

**SECOND ANNUAL REPORT**

**of the**

**OFFICE OF THE INDEPENDENT ADMINISTRATOR**

**of the**

**KAISER FOUNDATION HEALTH PLAN, INC.**

**MANDATORY ARBITRATION SYSTEM**

**for**

**DISPUTES WITH HEALTH PLAN MEMBERS**

**March 29, 2000 - December 31, 2000**

## REPORT SUMMARY

Kaiser Foundation Health Plan, Inc., has arbitrated all disputes with its members since 1971. In 1997, the California courts criticized the system, saying that it should not be self-administered and that there was too much delay in the handling of members' claims. In response, Kaiser requested that the Law Offices of Sharon Lybeck Hartmann create the Office of the Independent Administrator ("OIA") to operate its system. This is the second report on the results of the independent administration. Here are some of the highlights.

1. **Number of New Demands Forwarded to the OIA.** To date, Kaiser has forwarded 1716 new demands for arbitration to the OIA from its six million members in California. That's an average of about 90 new demands a month.
2. **41 Day Average to Appointment of a Neutral Arbitrator.** The OIA is moving even faster than it did in its first year in getting a neutral into place. For purposes of comparison, the California Supreme Court said that under its old system, Kaiser averaged 674 days to the appointment of a neutral arbitrator. In its first year, the OIA averaged 42.5 days in all of its cases, including in that average all delays such as the 90 day postponement that parties may claim under the *Rules* and the statutory disqualifications of neutrals that occur in some cases. This year the average for our entire 21 month existence has fallen to 41 days. If we go to the OIA average for routine initial placement of a neutral (77% of our cases), our average is only 25 days, about three and a half weeks.
3. **278 Day Average to Hearing.** The system's speed is reflected also in getting cases to hearing. The old Kaiser average to the first day of hearing was 863 days. The OIA average to the last day of hearing is 278 days -- about nine months. We have completed 111 hearings now.
4. **Fifty Percent of All Cases Closed.** Those cases that went to hearing are only 18% of the cases which have been resolved. Fifty percent of all OIA cases are now closed. Of those, 45% have settled. Our average time to closure of all cases is 229 days, about 8 months. So far, only one case is late, meaning it is beyond the 18 month period permitted by the rules.
5. **Claims Are Malpractice.** The OIA system is 95% medical malpractice claims. Less than one percent (only 11 cases thus far) are benefits or coverage claims.
6. **349 Arbitrators.** We are continuing to recruit and add members to our arbitrator panel. We now have 349 in the pool, an increase of 26 from our first year. We have also replaced another 17 who resigned. Twenty-nine percent or 102 of the present

panel are retired judges. Sixty-two percent of the entire panel, or 216 of 349, have been selected to serve as neutral arbitrators. On average, each neutral has been selected to serve 4.4 times. The large spread through the panel and the modest average number of selections seem to us to mitigate and perhaps eliminate the “repeat player” problem.

7. **Most Blue Ribbon Panel Recommendations Achieved.** After the *Engalla* decision, Kaiser convened a Blue Ribbon Panel to study its arbitration system and recommend improvements. The Blue Ribbon Panel Report, which brought the OIA system into being, made 36 recommendations for change in the old Kaiser arbitration system. In Exhibit B to this report, we have set forth all 36 of those recommendations along with the status of each. We conclude that 27 have been completed and another four are either well under way or essentially on-going in their nature. Two have not been done. About three, we have no knowledge since we are not involved in their implementation.
8. **Positive Party Evaluation of Neutrals.** In this reporting period, the OIA began the process of asking parties to evaluate their neutral arbitrators after a case has closed. With 39% of parties in closed cases responding anonymously, the reaction has been very positive. Attorneys on both sides agree that the neutrals have been fair, respectful and knowledgeable. An average of 85% agreed that they would recommend their neutral to a person or attorney with a similar case.
9. **Positive Neutral Evaluation of OIA Procedures.** In this reporting period, we have also begun to ask the neutrals to evaluate the way in which OIA procedures and rules have worked in each specific case as it closes. Thus far, the neutrals have responded in about 84% of all closed cases. Among other things, we asked whether the neutrals had experience in a similar Superior Court case, and if so, whether they would rank this particular OIA experience as better, worse or about the same. Of the 285 who had the parallel court experience, only six -- about two percent -- said that it was worse; 165 said it was about the same, and 114 said the OIA experience was better.

Complete copies of this report are available to Kaiser members, the public and the media. They can be obtained in hard copy from the Kaiser Permanente Member Service Customer Center, (800) 464-4000, or from the OIA at (213) 637-9847. The report can also be read or downloaded from the OIA website, [www.slhartmann.com/oia](http://www.slhartmann.com/oia).

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## A Note About Numbers

There are a lot of numbers in this report. To make it somewhat easier to read, we offer the following information.

For most items reported we give average, median, mode and range. Here are definitions of those terms:

**Average:** The mean. The sum of the score of all items being totaled divided by the number of items included.

**Median:** The midpoint. The middle value among items listed in ascending order.

**Mode:** The single most commonly occurring number in a given group.

**Range:** The smallest and largest number in a given group.

We have rounded percentages. Therefore, the total is not always exactly 100%.

If there are items which you do not understand and would like to, call us at 213-637-9847, and we will try to give you answers.

## **I. Introduction**

In October 1998, Kaiser Foundation Health Plan, Inc. and the Arbitration Advisory Committee selected the Law Offices of Sharon Lybeck Hartmann to act as Independent Administrator of Kaiser's mandatory member arbitration system in California.<sup>1</sup> Summarized broadly, the contract required Hartmann's office to write rules of procedure for Kaiser arbitrations, to create a pool of qualified neutral arbitrators to hear Kaiser cases, and to independently administer arbitration cases brought by Kaiser members. The contract specifies that the Independent Administrator write an annual report describing the arbitration system it administers. The report must describe the goals of the system, the actions being taken to achieve the system's goals, and the degree to which those goals are being met.<sup>2</sup> This is the second annual report issued by the Office of the Independent Administrator ("OIA").<sup>3</sup> It reports on our activity through December 31, 2000.

### **A. Background Information**

In July 1997, the California Supreme Court issued its decision in *Engalla v. Permanente Medical Group*. The opinion was critical of Kaiser's arbitration system, and strongly suggested that Kaiser appoint an independent administrator to manage its arbitration cases, ensure that neutral arbitrators were appointed quickly in all cases, and improve the speed with which its arbitration cases were resolved.

In response to this decision, Kaiser convened a Blue Ribbon Advisory Panel to evaluate its arbitration process and recommend improvements. The Blue Ribbon Panel's report, issued in January

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<sup>1</sup>Kaiser Foundation Health Plan, Inc. is a California nonprofit health benefit corporation, and a federally qualified HMO. Since 1971, it has required that its members use binding arbitration to resolve disputes. The Health Plan arranges for medical benefits by contracting exclusively with The Permanente Medical Group, Inc. (Northern California) and the Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals, another California nonprofit public benefit corporation.

<sup>2</sup>*Agreement Between Kaiser Foundation Health Plan, Inc. and the Law Offices of Sharon Lybeck Hartmann Creating the Office of Independent Administrator of the Kaiser Foundation Health Plan, Inc. Mandatory Arbitration System for Disputes with Health Plan Members*, Section D(15)(i) at 10. Copies of the entire contract and its amendments may be obtained from the OIA.

<sup>3</sup>The Office of the Independent Administrator is located within the Law Offices of Sharon Lybeck Hartmann, 3580 Wilshire Boulevard, Suite 2020, Los Angeles, California, 90010, 213/637-9847 (telephone), 213/637-8658 (facsimile), oia@slhartmann.com (e-mail). The OIA has a website where this report, our first report, the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator*, and much other data can be downloaded. It is located at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). A brief firm profile and a description of the Office of the Independent Administrator's staff are attached as Exhibit A.

1998, recommended that Kaiser appoint an independent administrator responsible for rapid appointment of neutral arbitrators and for fair, efficient management of Kaiser arbitration cases. The Blue Ribbon Panel also recommended that Kaiser appoint a permanent Arbitration Advisory Committee made up of knowledgeable representatives of affected parties to assist in designing and implementing an independently administered arbitration system and to permanently oversee its operation.<sup>4</sup>

In April 1998, Kaiser announced the appointment of the Arbitration Advisory Committee ("AAC"), made up of representatives of stakeholder interests. The AAC participated in the selection of the Independent Administrator, worked closely with Kaiser and the OIA in creating the new system, its rules and its qualifications for the selection of arbitrators, and provides ongoing oversight of the independently administered system. As part of this task, the AAC also reviews the OIA annual report before its general release.

## **B. Goals of the OIA System**

Consistent with the recommendations of both the California Supreme Court and the Blue Ribbon Advisory Panel, the OIA attempts to offer a fair, timely, low cost arbitration process that respects the privacy of all who participate in it. These goals are set out in Rules 1 and 3 of the *Rules for Kaiser Member Arbitrations Overseen by the Office of the Independent Administrator*.<sup>5</sup> As documented in the balance of this report, we believe that the goals are currently being realized.

## **II. Creation & Development of the System**

From November 1998 to March 1999, the OIA, the AAC, and Kaiser worked together to set qualifications and develop an application for neutral arbitrators, and drafted and negotiated the rules that would govern arbitrations overseen by the OIA.

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<sup>4</sup>The Panel's report is entitled *The Kaiser Permanente Arbitration System: A Review and Recommendations for Improvement* ("Blue Ribbon Panel Report.") It is a 45 page document containing a description of Kaiser's arbitration system through 1997, including historical background, and the Panel's 36 recommendations for improvement. Each of the Panel's recommendations and a brief discussion of their status is set forth in Exhibit B to this Report. The Report itself is available from Barbara Nelson, Kaiser Foundation Health Plan, Legal Department, 1950 Franklin Street, 17<sup>th</sup> Floor, Oakland, CA 94612.

<sup>5</sup>The *Rules* are attached as Exhibit D. They are available in English, Spanish and Chinese from the OIA, from Kaiser, and from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia).

**A. Maintenance & Expansion of the Panel of Neutral Arbitrators**

The process used to create our large panel of arbitrators was described in our first annual report. The OIA has continued to advertise and to add members to the panel during our second year. In response to requests from members of the plaintiffs' bar, we have created a new subdivision within the panel which serves the San Diego area. As the following data show, the response to these efforts has been strong from the outset through December 31, 2000:

<b>Total Number of Application Requests Received:</b>	<b>2106</b>
<b>Total Number of Completed Applications Received:</b>	<b>490</b>
<b>Total Number of Arbitrators in the OIA Panel:</b>	<b>349</b>
<b>Southern California Total:</b>	<b>178</b>
<b>Northern California Total:</b>	<b>136</b>
<b>San Diego Total:</b>	<b>35</b>

Since we last reported, our statewide panel numbers have increased from 323 to 349. To reach that total, we have added 26 new neutrals and also replaced 17 who left the panel because they resigned, died or were removed by the OIA for failure to meet one of the qualifications or for violation of the Rules.

In the nine months since our last report, we have received 269 requests for applications, 54 of which were completed and returned.<sup>6</sup> Many of these came from the San Diego area, where our advertising was concentrated in response to the requests from the bar that we establish a subdivision of the panel which served that area exclusively. About 75% of all arbitrators applying to the OIA have

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<sup>6</sup>This is about the same rate of return of completed applications (20%) which the OIA experienced in its first year. The arbitrator application is long, and copies of it are sent to all parties as part of the selection process. Some potential neutrals do not want to take the time to complete the application, and others object to the general distribution of the information which OIA rules require. There is also a group who do not want to give references drawn from past arbitrations in which they have participated. A copy of the application appears as Exhibit F, attached. It has not changed since we first began to distribute it.

been admitted to the panel. The OIA applies the criteria, which were jointly decided upon at the outset, and makes the decision on admission. Anyone not admitted has failed to meet one of the published qualifications. We cite the specific qualification in the letter of rejection.

## **1. Qualifications**

The Blue Ribbon Panel recommended that the Independent Administrator develop the largest possible list of qualified neutral arbitrators.<sup>7</sup> The panel noted that a number of members' attorneys believed that Kaiser would only agree to a limited number of neutral arbitrators, and that the small size of that group caused delay in getting neutral arbitrators in place on cases.<sup>8</sup> General critics of mandatory arbitration have noted that a limited number of arbitrators may also lead to a defense-bias in decision-making since neutrals may depend for their livelihood on continuing to receive cases from the defendant entity which is a repeat player while the claimant is not.

Qualifications for neutral arbitrators were originally set by the OIA in consultation with the AAC and Kaiser after they had reviewed qualifications used in a number of different arbitration systems. The qualifications have remained the same since the inception of the system. The list of specific qualifications is attached as Exhibit E, and is also available from the OIA website, [www.slhartmann.com/oia](http://www.slhartmann.com/oia).

In keeping with the Blue Ribbon Panel's recommendations in this area, the qualifications are broad and were designed to recruit a large, diverse, unbiased panel. The qualifications include the following: neutral arbitrators cannot have served as attorneys of record or as party arbitrators for or against Kaiser within the last five years; arbitrators must have been admitted to the practice of law for at least ten years, with substantial litigation experience; and arbitrators must provide satisfactory evidence of their abilities to act as arbitrators based upon judicial, trial, or other legal experience or training. In order to make the panel as broad as possible, and also to approximate the experience of the parties in a courtroom setting, the qualifications do not contain a requirement that the potential arbitrator have medical malpractice experience.

## **2. Application**

The application for neutral arbitrators belonging to the pool maintained by the OIA is attached as Exhibit F. It is a lengthy document. Prospective arbitrators must provide a wide range of information, including their educational background, employment history, a summary of their legal

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<sup>7</sup>Blue Ribbon Advisory Panel Report at 35. Exhibit B at Recommendation 9.

<sup>8</sup>Blue Ribbon Advisory Panel Report at 36.

experience, and information about their arbitration experience. They must provide detailed information about prior involvement in Kaiser cases. They are required to provide references from the last five matters where they acted as an arbitrator, attorney, or in another leadership role. This information must be updated annually. When the OIA provides parties to a case with a list of 12 possible arbitrators, for the purpose of striking and ranking their selections, the parties each receive a complete copy of each arbitrator's application.

In May 2000, we sent a letter to all panelists asking them to update their application information. Their responses are included in the material sent to parties. We will be mailing to them again in May 2001.

### **3. Neutral Arbitrators' Fees and Expenses**

Each neutral arbitrator applicant must fill out a document called "Schedule of Fees and Expenses," upon which he or she sets out information related to charges for services.<sup>9</sup> This is also given to parties when strike and rank lists are distributed. Neutral arbitrators on the OIA list may not change the fees listed on their Schedule of Fees and Expenses during an operating year. As part of our annual request for updated information, the OIA contacts the arbitrators, and asks them to update their schedule of fees and expenses. However, if the neutral arbitrator has been assigned to a given case, the fees in the year of assignment remain constant throughout that particular case. Neutral arbitrators on the OIA panel are free to set their rates as they see fit. The range in rates is quite wide.

The Blue Ribbon Panel recommended that Kaiser's arbitration system should be made less costly for members.<sup>10</sup> At the time that the panel was writing, members usually paid for half of the cost of the neutral arbitrator, and often had to pay for a party arbitrator as well. To reduce the cost, the panel suggested that Kaiser pay neutral arbitrators' fees and expenses in all cases proceeding with a single arbitrator.<sup>11</sup> Where the parties have the statutory right to proceed with three arbitrators, the panel suggested that Kaiser encourage the use of a single arbitrator by paying the neutral arbitrators' fees and expenses in cases where claimants waived the right to proceed with party arbitrators.<sup>12</sup> These recommendations were adopted and are set out in Rules 14 and 15. These two rules are designed to make the system more cost effective for members and to encourage efficiency and speed by having

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<sup>9</sup>This document is included as part of Exhibit F.

<sup>10</sup>Blue Ribbon Advisory Panel Report at 41-42, Exhibit B at Recommendation 27.

<sup>11</sup>Blue Ribbon Advisory Panel Report at 41-42, Exhibit B at Recommendation 27.

<sup>12</sup>Blue Ribbon Advisory Panel Report at 41-42, Exhibit B at Recommendation 27.

fewer arbitrators involved.<sup>13</sup> About 40% of the cases administered by the OIA have chosen to have Kaiser pay for the neutral. It appears that a number of other cases are also using a single neutral although they have not asked Kaiser to pay for that individual.

#### **4. The Panel as of December 31, 2000**

For the convenience of the parties and for ease of administration, the panel of neutral arbitrators maintained by the OIA is split into three parts, Northern California, Southern California and San Diego.<sup>14</sup> Parties receive a list of 12 possible arbitrators serving in the geographical portion of the state where the claim arose. There are currently 349 neutral arbitrators on the OIA panel, 136 in Northern California, 178 in Southern California and 35 in San Diego. Twenty-nine percent, or 102 members, of the total panel are retired judges. There are 47 retired judges on the Northern California part of the panel, or 35%, 45 retired judges on the Southern California part of the panel, or 25%, and 10 retired judges in the San Diego panel, or 29%.<sup>15</sup> The overall numbers of neutral arbitrators have grown in the past year, but percentages of retired judges available within each segment of the panel have remained constant.

