION

This agenda item seeks approval for the publication of proposed Arbitration Advisory 2025-01: Determination of a “Reasonable” Fee to supersede Arbitration Advisory 1998-03.

DISCUSSION

The Committee on Mandatory Fee Arbitration issued Arbitration Advisory 1998-03: Determination of a “Reasonable” Fee, which explored the factors applicable in determining the amount of such a “reasonable” fee. In 2018, the Supreme Court of California in *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59 (hereinafter *Sheppard, Mullin*) concluded that “an attorney contract that has as its object conduct

constituting a violation of the Rules of Professional Conduct is contrary to the public policy of this state and is therefore unenforceable”. (*Id.* at 74.)

Based on the decision in *Sheppard, Mullin*, COPRAC which is now responsible for drafting arbitration advisories, created Arbitration Advisory 2025-01, which is largely an update and would supersede Arbitration Advisory 1998-03 to incorporate the holding in *Sheppard, Mullin* as an additional factor for the arbitrator to consider when determining whether a “reasonable” fee may arise. Prior to being finalized for publication, while the advisory was still in development and out for public comment, it was designated as proposed Arbitration Advisory Interim No. 2025-01.

The full text of the proposed advisory is provided as Attachment A.

Public Comment

There were four public comments received in the 60-day public comment period: two individual commenters, one from the Orange County Bar Association, and one from the Consumer Attorneys of CA. Three comments support the advisory if modified, and one opposes the advisory.

Overall, those commenters who provided feedback on the advisory, in addition to indicating their position on it, provided nonsubstantive revisions that were mostly accepted by the committee and incorporated into the advisory. One commenter, the Orange County Bar Association, recommended moving the reference to *Pech v. Morgan* (2021) 61 Cal.App.5th 841 to avoid confusion; the committee relocated the reference to a footnote. Other commenters, including Ben Seinfeld and the Herbert E. Glick Trust, raised concerns or made suggestions related to billing practices, contingency fee arrangements, and arbitration procedures. One commenter, the Consumer Attorneys of California, expressed opposition to the advisory, stating that the guidance is inconsistent with existing law and does not reflect the realities of contingency fee practice. COPRAC declined to make changes based on those comments.

The public comments are provided as Attachment C.

Following consideration of the public comment received, and incorporation of selected feedback, at the March 14, 2025, meeting, COPRAC approved the advisory for submission to the Board, sitting as RAD, for formal publication. COPRAC requests that the Board approve the publication of Arbitration Advisory 2025-01.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 3. Protect the Public by Regulating the Legal Profession

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur, it is:

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee; recommends that the Board of Trustees approve the publication of Arbitration Advisory Opinion 2025-01, attached hereto as Attachment A.

ATTACHMENTS LIST

- A.** Arbitration Advisory 2025-01
- B.** Arbitration Advisory 2025-01: Redline Comparison to Arbitration Advisory 1998-03
- C.** Public Comment Synopsis Table and Full Text of the Public Comments Received