



## Alerts

### Former Clients Who Are Indigent May Be Excused From Paying Arbitration Fees

October 29, 2013

*Lawyers for the Profession® Alert*

*Roldan v. Callahan & Blaine*, 219 Cal.App.4th 87, 161 Cal.Rptr.3d 493 (2013)

#### Brief Summary

Former clients, who had reluctantly settled the underlying action, filed an action against their former lawyers, alleging, *inter alia*, financial elder abuse, conversion and breach of fiduciary duty. After the attorneys were partially successful in compelling arbitration, the clients, who had been granted *in forma pauperis* status, filed a joint motion alleging that they were indigent and could not afford to pay required "up front" arbitration costs as stated in the retainer agreements. The superior court denied the motions, and clients appealed. The court of appeals held that former clients may be excused from paying arbitration fees.

#### Complete Summary

Plaintiffs settled the underlying case reluctantly, and only after their attorneys unsuccessfully attempted to have them declared legally incompetent so that a guardian ad litem could be appointed to cooperate with the attorneys' efforts. Plaintiffs subsequently filed suit against the attorneys based on that attempt, on the alleged inadequacy of the settlement, and on other conduct. Defendants successfully moved to compel arbitration of that suit, based on the arbitration provision contained in the firm's retainer agreement. The appellate court declined to review that decision when plaintiffs petitioned for a writ of mandate.

Plaintiffs argued, however, they are indigent and cannot afford to share in the substantial expense of the arbitration forum, and they thus filed a motion in the trial court seeking an order compelling defendants to advance the entire upfront cost of the arbitration forum they have insisted upon utilizing. That motion was denied, and plaintiffs contested that denial in this appeal. The appellate court reversed and remanded to the trial court with directions to: (1) estimate the reasonable costs of arbitration previously ordered; (2) determine whether any of the plaintiffs are financially able to pay their anticipated share of that costs; and (3) if any of them are unable to do so, issue an order specifying that defendants have the option of either paying that plaintiff's share of the costs of arbitration, or waiving their right to arbitrate that plaintiff's case and allowing the case to proceed in court. If the trial court determines that one or more, but not all, of the plaintiffs are unable to pay their anticipated share of the arbitration cost, and

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defendants elect to waive their right to arbitrate those plaintiffs' claims rather than pay their share of the arbitration cost, then the court is directed to further consider whether the policy of avoiding conflicting rulings on common issues of law or fact supports an order requiring all of the plaintiffs' claims to be consolidated in the superior court.

### **Significance of Opinion**

This case is significant because the court invoked public policy to make an exception to compelling indigent clients to arbitrate.

For more information, please contact [Terrence P. McAvoy](#).

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