Under the *Rules*, the OIA provides each party in a given case with an identical list of 12 possible arbitrators. The parties have 20 days to strike and rank arbitrators on the list and serve their responses on the OIA. The OIA then puts a neutral arbitrator in place by adding up the numbers assigned to each listed person by the two sides. In the alternative, parties can jointly agree to any arbitrator of their choosing within the same 20 day period.<sup>16</sup> Since the OIA first began operation, it has placed a total of 1062 neutrals in cases. In 350 of these cases, or about 33%, the parties have jointly selected a neutral arbitrator, while in 710, or 67%, the parties have used the list supplied by the OIA.<sup>17</sup>

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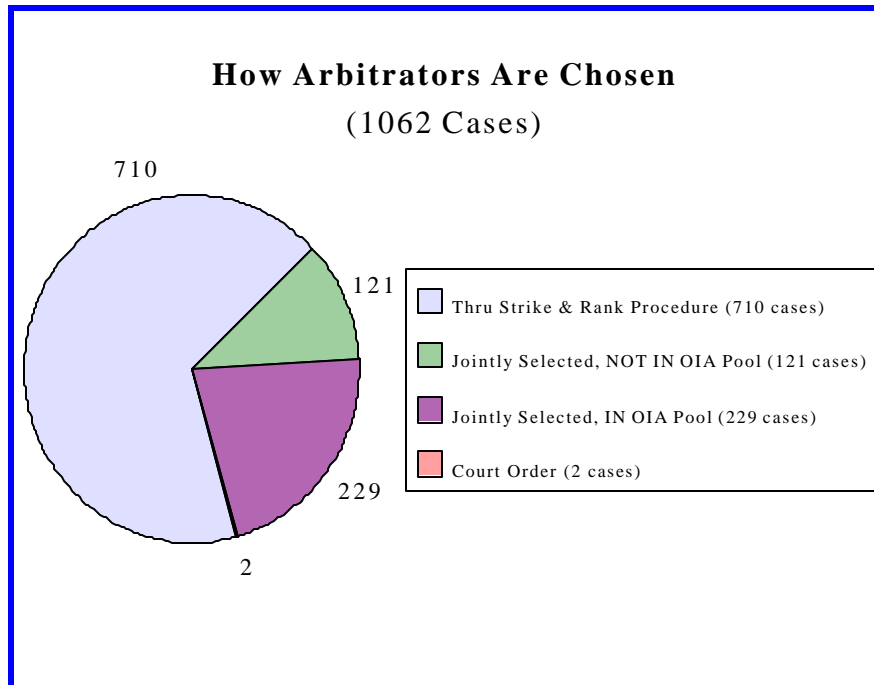
<sup>13</sup>Sections VI.K & L of this report contain information about how many parties have elected to follow the procedures set out in Rules 14 and 15.

<sup>14</sup>The San Diego Panel follows the boundaries of the United States District Court for the Southern District of California, and is thus composed of San Diego and Imperial Counties. A case is placed within one of the three panels depending upon the location of the facility giving rise to the claim. *See* Rule 16(b).

<sup>15</sup>A list showing the complete panel of OIA arbitrators is attached as Exhibit H. The list is also available from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). The lists posted on the website are updated regularly throughout the year as new arbitrators are added to or leave the panel.

<sup>16</sup>*See* Rules 16-18 for information about how parties select neutral arbitrators. *See also* Exhibit B at Recommendations 14 and 15.

<sup>17</sup>The neutral arbitrators for two cases were appointed by the courts.



As the chart above shows, of the 350 arbitrators jointly selected by the parties, 229 of them, or about two thirds, belong to the OIA's pool, although they may not have appeared on the specific list generated for a particular case, while 121, or about one third, are not part of the OIA's pool. Rule 17(b) permits the parties to jointly select a neutral arbitrator who is not on the OIA panel, as long as that person agrees to follow the Rules.

## 5. Materials Available to Help Parties Make Their Selection of a Neutral

As noted above, the application completed by the neutral is photocopied and sent to all parties whenever that person's name appears on a randomly generated list of possible arbitrators. The application includes names and phone numbers of those involved in previous arbitrations with this neutral. Parties considering the selection of a given neutral are encouraged to contact those people who have used the individual in the past. Part of the application also states the neutral's charges and other payment requirements, such as deposits, advance payments and forfeiture policies.

In addition, if a neutral has previously decided cases in the OIA system, copies of each written decision, without the names of parties involved, are also sent to the parties. Finally, the OIA asks all parties in closed cases to evaluate anonymously their experience with the neutral. We send copies of



these completed evaluations to those making a decision on a new arbitrator. A copy of the evaluation form is attached as Exhibit J.

Finally, we note that the California arbitration disclosure statute, Code of Civil Procedure § 1281.9, requires that a neutral complete and mail disclosures to both parties within ten days of being appointed. Thereafter, each party has fifteen days in which to disqualify the neutral. If such a disqualification occurs, which it has 76 times since the OIA began operation of its system,<sup>18</sup> the entire process for selection of a neutral begins again.

## **6. How Many of the Panel of Arbitrators Have Served?**

Sixty-two percent of all neutral arbitrators on the OIA's panel, (216 out of 349), have been selected to serve as neutral arbitrators on Kaiser arbitrations. The number of neutrals actually selected has risen 11% since our first report. The number of individual assignments to cases on the OIA's panel ranges from 0 to 29. The arbitrator at the high end of this range has been jointly selected by parties 23 times. The average number of selections to serve per neutral is 4.4. The median is 3 and the mode is 1.

For Northern California, all 134 arbitrators have appeared on at least one list of possible arbitrators given to the parties for their selection. The range for Northern California arbitrators appearing on a list is from 1 to 50 times. The average number of appearances is 29; the median number of appearances is 32, and the mode is 33.<sup>19</sup> In Southern California, 170 of 178 arbitrators have appeared on at least one list of possible arbitrators.<sup>20</sup> The range is from 0 to 36 times. The average number of appearances is 17; the median is 19, and the mode is 15.

Since May 1, 2000, when the San Diego panel was created, all 35 of the San Diego panel members have appeared on at least one list. The average, median and mode are each 8 appearances. The range of appearances is from 3 to 13.

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<sup>18</sup>Claimants have disqualified neutral arbitrators 51 times; Kaiser has disqualified a neutral 25 times.

<sup>19</sup>Note that the extent of the range is affected by how long a given arbitrator has been in the panel. Some have been panelists for 21 months, while others have only recently joined. The number of times an arbitrator is selected is also affected by whether the neutral is willing to hear cases where claimants have no attorneys (*pro per* cases). Many are not.

<sup>20</sup>Of the 8 Southern California neutral arbitrators whose names have not appeared on OIA lists, two were added to the pool on November 27, 2000 and 6 were added on December 18, 2000. All numbers in this report are being stated as of December 31, 2000.

## **7. The Parties & Their Counsel Evaluate the Neutral Arbitrators**

Under Rule 49, at the close of an arbitration, the OIA must send an evaluation form to each party, or to the party's counsel. The form focuses on the person's experience with the neutral arbitrator. Together with Kaiser and the AAC, the OIA created these forms and began to send them out for the first time during the period covered by this second annual report.<sup>21</sup> The form asks parties to evaluate their experience with the neutral appointed in the matter in eleven different areas including fairness, impartiality, respect shown for all parties, timely response to communications, understanding of the law and facts of the case and fees charged. Most important, each party is asked to say whether s/he would recommend this neutral to another person with a similar case. All inquiries appear in the form of statements, and all responses appear on a scale of agreement to disagreement with 5 being strong agreement and 1 strong disagreement.

The responses have been very positive. The agreement numbers are high, and they are encouragingly similar for both claimants and respondents. On December 31, 2000, the OIA had received responses from about 39% of the parties in closed cases. (435 forms returned of 1112 mailed). One third of those responding identified themselves as claimants or claimants' counsel, and two thirds were respondent's counsel.<sup>22</sup> Here are responses to some of the inquiries:

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<sup>21</sup>A blank copy of the Evaluation Form is attached to this report as Exhibit J.

<sup>22</sup>See Exhibit J for the full analysis of responses to all evaluation questions including the exact numbers of each group responding to each item.

Respond from 5 (Agree Strongly) to 1 (Disagree Strongly).

**Item 2: "The neutral arbitrator treated all parties with respect."**

The average of all 435 responses was 4.2 out of a maximum of 5 with the median and mode both at 5. Claimants' counsel averaged 4.2. Pro pers averaged 3.4.<sup>23</sup> Respondent's counsel averaged 4.4. The median and mode for all three subgroups was 5.<sup>24</sup>

**Item 5: "The neutral arbitrator explained procedures and decisions clearly."**

The average of all responses was 4.5 with the median and mode both at 5. Claimants' counsel averaged 4.4. Pro pers averaged 3.8. Respondent's counsel averaged 4.5. The median and mode for all three subgroups was once again 5.

**Item 7: "The neutral arbitrator understood the facts of my case."**

The average of all responses was 4.5 with the median and mode both at 5. Claimants' counsel averaged 4.6 with the median and mode both 5. Pro pers averaged 3.6 with the median 4 and the mode 5. Respondent's counsel averaged 4.6 with the median and mode both 5.

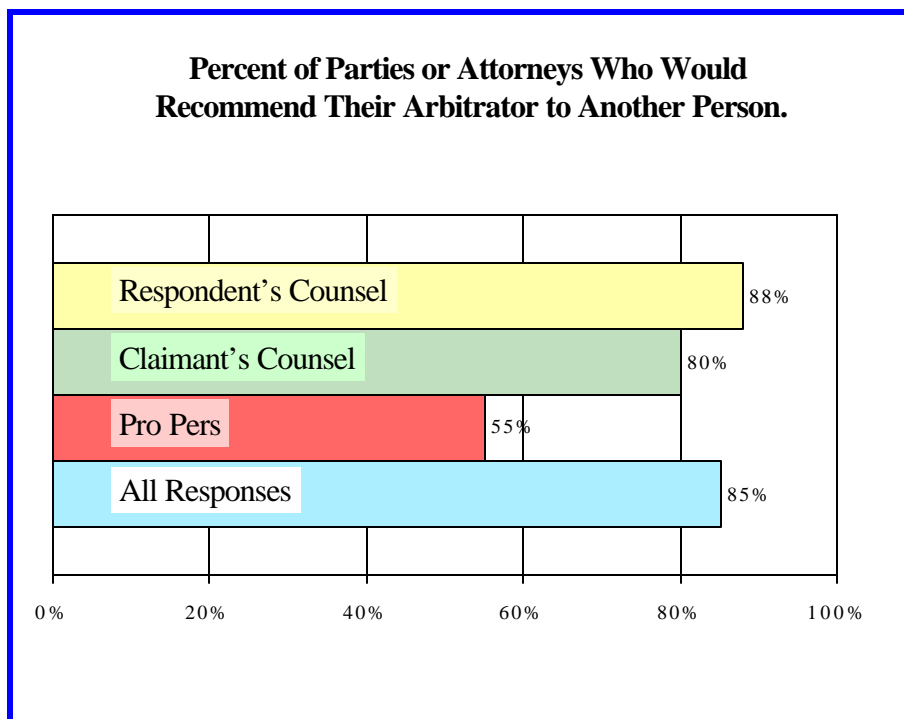
**Item 11: "I would recommend this arbitrator to another person or another lawyer with a case like mine."**

The overall average on all 435 responses was 4.3. Both the median and the mode were 5. Claimant attorneys gave an average response of 4.2. Pro pers gave an average of 3.2. And respondent's counsel had an average of 4.5. The median and mode in all three subgroups was 5.

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<sup>23</sup>As Exhibit J shows, the group which was least satisfied throughout this evaluation is composed of the 26 claimants who represented themselves. The OIA is working now on an initial handout which might help them to understand the arbitration process better. We will report on this next year.

<sup>24</sup>When the median and mode are both 5, it means that a large number of people responding gave that number as their answer. Five was our highest score, and it was the median and mode on nearly all of the 11 questions the evaluation contained. That was also true across subgroups. It is another measure of party satisfaction with their neutral.



## **B. Rules for Kaiser Member Arbitrations Overseen by the OIA**

The OIA, AAC and Kaiser completed negotiations on the rules for the independently administered system in March 1999. The *Rules for Kaiser Member Arbitrations Overseen by the Office of the Independent Administrator* consist of 53 rules in a 15 page booklet.<sup>25</sup> The booklet is available from the Office of the Independent Administrator, from the OIA website, [www.slhartmann.com/oia](http://www.slhartmann.com/oia), and from Kaiser Member Services. Some important features contained in the Rules include:

- § Deadlines stating that most cases must be resolved within 18 months after the OIA receives a claimant's demand for arbitration and filing fee;<sup>26</sup>
- § Deadlines stating that most cases must have neutral arbitrators in place no later than 33 days after the OIA receives a claimant's demand for arbitration and filing fee;<sup>27</sup>

<sup>25</sup>The *Rules* are bound into this report as Exhibit D. They have not been changed since first adopted.

<sup>26</sup>See Rule 24.

<sup>27</sup>Weekends and holidays sometimes increase the number of days. See Rule 43 for information about how

\$ Procedures under which claimants may choose to have Kaiser pay the fees and expenses of the neutral arbitrator;<sup>28</sup>

\$ Timing options for cases that require more or less time than 18 months for resolution.<sup>29</sup>

### III. Types of Demands for Arbitration Submitted by Kaiser to the OIA

The OIA began administering arbitrations on March 29, 1999. Since then, Kaiser has submitted three types of demands for arbitration to us for administration. The first may be described as "pre OIA" cases. These are cases where Kaiser first received a demand for arbitration before the OIA started accepting claims from Kaiser, i.e. prior to March 29, 1999. The second may be described as "post OIA" cases. These are cases where Kaiser first received a demand for arbitration on or **after** March 29, 1999, when the OIA began administering Kaiser cases. In neither of these first two groups of cases, does the member's contract call for use of the OIA. The third group of demands, called mandatory cases, arise under contracts requiring the use of the Independent Administrator.

#### A. Pre-OIA Cases

Between March 29, 1999 and December 31, 2000, Kaiser submitted 224 cases to the OIA in which the demand for arbitration was made before March 29, 1999. Of these, 204 joined our system, and 167 are now closed. The average length of time these cases were with Kaiser before being forwarded to the OIA for handling is 453 days. The mode is 13 days, the median 344 days, and the range is from 3 to 2409 days.<sup>30</sup>

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days are counted in the system. The 33 day deadline does not apply to cases where claimants elect a 90 day postponement to select a neutral arbitrator or to cases where the neutral arbitrator is disqualified by a party. *See* Rules 20 and 21.

<sup>28</sup>*See* Rules 14 and 15 for information about how claimants may shift the responsibility for paying all of a neutral arbitrator's fees and expenses to Kaiser. *See also* Exhibit B at Recommendation 27.

<sup>29</sup>*See* Rules 24 and 33. *See also* Exhibit B at Recommendation 7

<sup>30</sup>The OIA has no information about the status of old cases that were not forwarded for inclusion in the new system.

## **B. Post-OIA Cases**

Between March 29, 1999 and December 31, 2000, Kaiser submitted 1716 new cases to the OIA for administration. These cases are about evenly divided throughout the state – 835 are from Northern California; 822 are from Southern California, and 59 are from San Diego. Under the *Rules*, Kaiser must submit a Demand for Arbitration to the OIA within 10 days of receiving it.<sup>31</sup> The average length of time that Kaiser has taken for submitting new Demands for Arbitration to the OIA is 8 days. The mode is zero. The mode at zero means that most commonly Kaiser sends the OIA a claimant's demand for arbitration on the same day that it is received at Kaiser. The median is four days, and the range is from zero to 330 days.<sup>32</sup>

## **IV. Opt in Process for Post-OIA Cases**

At the time that the OIA began accepting claims from Kaiser, the employer contracts governing the roughly six million Kaiser members in California described the old, Kaiser-administered system. As Kaiser forwarded new Demands for Arbitration to the OIA, the OIA contacted claimants under these old contracts and gave them the choice of entering the OIA's system, or remaining in the old system variously described in their contracts with the health plan. Of the 1616 new Demands received since March 29, 1999, 924 chose to join the new system and proceed under the OIA's *Rules*.<sup>33</sup> Only 39 claimants have affirmatively refused to join the OIA system. Kaiser resolved six cases and five claimants withdrew their demands for arbitration before they opted in. Three cases settled in the opt-in period. However, the OIA returned 569 claims to Kaiser for handling under the old process because the claimants or their counsel never responded to a series of letters from the OIA asking whether or not they wished to enter the new system. The remaining 70 cases are in the process of deciding whether or not to opt in to the OIA system.

