

# The Professional Liability Law Blog

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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## [Legal Malpractice Claim Against Predecessor Counsel Should Not Be Referred to Arbitration in the Absence of an Agreement to Arbitrate](#)

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In ruling on a petition to compel arbitration, some of the more challenging issues faced by the court relate to the application of Code of Civil Procedure section 1282.2(c) (a petition to compel arbitration based on a written arbitration agreement will be granted unless “[a] party to the arbitration agreement is also a party to a pending court action . . . with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact.”) However, in an October 20, 2010 [unpublished decision](#) in *Kachlon v. Dressler & Lavina LLP*, the Court of Appeal (Second Appellate District, Division One) had no difficulty in concluding that section 1282.2 did not prevent the arbitration of a legal malpractice claim against a successor attorney from going forward.

The facts were straightforward. The clients had hired one law firm to handle a collection matter against a debtor. When the debtor later filed a separate but factually-related action against the clients, the clients retained a different law firm to defend them. The second lawsuit did not end well for the clients, so they sued both the first law firm and the second law firm for legal malpractice.

The clients had an agreement for binding arbitration with the second law firm, but not with the first law firm. The second law firm filed a petition to compel arbitration of all matters at issue between the parties and it was opposed by the first law firm. The first law firm correctly asserted that, under section 1282.2, it should not be required to go to arbitration because it was not a party to any arbitration agreement.

Rather than sending the claims against the second law firm to arbitration, and leaving the claims against the first law firm in Superior Court, the trial court elected to deny the petition to compel arbitration in its entirety. In reversing the trial court on appeal, the Court of Appeal ruled that just because the first law firm was not a party to the arbitration agreement, that was no ground for denying arbitration as between the clients and the second law firm. The attorneys’ alleged negligence occurred in different transactions—their respective (and successive) handling of plaintiffs’ legal affairs.