## **V. Mandatory Cases**

As of November 30, 2000, Kaiser had amended 79,000 employer contracts so that they now describe the OIA as the arbitration system administrator. All Kaiser contracts, covering some six

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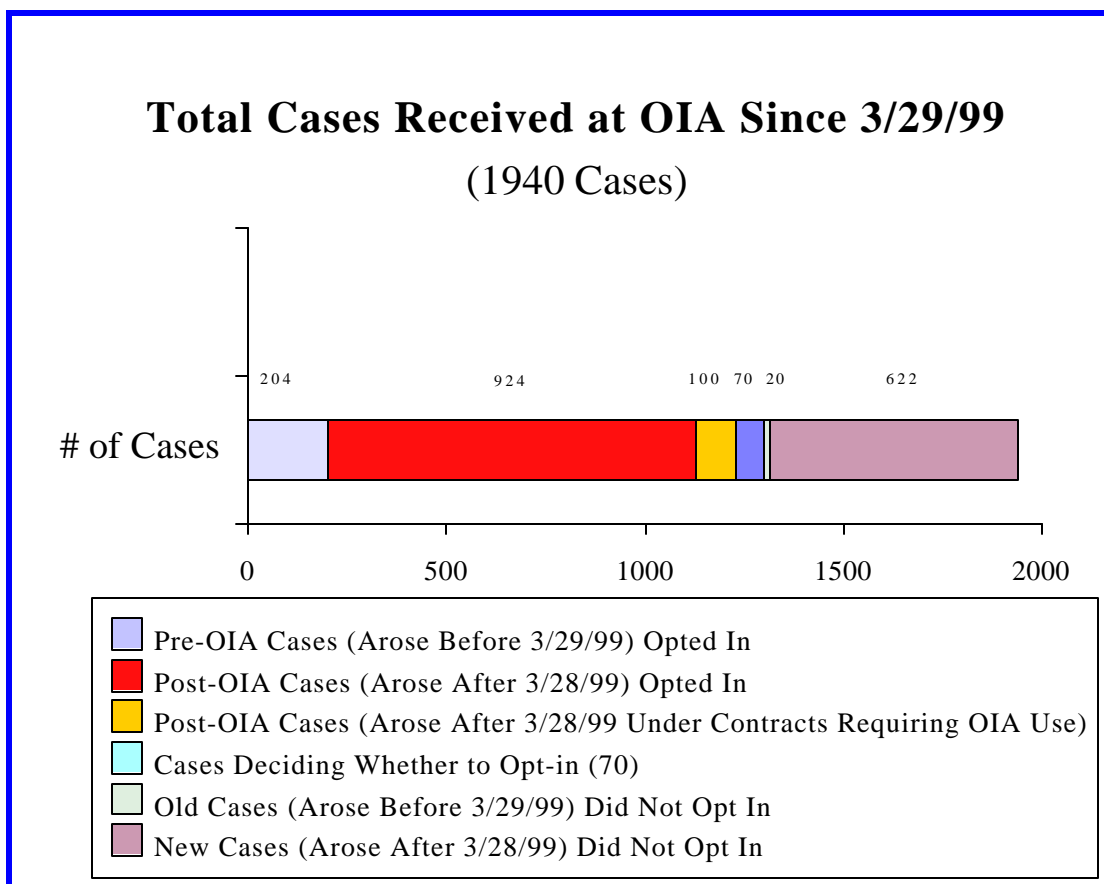
<sup>31</sup>See Rule 11. See also Exhibit B at Recommendation 12.

<sup>32</sup>The case which took 330 days was initially filed in the superior court; Kaiser had to file a petition to compel arbitration in order to bring it to the OIA. The court order was not forwarded to the OIA for sometime after it was entered.

<sup>33</sup>One hundred of the 1716 new cases mentioned the paragraph above were mandatory and thus did not have the choice of "opting-in" being explained in this paragraph. The mandatory cases are discussed below.

million Californians, were scheduled to be so modified by December 31, 2000. Therefore, all Kaiser disputes with its members arising after that date should be subject to OIA administration. Effective December 31, 2000, 100 claims in the OIA system were mandatory. In future reports we will be tracking closely what we experience as we change from an opt-in to a mandatory case load.

The following graph summarizes the cases Kaiser has forwarded to the OIA since March 29, 1999, based on whether they are pre or post OIA cases or new cases, whether they have or have not opted in to the OIA system, and whether they are mandatory:



## VI. Description of Cases Administered by the OIA

This section provides a detailed description of the cases administered by the OIA.

Of particular note is Section A, which describes the average length of time for neutral arbitrators to be appointed in the new system. Parties have selected neutral arbitrators in 1062 out of 1228 cases

administered by the OIA.<sup>34</sup> If we look at the vast majority of cases, where the parties select the neutral without seeking a postponement and where the neutral does not need to be replaced, – 77% of our cases – neutral arbitrators were placed in an average of 25 days after the date the OIA received the claim. This is two and half days faster, on average, than the number we reported in the first annual report.

For 1026 cases, neutral arbitrators were placed in an average of 41 days, or 16 times faster than the 674 days reported in the *Engalla* decision.<sup>35</sup> This 41 day figure includes in its average the remaining 23% of cases excluded in the paragraph above – those where claimants exercised their right to a 90 day postponement before appointment of a neutral under the *Rules* and/or one or more arbitrators were disqualified following the service of their statutory disclosures.<sup>36</sup> The following graph summarizes this comparison:

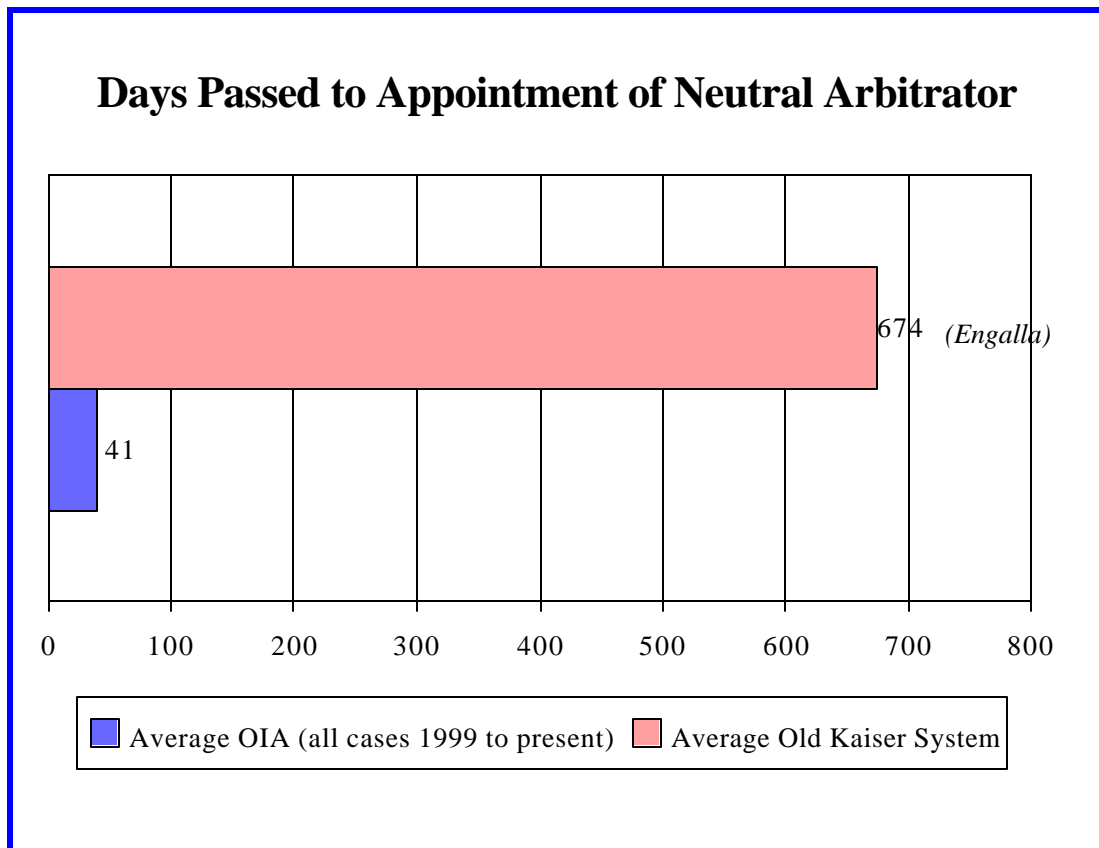
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<sup>34</sup>In the remaining 166 cases, the time for appointing a neutral had not expired on December 31, 2000 or the case may have closed before appointment of a neutral.

<sup>35</sup>This number subtracts the 36 cases in which neutral arbitrators have withdrawn from cases for personal reasons, or “recused” themselves. (1062 - 36=1026). See note 39, below, for an explanation of this.

<sup>36</sup>See California Code of Civil Procedure §1281.9 and Rule 20.





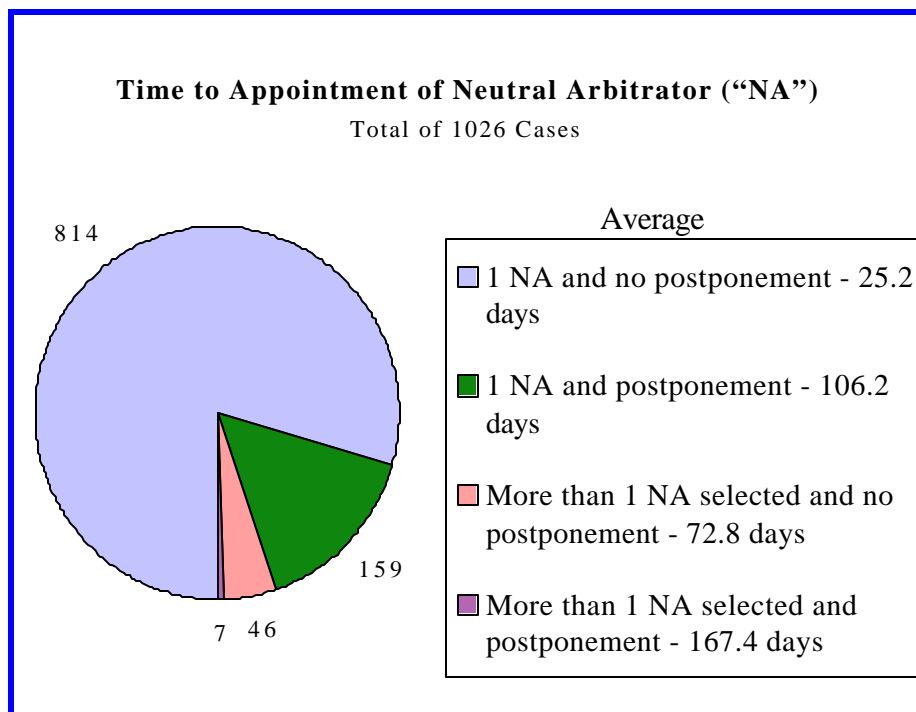
Other information included in this section provides the number and type of cases, the number of cases with and without attorneys representing claimants, and the number of cases where claimants have sought and obtained fee waivers. This section also provides the number of cases where the parties jointly selected a neutral arbitrator, the status of cases currently pending in the OIA system, as well as the number of cases resolved thus far and the types of resolutions. It discusses awards and compares them with the court system data available. This section also reports the number of cases using special procedures, the number of cases in which claimants have elected to have Kaiser pay the neutral arbitrator's fees and expenses, the number of cases in which parties have waived party arbitrators, and the number of cases proceeding with party arbitrators. Finally, it reports the results of neutral arbitrator evaluation of the OIA system as it has worked in specific cases thus far.

#### **A. Average Length of Time for a Neutral Arbitrator to be Selected**

The *Rules* set a 33 day timetable by which neutral arbitrators must be appointed. Weekends and holidays may extend this timetable. Under the *Rules*, the 33 day time frame for selecting a neutral arbitrator increases if one of several events takes place. First, the *Rules* permit claimants to obtain a 90

day postponement to select a neutral arbitrator upon request. Second, in some cases, parties have chosen more than one neutral arbitrator because they may disqualify a neutral arbitrator after receiving his/her statutorily required disclosures. Neutrals send these disclosures only after the OIA has appointed them initially. When such a disqualification occurs, the entire process of selecting a neutral arbitrator begins again, as does the statutory opportunity to disqualify him or her.<sup>37</sup> In a small number of cases, both these types of delay have occurred; that is, one party has requested a postponement and more than one neutral arbitrator has been chosen. The average number of days for neutral arbitrators to be appointed including all of these possible sources of delay is 41 days.

The following chart summarizes the time to appointment of neutral arbitrators in all cases:



<sup>37</sup>However, the disqualification and replacement of one or more neutrals does not extend the 18 month time period in which the case must be resolved unless the circumstances are very unusual.

The following subsections provide additional information about each average.

### **1. The Majority of Cases**

In 77% of the cases administered by the OIA where neutral arbitrators have been appointed (814 out of 1062), the average time to the naming of a neutral arbitrator is 25 days. The mode is 22 days, the median is 24 days, and the range is from 1 to 101 days. These figures exclude the cases where parties have obtained a postponement to select a neutral arbitrator, and the cases where more than one neutral arbitrator has been selected.

### **2. Cases With Postponements**

Under Rule 21, claimants may obtain a postponement to select a neutral arbitrator by serving a request for it on the OIA and the respondent. Respondents may obtain the postponement only if the claimant agrees in writing. To date, parties have obtained the 90 day postponement in 19% of the total number of cases administered by the OIA (234 of 1228).<sup>38</sup> A large majority of the postponements, 228, were obtained by claimants, while only six postponements were obtained by respondents.

In 159 cases with postponements, parties have subsequently selected only one neutral arbitrator. For those cases, the average time to appointment of a neutral arbitrator is 106 days, or only 16 days beyond the 90 day postponement itself. The mode is 112 days; the median is 113 days, and the range is from 28 to 141 days. In the remaining 63 of these cases, parties have not yet selected a neutral arbitrator. Cases with postponements where more than one neutral arbitrator has been selected are discussed below.

### **3. Cases In Which More Than One Neutral Arbitrator Has Been Appointed Because Earlier Choices Were Disqualified**

#### **a. Cases Without Postponements**

In 46 cases, parties have not requested a postponement, but have chosen more than one neutral arbitrator because an earlier choice was disqualified under the statutory procedure.<sup>39</sup> Each time a

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<sup>38</sup>Requests for postponements have risen in this reporting period. We got 113 in the first year (17%), and 121 in the second reporting period (22%) which was only nine months.

<sup>39</sup>See Rule 18(f) and (g) for the procedures followed when a proposed neutral arbitrator is disqualified.

neutral arbitrator is disqualified, the entire process of selection begins again, including the 10 day period that the neutral has to serve disclosures, and the 15 day time period which parties have for disqualifying the neutral following his/her disclosures.

In these 46 cases, a proposed neutral arbitrator was disqualified by a party after the neutral arbitrator served his or her statutorily required disclosures. In 5 of the 46 cases, a second neutral arbitrator was disqualified by parties after serving his/her statutorily required disclosures. Claimants have disqualified a neutral 51 times, and respondents have disqualified a neutral 25 times.

For these 46 cases, the average number of days to appointment of the current neutral arbitrator is 73 days. The mode is 52 days; the median is 64 days, and the range is from 29 to 127 days.<sup>40</sup>

#### **b. Cases With Postponements**

In seven cases, the parties have both selected more than one neutral arbitrator and have requested postponements. One case has disqualified both a third and a fourth neutral.<sup>41</sup> For these cases, the average number of days to appointment of the neutral arbitrator is 167 days measured from the day the case entered the OIA system. The median is 154 days. There is no mode, and the range is from 122 to 253 days.

#### **4. Average Time to Appointment of Neutral Arbitrator For All Cases Administered by the OIA**

The average time to the selection of the neutral arbitrator is 41 days, if we average together all cases, including those with no postponements, cases with postponements, and cases where a party has disqualified a neutral. For purposes of comparison, the *Engalla* decision reported that the old Kaiser system averaged 674 days to the selection of a neutral arbitrator over a period of two years. Thus far, in the 21 months of its existence, the OIA system overall is 16 times faster.

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There are also cases in which neutrals remove, or recuse, themselves at sometime in the course of the matter. This relatively rare event occurs because the neutral becomes sick, disabled, dies, or changes occupations. Last year we included those replacements in this average. Upon consideration, we think that this was mistaken and have excluded these cases this year. For purposes of completeness, here are the recusal figures. In 36 cases, neutrals have removed themselves. The average to appointment of another neutral, measured from the time that the case first entered the OIA system, is 186 days; the median is 171 days, and there is no mode. The range is from 31 to 538 days.

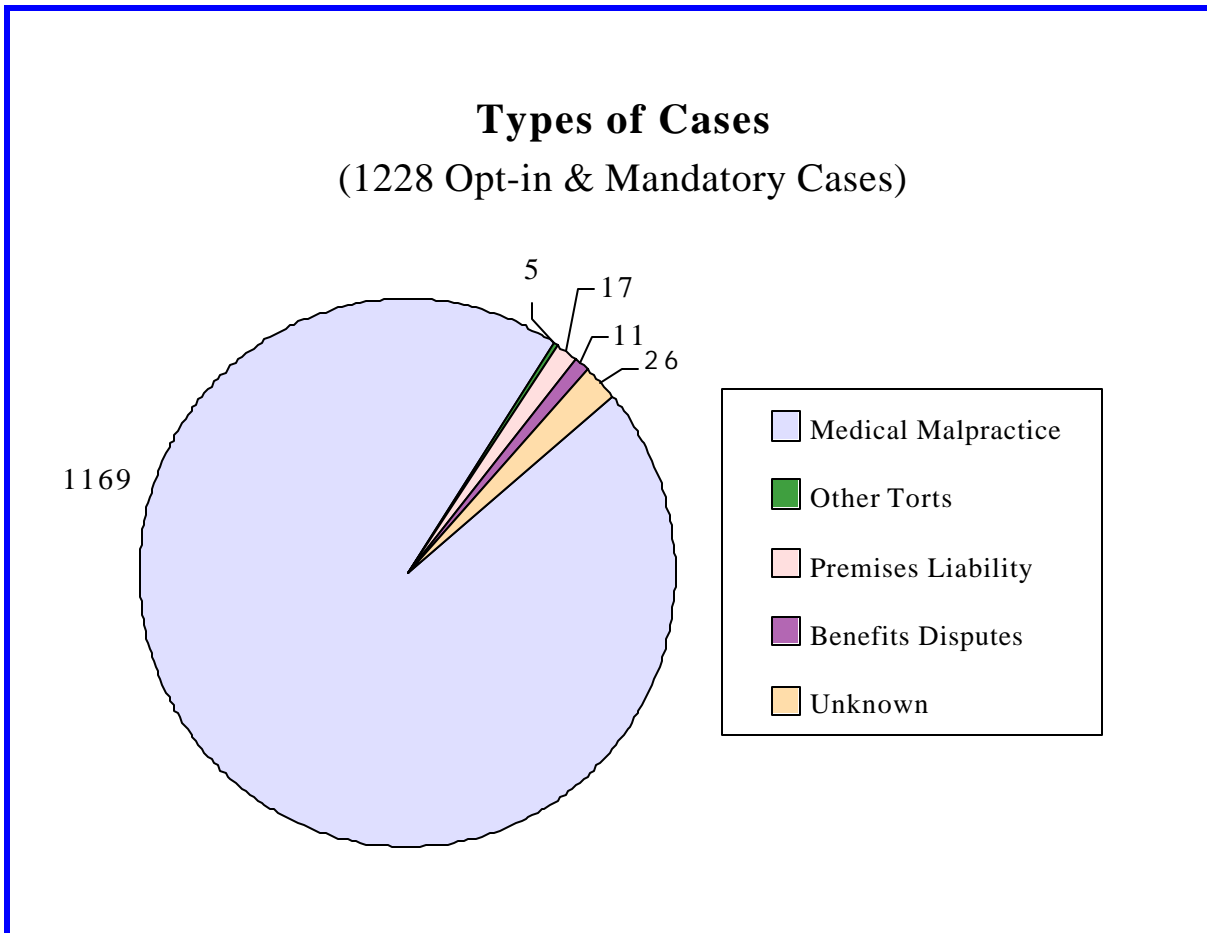
<sup>40</sup>The high end of the range was a court appointed arbitrator who accepted service in our system. It was a Pre-OIA case.

<sup>41</sup>At the time of this writing, this last case has a neutral in place who has not been disqualified.

Therefore, the OIA system is achieving the Supreme Court's primary recommendation in *Engalla*, and one of the major goals set by the Blue Ribbon Panel, by ensuring that neutral arbitrators are selected quickly in Kaiser arbitrations. The rationale of both the court and the Blue Ribbon Panel was that a case only really begins to move once the neutral arbitrator is in place. Therefore, the promise of speed in arbitration depends upon the swiftness of the neutral arbitrator's appointment.

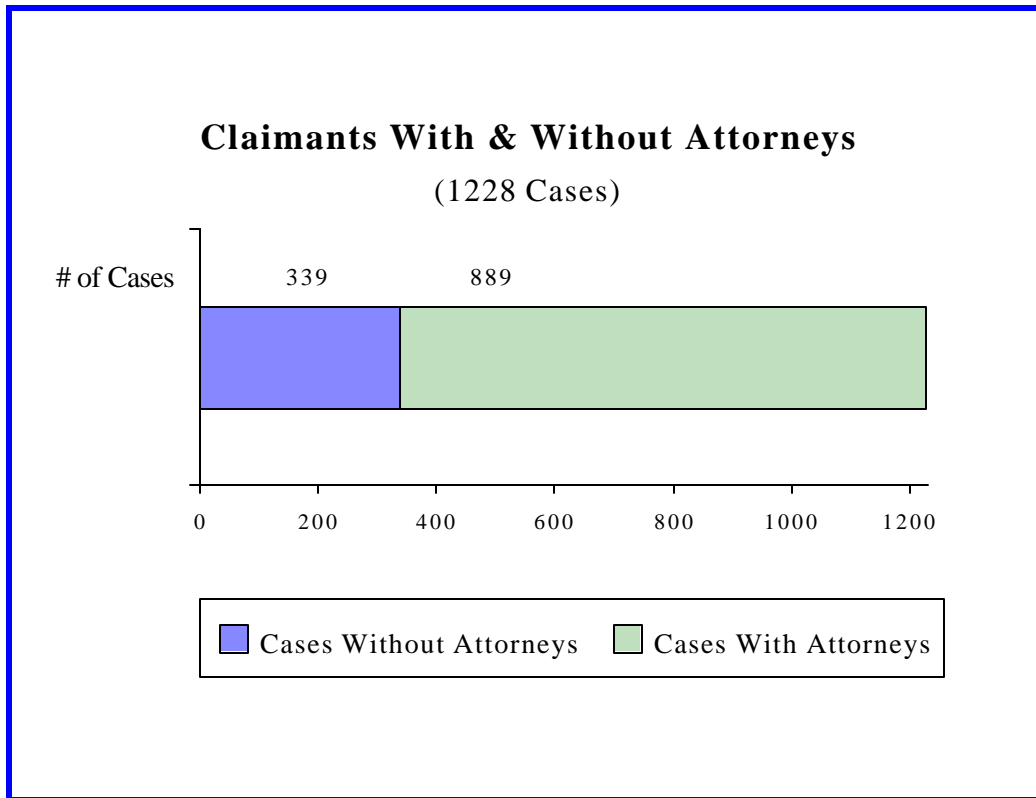
## **B. Types of Cases**

Since 1999, the OIA has administered, or is now administering, a total of 1228 Kaiser cases. Types of cases include medical malpractice, premises liability, other tort and benefits and coverage cases. In addition, there are a group of cases the nature of which is unknown because the demand for arbitration does not describe the nature of the claim. All of the unknown cases were received in 1999. Demands have become clearer since then. Medical malpractice cases are the most common, making up 95% of the cases seen in the OIA system, or 1169 of 1228. Benefits and coverage cases represent less than 1%. The following chart shows the breakdown of all cases by type:



#### C. Number of Claimants With and Without Attorneys ("Pro Pers")

In the 1228 cases administered by the OIA, 889 claimants are represented by counsel, while 339 are not. Therefore, 28% of the claimants in the system are representing themselves or acting in pro per. The following graph shows a breakdown of cases according to whether the claimant is represented by counsel or is proceeding in pro per:



#### D. Number of Cases Involving Fee Waiver Applications

As of December 31, 2000, 183 claimants have requested applications for fee waivers from the OIA. Of those, 114 applications have been completed and returned.<sup>42</sup> We have granted waivers in 104 cases and denied five.<sup>43</sup> None of the five denied applicants has subsequently left the system as a case abandoned for non-payment of the fee. Although the Rules permit Kaiser to object to a claimant's application for a fee waiver application, in the 21 months of the OIA's existence, it has never done so. The remaining five applications are still pending for various reasons. A copy of the fee waiver information sheet and application are attached as Exhibit G.

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<sup>42</sup>Of the 69 claimants who asked for fee waiver applications and did not return them, only three have left the system as cases abandoned for non-payment of the fee. These three cases occurred in the first year and were reported in the first annual report.

<sup>43</sup>See Rule 13 for information about fee waiver applications.

**E. Number of Cases Where Parties Use the OIA List of Arbitrators or Jointly Select a Neutral Arbitrator**

Under the Rules, parties can either jointly select a neutral arbitrator or use the list of possible arbitrators provided by the OIA, and strike and rank names. In 710 out of 1062 cases, or about 67% of the cases where parties have selected neutral arbitrators, the parties used the list provided by the OIA. In 350 cases, the parties jointly selected a neutral arbitrator instead of returning the list provided by the OIA. In the 350 cases where parties have jointly selected a neutral arbitrator, 229 of them have selected an arbitrator who is on the OIA's panel.<sup>44</sup>

**F. Administration of Cases**

The OIA tracks whether the key events set out in the *Rules* – service of the arbitrator's disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – take place by the deadlines set out in the Rules. The tracking of each key event is discussed in this section. The OIA created forms to track each of these events. The forms keep to a minimum the time that neutral arbitrators or parties need to spend communicating about completion of the events. This in turn reduces expense to the parties. All forms can be downloaded from the OIA website.

The OIA's approach for monitoring compliance with the deadlines established by the *Rules* is consistent for each key event that is controlled by the neutral arbitrator. If an arbitrator fails to notify us that a key event has taken place by its deadline, the OIA contacts the neutral arbitrator in writing and asks for confirmation that the event has occurred. In most cases, the neutral arbitrator responds by sending in confirmation. In some cases, the OIA has sent a second letter and/or made a phone call asking for confirmation. The second letter and/or phone call warns the arbitrator that, if he or she does not provide confirmation that the event took place, the OIA will remove his or her name from its panel until confirmation is received.

In a very few cases, a neutral arbitrator has not responded to a second letter and/or phone call. In those cases, the OIA removes the neutral arbitrator's name from its panel until s/he provides the required confirmation.

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<sup>44</sup>Two neutrals were appointed by the courts.



## **1. Neutral Arbitrator's Disclosure Statement**

Once the neutral arbitrator has been selected, he or she must make disclosures within ten days.<sup>45</sup> Neutral arbitrators are required to provide a copy of their disclosure statements to the OIA. If the OIA does not receive a neutral arbitrator's disclosure statement, we send the neutral arbitrator a letter requesting it. If the neutral arbitrator does not respond to the letter, the OIA calls the arbitrator to determine why he or she has not sent the disclosure and requests it be sent immediately and warns the arbitrator of possible suspension for failure to submit disclosures. If the OIA does not receive the disclosure in response to the phone call, the OIA temporarily removes the arbitrator's name from the panel. The OIA has temporarily removed three neutral arbitrators for failure to timely serve disclosures.

## **2. Arbitration Management Conference**

The *Rules* require the parties and the neutral arbitrator to have an arbitration management conference ("AMC") within 45 days of the neutral arbitrator's appointment. When the OIA assigns a case to a neutral arbitrator, we provide the arbitrator with an AMC form. The OIA prints the deadlines for the AMC, settlement meeting and hearing on this form. Therefore, the neutral arbitrator knows the deadlines for these events when s/he receives a case.

The neutral arbitrator returns the form to the OIA within five days after the conference. If the OIA fails to receive the form by the deadline, we write to the neutral arbitrator and request it. If the neutral arbitrator does not respond, the OIA sends a second letter informing the arbitrator of possible suspension if the form is not submitted. If the OIA still does not receive the form, the arbitrator is temporarily removed from the panel. The OIA calls the arbitrator and informs him or her that the suspension will remain in effect until confirmation is received. The OIA has temporarily removed three neutral arbitrators for failure to submit the AMC form in a timely fashion. All of them promptly sent in the missing document.

## **3. Mandatory Settlement Meeting**

The parties hold a mandatory settlement meeting ("MSM") within six months of the AMC. Implementing the Blue Ribbon Panel recommendation, the neutral arbitrator is not present at this meeting. The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. If the OIA fails to receive the form by the deadline, we send a letter to each of the parties requesting that they forward the form to our office as soon as possible. If we do not receive a response, we send a second letter requesting the form.

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<sup>45</sup>See California Code of Civil Procedure §1281.9 and Rule 20.

#### **4. Hearing**

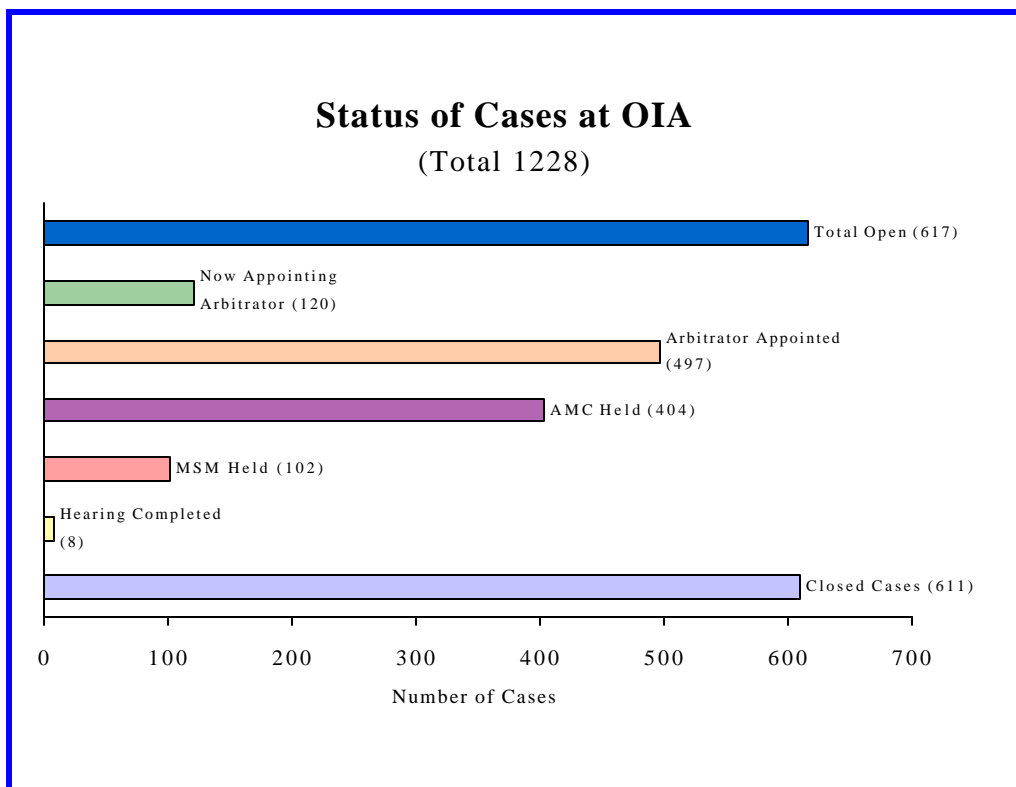
The neutral arbitrator is responsible for ensuring that the hearing takes place no later than 18 months after the OIA received the demand for arbitration and filing fee. When the OIA assigns a matter to a neutral arbitrator, we provide him or her with the award form. The neutral arbitrator informs the OIA of the hearing dates when he or she returns the AMC form. The neutral arbitrator must return the award form to the OIA ten days after the last day of the hearing. If the OIA fails to receive a completed award form by the deadline, we write to the neutral arbitrator and request it. If we do not receive a response to our letter, the OIA calls the arbitrator and requests the award. If the OIA still does not receive a copy of the award, the OIA sends a second letter informing the arbitrator of possible suspension if the award is not submitted. We have never had to suspend an arbitrator for failure to submit an award.<sup>46</sup>

#### **G. Status of Open Cases Currently Administered by the OIA**

The OIA is currently administering 617 open cases. In 120 open cases, the parties are now in the process of selecting a neutral arbitrator. In 497 cases, the neutral has been selected. In 404 open cases or 66%, the parties and the neutral arbitrator have held the arbitration management conference. In 102 open cases, the parties have held the mandatory settlement meeting. In eight cases, the hearing has been held, but the case has not yet been decided. There are 611 cases which have been closed. The following graph illustrates the status of cases:

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<sup>46</sup>See discussion in text on pages 33-34 at notes 63-64 regarding the 10 day rule.



## H. Number of Cases Resolved and Types of Resolution

Under the *Rules*, most cases must be completed within 18 months of the OIA receiving them.<sup>47</sup> The OIA has now been accepting claims for 21 months. Our system is still a young one, but it is approaching maturity. During our existence thus far, 50% of all OIA cases have closed (611 of 1228). All but one of these met the deadlines contained in the *Rules*.<sup>48</sup>

<sup>47</sup>Expedited, complex, and extraordinary cases may be resolved in more or less than 18 months. Those cases are discussed at Section VI.J of this report. *See Rules* 24 and 33.

<sup>48</sup>In this case, still not closed, an arbitrator withdrew only days before the hearing date which had been continued several times to a date very close to the 18 month deadline. The parties are still in the process of selecting a new arbitrator.

### **1. Settlements – 45% of Closures**

Thus far, 273 of 611 cases, or about 45%, have settled. The average time to settlement was 225 days. The median was 232 days and the mode was 69 days. The range in settlement time was 11 to 570 days. In 25 settled cases, the claimant was in *pro per*.

### **2. Withdrawn Cases – 20% of Closures**

The OIA has received notice that 125 out of 611 claimants have withdrawn their claims. In 61 of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons, but for the most part, the OIA has only anecdotal information on this point. We use this classification when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice. When we receive a dismissal with prejudice, we call the parties to ask whether the case was "withdrawn" or "settled" and enter the closure accordingly. About 20% of closed cases have been withdrawn.

### **3. Dismissed and Abandoned Cases – 5% of Closures**

Neutral arbitrators have dismissed 17 cases, about three percent, often for claimant's repeated failure to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Twelve of the 17 were in *pro per*. Fifteen cases, about two percent, have been deemed abandoned for claimant's failure to pay the filing fee of \$150.<sup>49</sup> Seven of the 15 were in *pro per*. Kaiser also resolved one case before a neutral was appointed.

### **4. Summary Judgment – 11% of Closures**

Sixty nine cases of 611, or 11%, have been decided by summary judgment which was granted to the respondent. In 52 of these cases, claimants were in *pro per*.

We have reviewed the reasons given by the neutrals in their written dispositions for the grant of summary judgment. They include 14 cases in which the claimant had not obtained an expert witness, a requirement of California law in nearly all medical malpractice cases. In another 13 cases, the claimant filed no opposition to the motion for summary judgment. In five cases, summary judgment was granted because the case was beyond the statute of limitations. One case was both beyond the statute of

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<sup>49</sup>Before claimants are excluded from this system for not paying the filing fee, they are offered the opportunity to apply for fee waivers. Those excluded have either refused to apply or have failed to qualify. The fee is a uniform \$150 irrespective of how many claimants there may be in a single case.

limitations and lacking a claimant expert. All of these cases state common reasons for the grant of summary judgment in the court system.<sup>50</sup>

In 27 additional cases, the neutral held that there was no triable issue of fact. In a 28<sup>th</sup> case, the facts were not disputed, and in a 29<sup>th</sup>, the matter was *res judicata*, *i.e.*, it had been decided in a previous litigation. In three more, the neutral held that there was no evidence of negligence. In this second cluster of 32 cases, the disposition suggests that the parties had had the opportunity to both discover and present to the neutral a significant amount of evidence before s/he entered the summary judgment ruling.

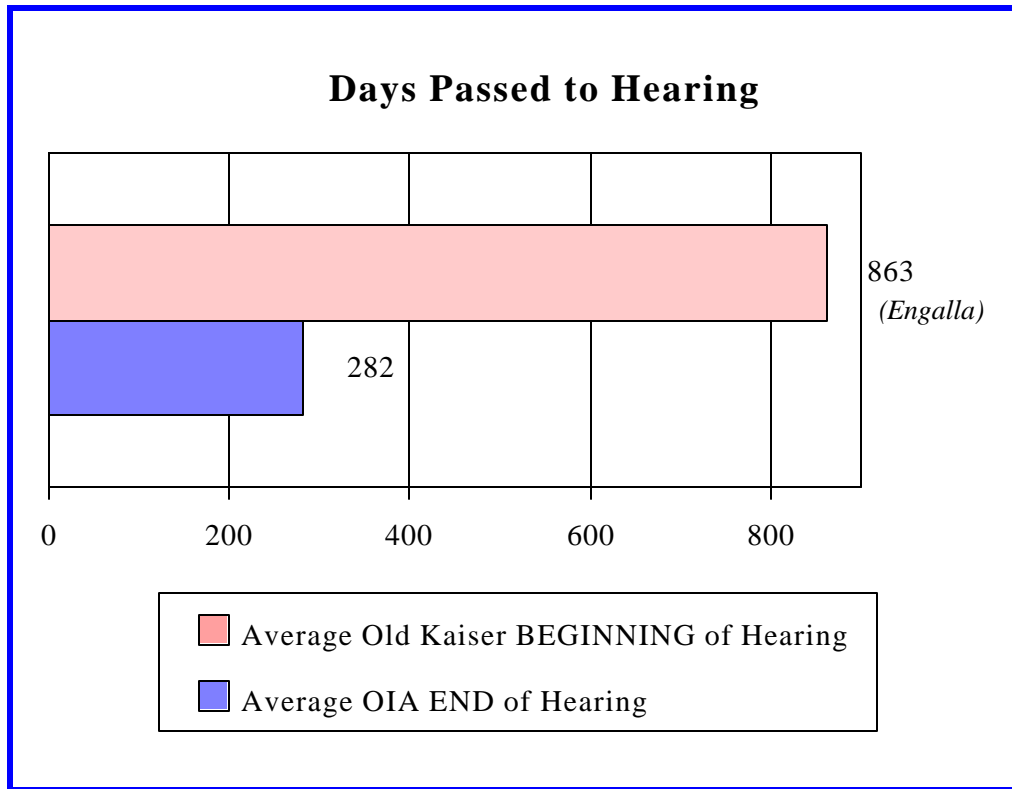
The average time to entry of a summary judgment is 266 days after the case entered the OIA system. The median is 252 days, and the mode is 141 days. The range is 77 to 492 days. As the discussion in the following section “Cases Decided After Hearing” shows, the times to grant of summary judgment are similar in these two categories.

## **5. Cases Decided After Hearing – 18% of Closures**

About 18% of all cases (111 of 611) have proceeded through a full hearing to an award. Judgment was for Kaiser in 74 cases, or 66%. In 31 of these cases, the claimant was in *pro per*. In 37 cases, or 33%, the claimant prevailed. In one of these cases, the claimant was in *pro per*.

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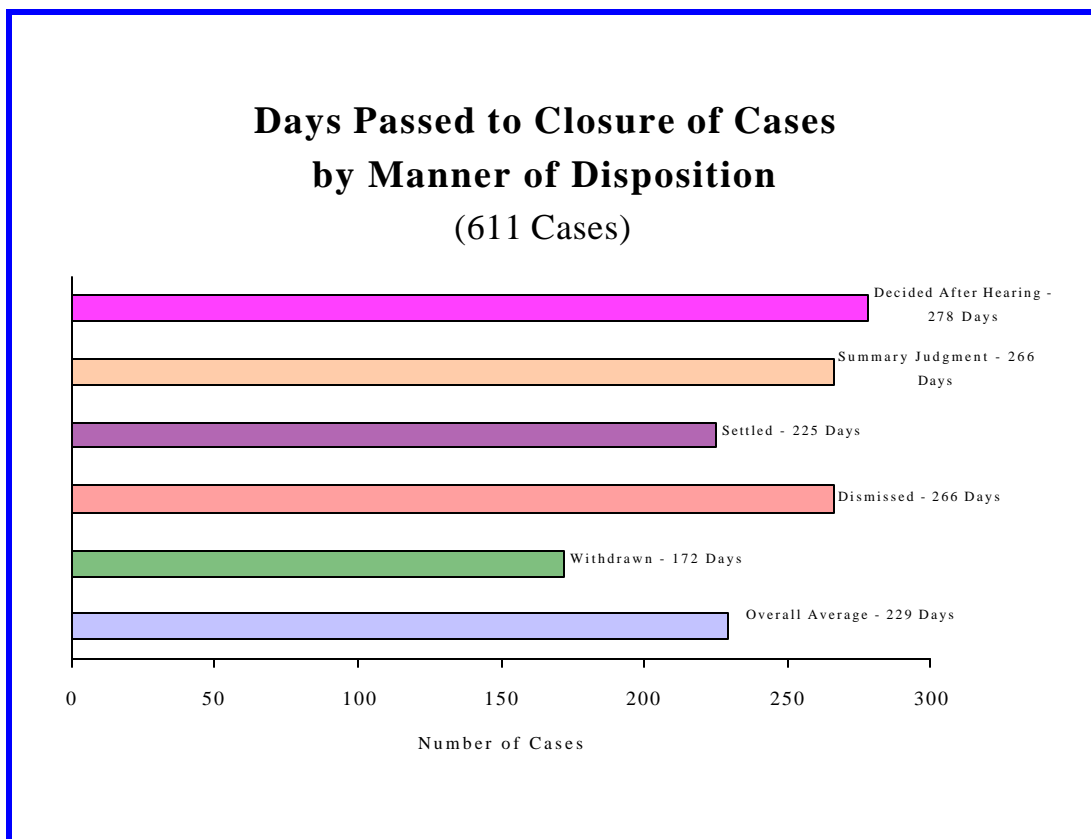
<sup>50</sup>We note also that this arbitration system (like most) has no equivalent to the court system’s demurrer or motion to dismiss where a case is closed at the outset because, construed in all ways favorably to the plaintiff, the complaint fails to state a claim for recovery. Since there is no complaint filed in Kaiser arbitration, there is no opportunity to demur or move to dismiss. Claims with such defects must be dealt with by summary judgment.



The 111 cases that have proceeded to a hearing thus far show an average of 278 days from the time the OIA began its process until the date the cases were resolved. That is about nine months. The median is 271 days, and the mode is 288 days. The range is from 39 to 538 days. One non-expedited case closed after a hearing in 45 days.

#### **6. Average Time to Closure of All OIA Cases**

All closed cases at the OIA average 229 days to completion or approximately eight months. The median is 230 days. The mode is 344 days, and the range is from 4 to 570 days.



### **I. Amounts of Awards**

Of the 111 cases which have gone to hearing, there have been 37 awards to claimants. One was in the amount of \$5.6 million. The average amount of an award was \$272,971. The median was \$102,740. The mode was \$175,000. The range was \$6,560 to \$5,594,605.

There is a full list of all awards in chronological order attached as Exhibit I.

### **J. Number of Cases Using Special Procedures**

The Rules include provisions for cases which need to be expedited or resolved in less time than 18 months. Grounds for expedited procedures include a claimant's illness or condition raising substantial medical doubt of survival, a claimant's need for a drug or medical procedure, or other good cause.<sup>51</sup> The *Rules* also include provisions for cases which need more than 18 months for resolution.

<sup>51</sup>See Rules 33-36 for information about expedited cases. See also Exhibit B at Recommendation 7.

Complex cases are those that need 24 to 30 months for resolution, while extraordinary cases are those that need more than 30 months for resolution.<sup>52</sup> This section discusses those cases.

## **1. Expedited Procedures**

A total of 22 claimants have filed requests to have their cases resolved in less than the 18 months permitted in the *Rules*. The OIA received 18 of those requests from claimants before a neutral arbitrator was appointed in the case. The OIA granted requests in 12 cases, and denied six without prejudice to the claimant's ability to raise the issue before the neutral arbitrator. Of the 18 requests made to the OIA, Kaiser objected to three. The OIA denied two where Kaiser objected and granted one. Neutral arbitrators have granted four out of five requests for expedited status. One of those granted had previously been denied without prejudice by the OIA.

There have been a total of 16 expedited cases in the OIA system thus far, a total of one percent of our total case load. Three of the 16 remain open. One case was closed in 20 days from beginning to end. While this case was settled, we have also had an expedited case close after a hearing in 39 days. All closed cases were decided within the accelerated timetable set for the case. The 3 remaining open appear to be on schedule for a timely finish. The average length of time in which they have been decided is 127 days, or 4 months. The range has been from 20 days to 430 days, or 14 months.

As noted previously, eleven cases at the OIA involve benefits and coverage issues, less than one percent of the case load. None of them has requested expedited handling.

## **2. Complex Procedures**

The OIA has received notice that neutral arbitrators have designated thirteen cases as complex and therefore that they would be resolved in a longer period of 24 to 30 months. Two were so designated in the first year. Eleven were so designated in this reporting period. The parties and the neutral arbitrator must inform the OIA if a case has been designated complex. Two have closed since designation.<sup>53</sup>

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<sup>52</sup>See Rule 24(b) for information about complex cases, and Rule 24(c) for information about extraordinary cases.

<sup>53</sup>In 5 cases, a neutral arbitrator has made a Rule 28 determination of "extraordinary circumstances" and extended a case beyond its 18 month limit. At this point, such extensions have been brief. We will monitor this and report upon it in our third annual report.



### 3. Extraordinary Procedures

The OIA has not received notice that any cases have been designated extraordinary and therefore will take more than 30 months for resolution. The parties and the neutral arbitrator must inform the OIA if a case has been so designated.

#### **K. Number of Cases in Which Claimants Have Elected to Have Kaiser Pay the Fees and Expenses of the Neutral Arbitrator and to Proceed with a Single Arbitrator**

The Blue Ribbon Panel Report recommended that Kaiser pay the neutral arbitrator's fees and expenses when a claim proceeds with a single neutral arbitrator.<sup>54</sup> The Panel made this recommendation both to lower the cost of arbitration to the claimant and because it questioned whether the value added by party arbitrators justified their expense and the extra delay of obtaining and scheduling two additional participants in the arbitration process.<sup>55</sup> Such delay and rescheduling lengthens cases and raises costs for all parties. In the interest of increased speed and lowered expense, the Panel suggested that the system create incentives for cases to proceed with one neutral arbitrator.<sup>56</sup> At this point, the system seems to be working well. In only nine of the 1062 cases which the OIA has administered, have we received a designation of party arbitrators. That would mean that 1053 have or had a single arbitrator.<sup>57</sup>

In implementing the Blue Ribbon Panel's recommendation that Kaiser pay the neutral, the *Rules* include procedures which allow claimants to shift the responsibility for payment to Kaiser.<sup>58</sup> The procedures are simple, voluntary and made entirely at the claimant's election. Claimants making claims of \$200,000 or less must only waive objection to the respondent paying the neutral arbitrator's fees and expenses.

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<sup>54</sup>Blue Ribbon Panel Report at 41-42, Exhibit B at Recommendation 27.

<sup>55</sup>Blue Ribbon Panel Report at 42.

<sup>56</sup>Blue Ribbon Panel Report at 42.

<sup>57</sup>It could be that the greatest inducement to proceed with a single arbitrator which the *Rules* provided is a fast, workable way to appoint the neutral. Formerly, the party arbitrators were picked first, and they selected the neutral.

<sup>58</sup>See Rules 14 and 15 for information about how claimants may shift responsibility for payment of the neutral arbitrator's fees and expenses to Kaiser.

Claimants and respondents in cases where damages exceed \$200,000 have a statutory right to proceed with three arbitrators, one neutral arbitrator and two party arbitrators.<sup>59</sup> Kaiser will pay the fees and expenses of the neutral arbitrator if a claimant with a claim greater than \$200,000 waives his or her right to a party arbitrator, and waives objection to Kaiser's payment of the fees. Kaiser will pay the neutral arbitrator's fees and expenses even if it declines to waive its right to a party arbitrator. In this way, the *Rules* create a financial incentive for claimants who are entitled to proceed with a tripartite panel of arbitrators to agree to proceed with a single neutral arbitrator.

Through execution of the appropriate waiver forms, claimants have shifted the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser in 492 cases out of a total of 1228 cases, or 40% of all cases administered by the OIA. This is a rise of 5% from the first annual report. In 156 of these cases, the claimant is in *pro per*. In 336 of these cases, the claimant is represented by counsel.

These numbers are somewhat fluid. This is graphically illustrated by the statement which opened this section – that in only nine cases has the OIA has received signed statements of agreement to serve from party arbitrators. Until we receive those executed forms, we cannot truly say that a panel of three will be used in a given case. However, the *Rules* intentionally do not set a deadline by which claimants must waive objection to Kaiser paying a neutral arbitrator's fees and expenses. The range of our receipt of such notices has been from 0 to hundreds of days. It is also possible that although neither side affirmatively waives the right to proceed with a party arbitrator, the case actually proceeds with a single neutral. This would be true, for example, in cases where both sides wish to proceed with a single neutral arbitrator, but claimant does not elect to have Kaiser pay the fees and expenses of the neutral arbitrator. In these cases, there would be no need for the OIA to receive notice that either side waives party arbitrators, or to receive identification of party arbitrators.

Last year, we promised to report on this phenomenon in this report. So far, it appears that few party arbitrators are being used and most cases are proceeding with a single neutral. We will continue to track this closely and report on it again in the third annual report.

#### **L. Number of Cases in Which Kaiser Has Agreed to Waive Its Party Arbitrator**

In a total of 144 cases, 76 of them open and 68 of them closed, the OIA has received notice that Kaiser has agreed to proceed without a party arbitrator. Claimants have notified the OIA that they are waiving party arbitrators in 339 cases.

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<sup>59</sup>See California Health & Safety Code Section 1373.19.

Several factors may account for the difference in these two numbers. First, claimants usually give notice that they are willing to waive their party arbitrators before respondents, in order to gain the benefit of having Kaiser pay the neutral arbitrator's fees and expenses. In some of these cases, Kaiser is in the process of deciding whether or not to waive its party arbitrator. Second, the statutory right to proceed with a panel of three arbitrators belongs to both parties. Under Rules 14 and 15, respondent pays the neutral arbitrator's fees and expenses when a claimant waives party arbitrators, whether or not respondent also agrees to waive its right to proceed with party arbitrators. When claimants waive party arbitrators and respondent does not, the matter proceeds with a tripartite panel. However, respondent still pays the neutral arbitrator's fees and expenses if the claimant is willing to have Kaiser do so.

### **M. Arbitrator Evaluations of the OIA System**

Under Rule 48, when each case closes, the neutral arbitrators complete a questionnaire about their experiences with the *Rules* and with the overall system as it worked in that matter.<sup>60</sup> The information is used to evaluate and improve the system. The OIA designed this form with input and comment from Kaiser and the AAC, and used it for the first time within the second reporting period. At the end of the year 2000, the form had been returned by 468 arbitrators<sup>61</sup> in 556 closed cases for a response rate of 84%. The results show a high degree of approval and satisfaction.

On a scale of 1 to 5, with 5 showing the highest level of agreement, the neutrals averaged 4.4 or 85% in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses averaged 4.7 or 92% in saying that they would participate in another arbitration in the OIA system. And they averaged 3.6, or 65%, in saying that the OIA had accommodated their own questions and concerns in the specific case.<sup>62</sup> The median and mode overall for each of these three items was 5.

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<sup>60</sup>The blank form and the entire analysis of responses to it are attached as Exhibit K.

<sup>61</sup>There were an additional fifteen forms returned blank and marked to indicate that because the case closed so early the neutral had no reportable involvement with it. And an additional 10 were simply returned blank. The total returned was thus 493, or 89%, but we have used only those with substantive responses above.

<sup>62</sup>The OIA is concerned about the average score of 3.6 in this category. According to some of the comments made on the questionnaires, the lower score seems related to reaching the OIA rather than the quality of the communication once contact has been achieved. The OIA has not had a general phone line which would dependably be answered by a live person, as opposed to voice mail. Some neutrals found this problematic. Beginning March 1, 2001, we will have a person regularly answering our main line 213-637-9847 in the attempt to be more accommodating to our panelists in this regard. There were also neutrals who wanted to communicate with the OIA by e-mail. We are happy to do that. The OIA e-mail address is oia@slhartmann.com. Each individual staff member also has e-mail and will be glad to give her address to any arbitrator or party who asks for it. However, we cannot accept forms by e-mail because the *Rules* do not yet permit it.

Arbitrators were also invited to check off features of the system which worked well or poorly in the specific case. They did not have to check off any features at all and of the 468 responses some did not. These are the replies.

The manner of a neutral arbitrator's appointment was checked as working well by 328 neutrals, while only 7 thought it needed improvement.

The early management conference was checked as working well by 334 neutrals and as needing improvement by only 8.

The availability of expedited procedures was checked as working well by 115 neutrals and as needing improvement by 0.

The claimant's ability to have the respondent pay the cost of the neutral was checked as positive by 164 neutrals and as needing improvement by 10.

The system's *Rules* overall were seen as positive by 253 and as needing improvement by 9.

The requirement that a hearing be held in 18 months was marked as positive by 159 neutrals and as negative by 10.

Only one area was controversial. The *Rules* require that a written decision be served on the parties and the OIA within ten days after a hearing. Neutral arbitrators have called the OIA about this rule, and have been late in serving decisions,<sup>63</sup> and so we knew that a number of them thought the time allowed was not sufficient. On this survey, 28 marked the category "award within 10 days of hearing"

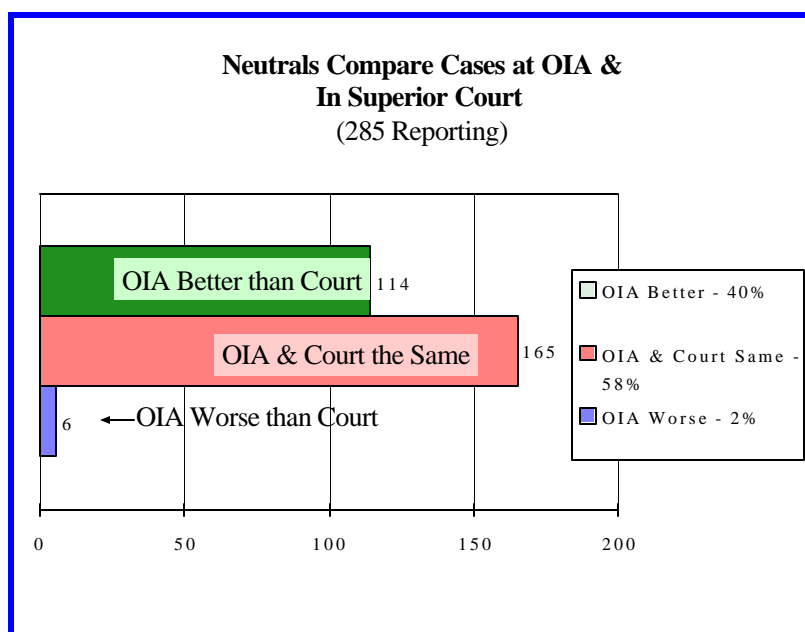
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Some neutrals commented on this item that the parties had not informed them of a settlement. The *Rules* require both parties to make such a report to the neutral and the OIA. We are now working on changes in the forms and procedures to facilitate this communication including the distribution of a new reporting of settlement form which will go to all parties at the outset of a case. We will also urge parties to make sure that both the OIA and the neutral are informed promptly when they have agreed on a settlement.

<sup>63</sup>Of our 111 decisions following a hearing, neutrals have been beyond the 10 day limit for service of decision in 62 of them. In other words, they have been late 56% of the time. However, most of those cases occurred sometime ago. In the summer of 2000, the OIA began tracking hearing dates in its software and asking neutrals for the decision when the ten day period had passed. The letters of inquiry seem to have increased timely compliance substantially. We rarely have to send even a second letter of inquiry before the decision arrives.

as needing improvement, and 33 commented that the time for final decision must be increased to a period greater than 10 days. However, 89 neutrals marked the award within 10 days of hearing as working well.<sup>64</sup>

The OIA also asked the neutrals whether they had experienced a similar case in the Superior Court, and if so, whether they would rank the OIA experience as better, worse or about the same. Two hundred and eighty-five neutrals answered saying that they had such parallel experience and made the comparison. One hundred and fourteen (114) said that the OIA experience was better, and 165 said it was the same. Only six – 2% of those responding – said that the OIA experience was worse.



In comments and suggestions the neutrals said that the system encourages early settlement. Our 45% of closed cases settled certainly bears this out. The neutrals also asked for additional help for the 28% of claimants who represent themselves in this system. We are working now on a pamphlet to be mailed to those who are not represented at the time they enter the system which we hope will help them. The other comments and suggestions made by our panelists will be submitted to the AAC and Kaiser when they meet with the OIA later this year to discuss possible *Rules* revisions and procedural changes.

<sup>64</sup>Anecdotally, the OIA tended to receive more complaints from neutrals about this at the beginning of its existence than it receives now. Presently, neutrals seem more familiar with the tight timetable and appear to have adjusted their schedules accordingly. Initially, there was also confusion about when the ten day period began. If post-hearing briefing is set, the 10 day period runs from the day on which the briefs are received.

## **N. Future Reports**

As noted in our first report, the contract between the OIA and Kaiser was modified so that reports, beginning with this one, would follow the calendar year. Thus, this report has covered only nine months, from March 29, 2000 to December 31, 2000. Our subsequent reports will cover entire calendar years, from January 1 through December 31. The next one will be released early in the year 2002 and will cover the time period, January 1 through December 31, 2001.

## **VI. Conclusion**

In keeping with the recommendations of the California Supreme Court and the Blue Ribbon Panel on Kaiser Permanente Arbitration, the Office of the Independent Administrator has created and is operating an independently administered system of arbitration for Kaiser and its members that is fast, fair, low cost, and confidential.

This report describes the degree to which these goals are being met. The OIA, the AAC, and Kaiser set qualifications for neutral arbitrators hearing Kaiser arbitrations. The OIA has created a panel of 349 neutral arbitrators willing to hear Kaiser cases throughout the state of California. The OIA, the AAC, and Kaiser negotiated a set of rules that provide deadlines and procedures for Kaiser arbitrations. So far, a total of 1228 claimants have entered the system governed by the *Rules* and administered by the OIA. In the OIA system, neutral arbitrators are selected quickly. Parties and arbitrators are holding early management conferences and setting hearing dates at the outset of the cases, and the OIA is monitoring cases to ensure that hearings and other events are being completed by their deadlines. Thus far, in the cases we have administered, all but one have met their final deadlines.

Of particular note, the OIA system has greatly reduced the amount of time that elapses from the time the health plan receives a demand for arbitration until a neutral arbitrator is selected. In the OIA system, the average for all cases combined is 41 days. This is 16 times faster than the average of 674 days to appointment of a neutral arbitrator reported by the California Supreme Court in *Engalla v. Permanente Medical Group*.

Although the OIA system has only existed for 21 months, the data provided in this report shows that thus far the OIA is ensuring that the deadlines and procedures found in the Rules are being followed in all of the Kaiser arbitrations it is administering.

# **Exhibit A**

## **Firm Profile and Description of OIA Staff**

## **Exhibit A**

### **Firm Profile and OIA Staff Description**

#### **I. Firm Profile**

The Law Offices of Sharon Lybeck Hartmann is a boutique firm specializing in monitoring consent decrees and in alternative dispute resolution, primarily in the field of civil rights. The firm's expertise results from assisting large, complex organizations at junctures where they seek substantial and lasting change. Sharon Lybeck Hartmann is now the appointed Monitor in two consent decrees settling complex litigation, one federal case involving the United States Department of Justice in the area of civil rights, the other a state matter involving the California Department of Corporations in the area of legal compliance in franchise sales. In 1998, the firm was selected by the City of Los Angeles to review, evaluate and report upon the city's compliance with a settlement entered in an employment discrimination case. Between 1994 and 1999, Ms. Hartmann was the national Civil Rights Monitor for the consent decrees that settled the national class action litigation against Denny's restaurants. The firm's outstanding work monitoring the Denny's cases was recognized in a commendation from U.S. Attorney General Janet Reno.

The firm also has extensive, specialized expertise creating and executing confidential testing programs measuring discrimination. In partnership with The Urban Institute, the firm was selected by the United States Department of Housing and Urban Development to supervise a large scale testing project studying the incidence of housing discrimination nationally. The firm's testing department has conducted thousands of neutral, confidential tests for discrimination across the United States since 1995. Testing areas have included housing, public accommodations, homeowners insurance, mortgage lending, and franchise sales.

The firm's work has also included the following activities. It decided over 5,000 claims appealed by individuals denied membership in a national class action based on race and color discrimination for which it was commended by the presiding federal district court. It has conducted neutral, confidential investigations for racial discrimination in public accommodations across the United States. It has created, designed and conducted national and state-wide anti-discrimination training. It has designed and conducted state-wide training geared toward eliminating fraudulent practices in consumer contracts. It has published confidential reports describing its activities and the progress made toward the goals of each project in which it has participated. The firm is highly computer-literate, and has a great deal of expertise formulating rules and processes where none existed, monitoring timely compliance with those rules, and ensuring compliance where problems occurred.



For the past two years, the firm has brought its expertise to bear on operating the Kaiser Mandatory Arbitration System for disputes with its members.

## **II. Staff of the Office of the Independent Administrator**

**Sharon Lybeck Hartmann, Esq., Independent Administrator.** Ms. Hartmann is the principal and sole owner of the Law Offices of Sharon Lybeck Hartmann. She is a second-career lawyer who first spent twelve years as a high school English teacher, two of them in Tanzania, East Africa, with a Peace Corps predecessor program. In 1979, she graduated from Boalt Hall Law School, where she served as Editor-in-Chief of the *Industrial Relations Law Journal*. She served as a federal law clerk both at the district court level and on the 9<sup>th</sup> Circuit. Ms. Hartmann has over twenty years' experience in the areas of civil rights monitoring of consent decrees, civil rights litigation and civil litigation. She is a past recipient of the Maynard Toll Pro Bono Award of the Legal Aid Foundation of Los Angeles for her work co-directing the litigation in *Paris v. Board of Supervisors*, a *pro bono* case brought to improve conditions in emergency shelter for the homeless in Los Angeles County. She has taught at Boalt Hall and at the UCLA and Loyola of Los Angeles law schools. Ms. Hartmann supervised the creation of the OIA system and supervises the overall operation of the OIA.

**Marcella A. Bell, Esq., Director of the Kaiser Project.** Ms. Bell is a graduate of Loyola Marymount University and the University of West Los Angeles School of Law, where she served on the Moot Court Board of Governors. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Ms. Bell has been an attorney with the Hartmann firm since 1995. She has served as a volunteer attorney at the Domestic Violence Prevention Clinic since 1998. At the OIA, Ms. Bell reviews claims, arbitrator applications, and fee waiver applications, compiles and analyzes statistical data, corresponds with claimants and attorneys and supervises the day to day operation of the OIA and its staff. Ms. Bell is fluent in Spanish and Italian.

**Stephanie L. O'Neal, Esq., Assistant Director.** Ms. O'Neal is a graduate of Dartmouth College and UCLA School of Law. She received a Masters in Urban Planning from UCLA School of Architecture and Urban Planning. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Ms. O'Neal has been an attorney with the Hartmann firm since 1996. At the OIA, Ms. O'Neal reviews claims, arbitrator applications and fee waiver applications, compiles and analyzes statistical data, and corresponds with claimants and attorneys. She assists Ms. Bell in supervision of the OIA and its staff.

**Tracy Holler, Management Information Systems.** Ms. Holler is a graduate of California State Polytechnic University, Pomona. She studied Business Administration, with a concentration in Management and Human Resources. She has worked at the Hartmann firm since 1994. She is the

Computer Network Administrator and is responsible for all parts of the computer network. She designed, set up, and maintains the OIA's extensive computer software databases. She generates the statistical reports upon which these annual reports are based.

**Vivian Arroyo, Administrative Staff.** Ms. Arroyo has worked as an administrator at the Law Offices of Sharon Lybeck Hartmann since 1997. Prior to joining the firm, she worked for Mexicana Airlines as a sales representative for fifteen years. Ms. Arroyo traveled all over the world during her career with the airline. At the OIA, Ms. Arroyo is responsible for tracking each case's compliance with the *Rules* through our computer database, and for maintaining case files and arbitrator files. She is fluent in Spanish.

**Kelly Besser, Administrative Staff.** Ms. Besser is a graduate of UCLA's Communications Studies Department, where she also served as Editor-in-Chief of the campus women's newsmagazine. Ms. Besser did graduate work at New York University's Tisch School of the Arts. She has experience as a legal intake investigator, as an independent music publicist, and as an editorial assistant. She founded and operated a performance art space in Brooklyn, New York. Ms. Besser has worked at the Hartmann firm since 1994. At the OIA, Ms. Besser reviews arbitrator applications against the published standards and generates and sends out Lists of Possible Arbitrators to the parties along with their supporting materials.

**Mary Destouet, Administrative Staff.** Ms. Destouet has worked as an administrator at the Law Offices of Sharon Lybeck Hartmann since 1996. Prior to joining the firm, she specialized in advanced technology marketing. Her marketing career included experiences working in the former Soviet Union and in London. Ms. Destouet reviews arbitrator applications against the published standards and serves as the OIA's primary liaison with neutral arbitrators and organizations providing arbitrators.

**Griselda Luna, Administrative Staff.** Ms. Luna has worked at the Hartmann firm since 1996. She is a graduate of Watterson College, where she studied Business Administration. At the OIA, Ms. Luna is responsible for maintaining case files, data input, and miscellaneous projects. Ms. Luna is fluent in Spanish.

**Lynda Tutt, Legal Assistant.** A native of Philadelphia, Pennsylvania, Ms. Tutt completed course work at Temple University. She has many years' experience as a Legal Assistant, and has worked for the Hartmann firm since 1995. Ms. Tutt is a licensed notary and is a member of the Legal Secretaries Association, Beverly Hills/Century City Chapter. Her responsibilities at the OIA include creating case files and maintaining information in the OIA's computer database. Ms. Tutt is currently studying Spanish.

# **Exhibit B**

## **Blue Ribbon Panel Report Recommendations and Report on Achievement**

## Exhibit B

### Status Report on Blue Ribbon Panel Recommendations

This appendix sets out in bold type each of the recommendations made by the Blue Ribbon Advisory Panel on Kaiser Permanente Arbitration in the report that it issued in January 1998. Each recommendation is followed by the status of the recommendation as known to the Office of the Independent Administrator ("OIA") on December 31, 2000.

#### A. Independent Administration

- 1. An Independent Administrator should manage the Kaiser Permanente Arbitration System and the individual cases within it. The Kaiser Foundation Health Plan, Inc. should fund the Independent Administrator.**

**Status:** Ongoing. At the present time, the majority of Kaiser members may voluntarily elect whether or not to have their claims proceed according to the Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator. The OIA began accepting claims from Kaiser on March 29, 1999. At that date, almost all arbitration claims were brought under member service agreements that predated the creation of the OIA. Those member service agreements therefore did not contain language about the OIA or the Rules. As Kaiser Member Service Agreements renewed throughout the year 2000, they were amended to contain language making the OIA Rules and administration mandatory. As of December 31, 2000, Kaiser informed the OIA that all such contracts have been amended. However, since contracts were being amended throughout the year, and since malpractice claims arise at the date of discovery rather than the date of the incident, a great many claims still arise under contracts where use of the OIA is not required. We expect this to be so for several years. Kaiser has forwarded all claims it received on or after March 29, 1999, to the OIA as they were submitted by its members. At the end of 2000, we had 100 claims which were mandatory out of a total of 1716 new demands for arbitration which had been forwarded to us by Kaiser during our tenure. The OIA has contacted all claimants in the remaining 1616 cases with claims made on or after March 29, 1999 and asked whether they wish to join the new system. Of the 1616, a total of 924 have opted in. The OIA is funded by Kaiser and by the \$150 filing fee members pay when they make a demand for arbitration.

2. **The mission of the Independent Administrator should be to ensure that the Kaiser Permanente process is fair, speedy, cost-effective, and protects the privacy interests of the parties. These goals should be reflected in the contract with the Independent Administrator and made available to all members and employer-purchasers.**

**Status:** Completed. The Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator set out a fair, speedy, cost-effective process. The system's goals are set out in Rule 1, and mirror this recommendation. Rule 3 provides that the arbitrator and the Independent Administrator shall not divulge information disclosed to them in the course of an arbitration. The goals are also set out in the contract between Kaiser and the Law Offices of Sharon Lybeck Hartmann. The contract contains specific provisions related to confidentiality. The entire contract between the Independent Administrator and Kaiser is available to anyone who requests it from the OIA. Many copies of the contract have been distributed.

3. **The Independent Administrator selected should not be a provider of neutral arbitrators or mediators.**

**Status:** Completed. The Law Offices of Sharon Lybeck Hartmann is not a provider of neutral arbitrators or mediators.

#### **B. Advisory Committee**

4. **Kaiser Permanente should establish, an on-going, volunteer Advisory Committee, comprised of representatives from Kaiser membership, Permanente Group physicians, Kaiser health care personnel, employer-purchasers of Kaiser Permanente services, an appropriate consumer advocacy organization and the plaintiffs' and defense bar involved in medical malpractice in the Kaiser Permanente arbitration system. Kaiser Permanente should consult with the Advisory Committee prior to the selection of the Independent Administrator and at other critical points described later in this report.**

**Status:** Completed. In April 1998, Kaiser announced appointment of the Arbitration Advisory Committee ("AAC") and its membership. The AAC participated in the selection of the Independent Administrator, worked closely with Kaiser and the OIA in creating the new system, and its members provide ongoing comment on, and oversight of, the independently administered system.

It also reviews the draft annual report. The AAC has informed the OIA that it plans changes in its structure and composition during this coming year. We will report the changes in our third annual report.

### C. Goals of a Revised Kaiser Permanente Arbitration System

#### Time frame for resolution

5. **The Independent Administrator, after consultation with Kaiser Permanente and the Advisory Committee, should establish arbitration process deadlines, which will serve as publicly stated benchmarks for the program.**

**Status:** Completed. Under the Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator, ordinary cases must be resolved within eighteen months of the OIA receiving the claim and the filing fee or a completed fee waiver application. The Rules set out events and deadlines that parties must meet en route to a matter's completion. This helps ensure that target completion dates will be met. The Rules also contain provisions for cases that must be completed in more or less time than eighteen months.

6. **The Independent Administrator should supervise the progress of each case and should communicate regularly with the neutral arbitrator (and the parties, when appropriate) to assure that each case moves as expeditiously as possible. To this end, the Independent Administrator should encourage continuous hearings.**

**Status:** Ongoing. As described in Section VI.F of the annual report, the OIA tracks the progress of each case and communicates with the neutral arbitrator and the parties as necessary to ensure that each case moves forward as expeditiously as possible. Rule 25(c)(ii) requires that arbitration hearings be scheduled for consecutive days if more than one day is necessary. Of the 111 cases that have had hearings since the OIA began its work, 96 had continuous hearings. That's 86%. Thirteen of the remaining 15 cases were completed within two weeks. The remaining two were completed 28 and 68 days later.

7. **Although all cases should move as swiftly as possible, special expedited procedures, including those for appointing the neutral arbitrator and setting arbitration hearing dates, should be established for cases in**

**which the member is terminally ill or in other catastrophic circumstances.**

**Status:** Completed. Rules 33 through 36 set out procedures for expedited cases. There have been a total of 16 expedited cases in the OIA system since it began. Thirteen are now closed. All have finished within their allotted time periods. We handled one from beginning to end in 20 days. Three remain open and appear to be on track for timely completion.

### **Documentation and availability of procedures**

- 8. The Independent Administrator should formalize and make available Kaiser Permanente's new arbitration goals and procedures in writing and take actions, where necessary, to assure all participants are properly informed.**

**Status:** Completed. The OIA sends a written System Description, the Rules, and a detailed letter to all claimants and/or counsel each time Kaiser forwards a demand for arbitration to the OIA. These items are also available to anyone who requests them from the OIA, and through the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). Kaiser members may also obtain much of this information from the Kaiser Permanente Member Service Customer Center. The OIA has done outreach to the plaintiff's bar and the media regarding its goals and procedures. Published accounts have appeared as a consequence of these efforts. OIA staff have also appeared and spoken at such organizations as the National Health Policy Forum in order to describe the system. Copies of the annual report are also available to anyone who asks and are available on the OIA website.

### **Establishing a list of qualified arbitrators**

- 9. The Independent Administrator should develop the largest possible list of qualified neutral arbitrators.**

**Status:** Completed. The OIA's panel of neutral arbitrators currently has 349 members, made up of 136 in Northern California, 178 in Southern California and 35 in San Diego. The OIA has continued to recruit arbitrators through advertising and targeted mailing, to accept applications from interested parties, and to admit those qualified to the panel. Twenty-nine percent, or 102 members, of the total panel are retired judges.

- 10. The Independent Administrator should solicit applications from firms and individuals in California who provide neutral arbitration services and who are interested in serving in Kaiser Permanente cases. The qualifications for applicants should be established by the Independent Administrator after discussions with the Advisory Committee and Kaiser Permanente.**

**Status:** Completed. In a series of meetings held in November and December 1998, and January 1999, the OIA, the AAC, and Kaiser jointly agreed upon the qualifications for neutral arbitrators. The OIA advertised them widely. The OIA has communicated extensively with JAMS/Endispute, Alternative Resolution Centers, Action Dispute Resolution Services, Judicate West, and Resolution Remedies. We have neutral arbitrators from all of these organizations in our panel as well as individuals.

- 11. The Independent Administrator should select those applicants who meet standards of qualification and experience and who demonstrate that they will implement the program's goals of fairness, timeliness, low cost and protection of the parties' privacy interests.**

**Status:** Completed. The OIA reviews each arbitrator's application and makes sure that the applicant meets the published qualifications. When an applicant is rejected, she or he receives a letter citing the specific, numbered requirement which has not been met.

#### **Prompt selection of the neutral arbitrator**

- 12. Kaiser Permanente should be required to send the demand for arbitration, or other notice of arbitration, to the Independent Administrator within five (5) business days of receipt.**

**Status:** Completed as modified. Rule 11 requires that Kaiser Permanente forward Demands for Arbitration to the OIA within 10 business days of receipt. Kaiser and the AAC enlarged this number in our original discussions of the Rules. As stated in Section III.B of the Second Annual Report, Kaiser has most frequently forwarded new demands to the OIA on the same day that it has received them. The average length of time that Kaiser has taken for submitting new Demands for Arbitration to the OIA is 8 days. The mode is zero. The median is four days, and the range is from zero to 330 days.



**13. The neutral arbitrator should be selected within thirty (30) days of the Independent Administrator's receipt of the arbitration demand.**

**Status:** Completed. As reported in Section VI.A of the second annual report, in the majority of cases administered by the OIA, the average time to the naming of a neutral arbitrator is 25.19 days. This figure excludes cases where parties have obtained postponements, and cases where more than one neutral arbitrator has been put into place. The Blue Ribbon Panel also recommended including the ability to obtain postponements in the system's rules. See Recommendation 17. The disqualification procedure is statutory. See California Code of Civil Procedure §1281.9.

**14. The parties should have a short period within which they may agree upon any neutral arbitrator of their choosing.**

**Status:** Completed. Under Rule 17, the parties may select any neutral arbitrator of their choosing, as long as that person agrees to follow the OIA's rules. The parties may make their joint selection during the same 20 days they have for selecting a neutral arbitrator using a randomly generated list of possible arbitrators provided by the OIA. The parties notify the OIA of their joint selection instead of returning their lists with strikes and ranks. As reported in Section VI.E of the second annual report, in 710 out of 1062 cases, or about 67% of the cases where parties have selected neutral arbitrators, the parties used the list provided by the OIA. In 350 cases, the parties jointly selected a neutral arbitrator instead of returning the list provided by the OIA. In the 350 cases where parties have jointly selected a neutral arbitrator, 229 of them have selected an arbitrator who is on the OIA's panel.

**15. If no arbitrator is selected within that period, the Independent Administrator should select the neutral arbitrator by providing a list of names to the parties and giving them ten (10) days to strike some number of those names. The procedure for this striking process should be established by the Independent Administrator.**

**Status:** Completed as modified. Rules 17 and 18 give the parties twenty days to either jointly select a neutral arbitrator or return a strike and rank list provided by the OIA.

- 16. In creating lists of potential neutral arbitrators, the Independent Administrator should rotate among the qualified neutral arbitrators.**

**Status:** Completed. The OIA creates lists of possible arbitrators by randomly selecting names from its computer data base. The OIA uses a lottery program to make random selections. As reported in Section II (A)(6) of the second annual report, 62% of all neutral arbitrators on the OIA's panel, (216 out of 349), have been selected to serve as neutral arbitrators on Kaiser arbitrations. The number of neutrals actually selected has risen 11% since our first report. The average number of selections to serve per neutral is 4.4. The median is 3 and the mode is 1.

- 17. A one-time delay in appointment of up to ninety (90) days may be allowed by the Independent Administrator upon written request of the plaintiff. Counsel requesting a delay should be required to provide a copy of the written request to his or her client.**

**Status:** Completed as modified. Rule 21 provides for this postponement upon the request of a claimant. Rule 21 does not require counsel requesting a delay to provide a copy of the request to his or her client. In the discussions which created the Rules, the Arbitration Advisory Committee felt that this was not necessary.

- 18. The Independent Administrator should be able to grant further continuances in unusual circumstances.**

**Status:** Completed. See Rule 28. The OIA and the neutral arbitrators have granted 15 Rule 28 continuances since the system began to operate.

#### Arbitration management

- 19. The neutral arbitrator should promptly convene an arbitration management conference, in person or by phone, to set deadlines for key events, establish the date of the arbitration hearing and assist in resolving any issues that might impede the progress of the case. The neutral arbitrator should hold additional conferences as necessary to assure that the case continues to move expeditiously. The Independent Administrator should monitor the cases and supervise the neutral arbitrators to assure efficient progress.**

**Status:** Completed. Rule 25 requires that the neutral arbitrator call an arbitration management conference within 45 days of appointment. Items to be discussed at the conference cited in Rule 25(b) and (c) track this Blue Ribbon Panel recommendation. Rule 25(f) provides for additional conferences as the parties and the arbitrator need them. As described in Section VI.F of the annual report, the OIA monitors each case and ensures that the neutral arbitrator is complying with the deadlines set out in the Rules. There are currently 404 or 66% of the 617 open cases where the parties and neutral arbitrators have held the arbitration management conference.

#### **Disclosures by potential arbitrators**

- 20. The Independent Administrator should maintain a list of all qualified neutral arbitrators and arbitration organizations and maintain a file on each. An individual neutral arbitrator's file should contain the history of the arbitrator's rulings in Kaiser arbitrations, written decisions (if any) in those cases, a biography and any additional information necessary to enable parties to screen for bias and possible conflicts of interest.**

**Status:** Completed. A list showing arbitrators on the OIA's panel is available from the OIA and is posted on the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). The OIA maintains a file for each arbitrator. The files contain copies of the arbitrators' lengthy applications, redacted decisions that the OIA has received under Rule 39(c), and other documents such as biographies and resumes. The application includes a question in which arbitrators must set forth any previous involvement in a Kaiser matter within the last five years. The OIA contacts its panelists once per year and asks them to update the information they provided on their applications. When the OIA issues a list of possible arbitrators to parties, each side receives a copy of the files for the twelve randomly selected arbitrators on the list. Any neutral arbitrator selected by the parties must also make disclosures as required by law. See Rule 20. The files also contain evaluation forms completed by parties to prior OIA arbitrations.

- 21. These files should be made available to parties and counsel in pending Kaiser Permanente arbitrations. When a list of potential neutral arbitrators is sent to parties and counsel, a summary of the file information on the proposed neutral arbitrators should be included in that mailing.**

**Status:** Completed. Copies of each arbitrator's file is sent to the parties when an arbitrator's name appears on a list issued by the OIA. To avoid the appearance of altering or shaping information about an arbitrator, the OIA sends copies of actual documents in the file rather than a summary of documents.

### Written decisions

22. **Neutral arbitrators should be required to issue brief written decisions to the parties in Kaiser Permanente arbitrations and the Independent Administrator. These decisions should include the name of the prevailing party; the amount and other relevant terms of the award, if any; and reasons for the judgment rendered.**

**Status:** Completed. See Rule 38. Neutral arbitrators have issued written decisions to the parties in all cases since the OIA began operation.

23. **The Independent Administrator should maintain a complete set of the written decisions in Kaiser Permanente arbitration cases. In addition, a copy of a neutral arbitrator's decision should be kept in that arbitrator's file. These documents should be made available, as described above, to parties and counsel in pending Kaiser Permanente arbitrations.**

**Status:** Completed. The OIA keeps copies of written arbitration decisions in each case file. Under Rule 39(c), Kaiser is required to provide the OIA with a redacted version of each decision. The OIA places a copy of redacted decisions in neutral arbitrators' files. Copies of decisions are part of the information that is provided to parties and their counsel whenever the name of a neutral arbitrator who has rendered a decision appears on a list of possible arbitrators.

### Protection of privacy

24. **In developing principles to govern the Independent Administrator and the neutral arbitrators who will serve in Kaiser Permanente cases, Kaiser Permanente and the Advisory Committee should give substantial care to ensure the privacy of members, physicians and Kaiser personnel. Prior to making past awards and written decisions available, as recommended above, the Independent Administrator should remove the names of parties, members, physicians and Kaiser Permanente personnel, as well as the name and location of the Kaiser facility.**

**Status:** Completed. Rule 39(c) requires Kaiser to provide the OIA with copies of redacted decisions. Redacted decisions become part of the OIA file for the neutral arbitrator who issued the decision. The redacted decisions are the same ones which Kaiser is required by statute to prepare for California's Department of Managed Health Care.

### Enhancement of settlement opportunities

25. **The Independent Administrator should ensure that the neutral arbitrator schedules, but does not attend, an early meeting between the parties to consider settlement, either through direct negotiations or with the assistance of a mediator.**

**Status:** Completed. Under Rule 26, the parties must hold a mandatory settlement meeting within 6 months of the neutral arbitrator being appointed. The OIA tracks the scheduling and the holding of this settlement meeting.

26. **Within twelve (12) months of this report, Kaiser Permanente should consult with the Independent Administrator and the Advisory Committee and begin implementation of a mediation program.**

**Status:** Not completed. No such program is planned. However, Kaiser and the OIA have had several discussions about this recommendation. Kaiser believes that its other internal dispute resolution mechanisms, its voluntary external review, and the statutory changes requiring DMHC intervention in benefits and coverage disputes have met the spirit of this recommendation. Kaiser has significantly reduced its number of open claims by utilizing its present

devices. It does not believe that a mediation program as such is needed now and does not plan to start one.

### **Encouraging use of the sole arbitrator**

- 27. If the member requests a single, neutral arbitrator, Kaiser Permanente should consent and pay the full fee of the neutral arbitrator. If Kaiser Permanente insists upon a tripartite panel in these circumstances, it should pay for all fees of the neutral arbitrator as well as its own party arbitrator.**

**Status:** Completed. Rules 14 and 15 provide these features. In about 44% of the cases the OIA is administering, claimants (537 of 1228 cases) have elected to shift the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser. This is a rise of 9% from the first annual report. See sections VI.L of the Annual Report.

### **Oversight and monitoring**

- 28. The Independent Administrator should report annually to Kaiser Permanente and the Advisory Committee. The report should discuss the actions taken to achieve the program's goals and whether those goals are being met. The annual report shall be made available to the Advisory Committee and, upon request, to Kaiser Permanente members, employer/purchasers and the general public.**

**Status:** Completed. This is the second annual report. Hard copies of the annual report are available without cost from Kaiser and from the OIA. The report can also be read or downloaded from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). We intend to leave the First Annual Report posted and simply add the second one, and future annual reports to it.

- 29. No less than every five years, an independent audit of the Independent Administrator should be undertaken. This audit shall also be made available to the Advisory Committee and, upon request, to Kaiser Permanente members, employer/purchasers and the general public.**

**Status:** Not completed because the OIA has only been in existence for two years. However, the contract between Kaiser and the Law Offices of Sharon Lybeck Hartmann provides that the Law Offices will make the OIA available

for independent audits not to exceed one per calendar year. The OIA has not yet received a request for an audit but will cooperate whenever one is requested.

- 30. Kaiser Permanente should conduct on-going, internal research to assess the extent to which the arbitration system is meeting its stated goals.**

**Status:** Unknown. This recommendation does not call for the OIA's participation.

**D. Improvement of the Pre-arbitration System**

- 31. Kaiser Permanente should establish and fund a formal Ombudsperson program to assist members in the complaint and grievance processes.**

**Status:** Unknown. This recommendation does not call for the OIA's participation. However, Kaiser has recently announced the creation of a new position known as The Director of Advocacy which will fulfill many of the tasks commonly thought of as those of an Ombudsperson. The position came into existence and was filled in February 2001.

- 32. The Kaiser Permanente dispute resolution system should be standard across all facilities in California and should be communicated more clearly and directly, in writing, to its members.**

**Status:** Ongoing. To the extent that this recommendation involves systems other than arbitration, the OIA has no information because it is not involved. With regard to the OIA, the attempt is to completely standardize the system across the state. Standardization increases as Kaiser Member Service Agreements renew and include the OIA. The OIA treats each demand for arbitration received from Kaiser in the same fashion, sending a written description of its system and a copy of the Rules to all claimants who file demands. All OIA cases are administered in the same manner.

**E. Cases Not Involving Medical Malpractice**

- 33. Kaiser Permanente should consult with the Advisory Committee and the Independent Administrator to determine whether different arbitration procedures are needed for benefits and coverage cases and matters other than medical malpractice.**

**Status:** Ongoing. At this point 95% of all cases in this system are medical malpractice. In the OIA's first 21 months of operation, benefits and coverage cases constituted less than one percent of the entire case load (11 cases). None of them have requested expedited status. They appear to be proceeding through the regular system without problems. As the system develops, Kaiser, the Advisory Committee and the OIA will continue to watch to see whether benefits and coverage cases and types of cases other than medical malpractice need different arbitration procedures. Kaiser has forwarded claims of the following types to the OIA: medical malpractice, premises liability, other tort, benefits, and unknown because the demand did not contain this information. So far, all types of cases are proceeding under the Rules.

#### **F. Speed of Implementation**

- 34. The Advisory Committee should be appointed no later than February 1, 1998.**

**Status:** Completed late. The Arbitration Advisory Committee was appointed in April of 1998.

- 35. The Independent Administrator should be selected no later than April 1, 1998.**

**Status:** Completed late. Kaiser and the Law Offices of Sharon Lybeck Hartmann executed their contract on November 4, 1998.

- 36. Kaiser Permanente should develop and publish an implementation schedule for these recommendations as rapidly as possible.**

**Status:** Unknown. The OIA is not aware of a published implementation schedule for the Blue Ribbon Panel's recommendations. However, as noted above, 27 out of 36 recommendations have been completed, with another four well on the way to completion. Two recommendations, mediation and the audit of the OIA, have not been done, and we have no information on recommendations 30, 31 and 36 since they do not involve us. However, the AAC may have such information.



# **EXHIBIT C**

## **REPORT & COMMENT OF THE ARBITRATION COMMITTEE ON THE SECOND ANNUAL REPORT OF THE OIA**

## **REPORT & COMMENT OF THE ARBITRATION ADVISORY COMMITTEE ON THE SECOND ANNUAL REPORT OF THE OIA<sup>1</sup>**

The Arbitration Committee has reviewed the second annual report of the Office of the Independent Administrator (OIA). Dr. David Werdegar, who will chair the committee in the future, participated in the review. In its response the Committee wishes to: (1) acknowledge the significant accomplishments of the OIA, and (2) identify, from the report, matters that might be addressed in future work.

### **Significant Accomplishments of the OIA**

The OIA has made fine progress toward meeting goals for the Kaiser arbitration system articulated in the Blue Ribbon Committee report, and in implementing the Committee's specific recommendations.

These achievements are especially noteworthy:

1. Independent administration of the Kaiser arbitration system has been implemented and functions effectively.
2. The OIA has reduced the average time for selection of neutral arbitrators to 41 days. Factors contributing to this desirable outcome have included expansion of the available pool of qualified arbitrators; effective communication among OIA parties and arbitrators; and enforcement of the strict deadlines required by the new rules for Kaiser Permanente member arbitrations.
3. Similarly, the time span to final hearing of cases has been much reduced from earlier times, now averaging 278 days.
4. The system has moved to the predominant use of single neutral arbitrators – with incentive provided, at least in part, by Kaiser's willingness to pay the fees when a single neutral arbitrator has been agreed to.

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<sup>1</sup>On March 13, 2001, the Arbitration Advisory Committee ("AAC"), in the exercise of its OIA oversight function, sent Exhibit C to the OIA, requesting that it be published as part of the Second Annual Report. In several places, the OIA thought it would be appropriate to respond to the suggestions of the AAC. All footnotes which appear in this exhibit are such OIA responses.

5. Brief written decisions are obtained from the arbitrators in all cases of summary judgment and in cases decided after hearing. They are included in the arbitrator's file, providing useful information for review in subsequent arbitrator selections.
6. A process has been initiated for evaluation of neutral arbitrators by the parties in the case, and for evaluation of OIA procedures by arbitrators, using written questionnaires. Preliminary findings indicate overall satisfaction in each instance.

### **Matters That Might Be Addressed in Future Work**

The OIA report provides excellent data on current operations of the arbitration system and compliance with its existing rules. In the spirit of continuous improvement of the system, so as to develop the model arbitration system envisaged in the Blue Ribbon Committee Report, it will be important to identify areas where there are concerns, where procedures are not working as well as expected, and where modifications or enhancements might be desirable. The Advisory Committee will be interested in a process in which the existing rules are regularly reviewed in light of experience.

The necessary insights to guide the evolution of the arbitration program will likely come from many sources. They will include examination of issues that arise in day-to-day administration of the program, comments gleaned from evaluations obtained from participants in the arbitration system, and from data-based research. Constructive criticisms and suggestions received from Kaiser members, consumer groups, unions, employer-purchasers, Kaiser health providers and administrators, and other interested parties will be valuable. This will entail close working relationships between the Arbitration Advisory Committee and the OIA.

The OIA report contains a number of observations on the arbitration system that deserve follow-up for purposes of program improvement. Here are just a few examples:

1. The OIA report describes the transition occurring throughout the Kaiser Health Plan – from previous systems of arbitration to that administered by the OIA. The many thousands of contracts covering Health Plan members have been amended, as old contracts expired and new ones were written, so that all arbitrations will be handled by the OIA. The AAC will follow this transition with a view to successful implementation of the full-scale program.
2. Although overall evaluations indicate satisfaction with the arbitration system, various issues are raised by litigants and arbitrators. A process should be developed to allow our committee to evaluate the rules in light of these evaluations.
3. Evaluations submitted by parties evaluating arbitrators are submitted anonymously. However, arbitrator's evaluations of OIA procedures are not submitted anonymously,

although some apparently sent in evaluations without identification. In view of the close working relationship between the OIA and arbitrators, it may be preferable to conduct these evaluations through a neutral third party. This is a matter that might be addressed in future AAC/OIA discussions.<sup>2</sup>

4. The OIA intends to change its telephone system to improve communications. What kinds of calls come in from litigants, from members? Can the calls be categorized by number, source, and general subjects? What can we learn from analysis of the call-ins that might improve operations?
5. A procedure is in place requiring mandatory settlement discussions. What is the value of this procedure? What have been its results?<sup>3</sup>
6. Kaiser will pay the fees if the parties agree to a single neutral arbitrator. Many plaintiffs have taken advantage of this financial assistance, but the OIA report states there are parties who do not avail themselves of the Kaiser funding. The reason for this might be explored further.<sup>4</sup>
7. A certain number of parties (approximately 10%) go outside the OIA pool to select their arbitrator, although it is understood that the arbitrator must abide by the rules governing the OIA. The arbitrators so chosen are potentially good candidates for the OIA pool. Follow-up invitations to submit applications to join the pool may be

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<sup>2</sup>The OIA would welcome any sort of third party evaluation of its activities such as that which the AAC suggests here. As for the arbitrator questionnaire now in circulation, a copy of which appears in Exhibit K attached, the OIA has carefully asked the neutral to evaluate only how OIA procedures and rules worked in the specific case for which the neutral is responding. We are concerned about asking neutrals to evaluate this office in any way which might make them feel that they could not be completely honest with us.

<sup>3</sup>The Blue Ribbon Panel recommended mandatory settlement discussions outside the presence of the neutral and so the *Rules* embody this requirement. We have not been able to ascertain whether the requirement has any effect or not. While nearly half of our cases settle, the settlements occur across a wide time band. They do not focus around the settlement conference.

<sup>4</sup>The OIA would also like to know why the option for payment by Kaiser is not being exercised more frequently. However, in our capacity as a neutral, the OIA has not been able to devise a way in which it could inquire into this interesting question, since the information might go to the heart of claimant litigation strategy. It would welcome any methods of inquiry that the AAC can devise which would throw light on this matter.

productive. It would be of interest to see if this would prove to be a further source of qualified arbitrators.<sup>5</sup>

8. Individuals representing themselves in arbitration (“pro pers”) constitute a significant fraction of the total number of claimants (approximately 28%). In the data on “numbers of cases resolved and types of resolution” (Section VIH), the OIA report shows that many of their cases were withdrawn or decided on summary judgment. The AAC and the OIA have been interested in developing an appropriate handout for individuals who wish to represent themselves, describing the requirements of the arbitration system. This is a task to be accomplished in the coming year.<sup>6</sup>

It was not the intention of the Advisory Committee to cite all items identified in the report that might command attention in future work. Rather these few examples are provided to indicate that the OIA report sheds light on matters which may be fruitfully explored in Committee discussion in its work with the OIA.

In summary, the Arbitration Advisory Committee concludes that the report of the OIA reflects significant progress in meeting the goals of a timely, fair, efficient and confidential arbitration system for Kaiser members. The Committee looks forward to its work with the OIA in the coming year.

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<sup>5</sup>From its inception, the OIA has invited any jointly selected arbitrator to join its panel. Many have accepted. Others have refused on the basis that they already have enough work or that they do not want to fill out our lengthy application. Some cannot meet our requirements for panel admission (because for example they have served as party arbitrators in a Kaiser arbitration within the past five years). But they still may serve when they are jointly selected. However, some whom we have solicited have not responded. We will follow up with them immediately.

<sup>6</sup>As noted in the report body, the OIA is working on a document to be distributed to *pro pers* now.

# **EXHIBIT D**

## **Rules for Kaiser Permanente Member Arbitrations**

**RULES FOR KAISER PERMANENTE MEMBER  
ARBITRATIONS**

**OVERSEEN BY**

**THE OFFICE OF THE INDEPENDENT ADMINISTRATOR**

**March, 1999**

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**A. GENERAL RULES**

**1. Goal**

These Rules are intended to provide an arbitration process that is fair, timely, lower in cost than litigation, and that protects the privacy interests of all Parties.

**2. Administration of Arbitration**

The arbitrations conducted under these Rules shall be administered by the Office of the Independent Administrator.

**3. Confidentiality**

Information disclosed to and documents received by an Arbitrator or the Independent Administrator by or from the Parties, their representatives, or witnesses in the course of the arbitration shall not be divulged by the Arbitrator or the Independent Administrator. With respect to the Independent Administrator, this Rule shall not apply to communications concerning Arbitrators, or statistical information used in its annual reports.

**4. Code of Ethics**

Arbitrators shall comply with the AAA Code of Ethics for Arbitrators in Commercial Disputes.

**5. Meaning of Arbitrator**

The term "Arbitrator" in these Rules refers to the arbitration panel, whether composed of one or more Arbitrators or whether the Arbitrators are Neutral or Party. The term "Party Arbitrator" means an Arbitrator selected by one of the sides to the arbitration. The term "Neutral Arbitrator" means any Arbitrator other than a "Party Arbitrator."

**6. Authority of Arbitrators**

Once appointed, the Neutral Arbitrator will resolve disputes about the interpretation and applicability of these Rules, including disputes relating to the duties of the Arbitrator and the conduct of the Arbitration Hearing. In cases involving more than one Arbitrator, however, issues that are dispositive with respect to a claim, including summary judgment motions, will be ruled on by all three Arbitrators and decided by a majority of them. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the full panel or as otherwise agreed by them.

**7. Contents of the Demand for Arbitration**

The Demand for Arbitration shall include the basis of the claim against the Respondent(s); the amount of damages the Claimant(s) seeks in the Arbitration; the name, address and telephone number of the Claimant(s) and their attorney, if any; and the name of all Respondent(s). Claimant(s) shall include all claims against Respondent(s) that are based on the same incident, transaction, or related circumstances in the Demand for Arbitration.

**8. Serving Demand for Arbitration**

- a. In Northern California, Kaiser Foundation Health Plan, Inc. (“Health Plan”), Kaiser Foundation Hospitals, and/or The Permanente Medical Group, Inc. shall be served with a Demand for Arbitration by mailing the Demand for Arbitration addressed to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc. or  
Legal Department  
P.O. Box 12916  
Oakland, CA 94604

Kaiser Foundation Health Plan, Inc.  
Legal Department  
1950 Franklin Street, 17th Floor  
Oakland, CA 94612

Service on that Respondent shall be deemed completed when received.

- b. In Southern California, Health Plan, Kaiser Foundation Hospitals, and/or Southern California Permanente Medical Group, shall be served with a Demand for Arbitration by mailing the Demand for Arbitration to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc.,  
Legal Department  
393 East Walnut Street  
Pasadena, CA 91188

Service on that Respondent shall be deemed completed when received.

- c. All other Respondent(s), including individuals, must be served as required by the California Code of Civil Procedure for a civil action.
- d. All Respondent(s) served with a Demand for Arbitration in the manner described above shall be Parties to the Arbitration. The Arbitrator shall have jurisdiction only over Respondent(s) actually served. If Claimant(s) serves any Respondent(s) other than an organization affiliated with Kaiser Permanente, the Claimant(s) shall serve a proof of service of that Respondent(s) on the Independent Administrator.

**9. Serving Other Documents**

- a. Service of other documents required by these Rules will be made on the Parties or Arbitrator at their last known address. If the Party is represented in this arbitration, that counsel shall be served instead of the Party. Service may be made by personal service, Federal Express or other similar services, facsimile transmission, or by U.S. mail.
- b. Service for the Independent Administrator shall be directed to:

Office of the Independent Administrator for the  
Kaiser Foundation Health Plan, Inc.  
P. O. Box 76587  
Los Angeles, California 90076-0587

or

Office of the Independent Administrator for the  
Kaiser Foundation Health Plan, Inc.  
3580 Wilshire Boulevard, Suite 2020  
Los Angeles, California 90010

or

Fax: 213-637-8658.

- c. If a Party or Arbitrator serves the Independent Administrator by fax, the Party or Arbitrator shall call the Independent Administrator's office at 213-637-9847 to confirm receipt.
- d. Service on the Independent Administrator is effective on the date the Independent Administrator receives the document.

10. **Representation**

Parties represented by counsel shall not contact the Independent Administrator except through counsel.

**B. RULES ON COMMENCEMENT OF ARBITRATION AND SELECTION OF ARBITRATORS**

11. **Initiation of Arbitration**

Demands for Arbitration shall be served in accordance with Rule 8. Whether or not the Claimant(s) has enclosed a filing fee, within ten (10) days of such service upon the Health Plan at the address set forth in Rule 8, Health Plan shall transmit the Demand for Arbitration and the envelope it came in to the Independent Administrator using the Transmission Form. If the Claimant(s) submitted a filing fee with the Demand, the Health Plan shall transmit the filing fee as well. Health Plan shall also serve a copy of the Transmission Form on the Claimant(s).

12. **Filing Fee**

- a. The Claimant(s) seeking arbitration shall pay a single, non-refundable, filing fee of \$150 per arbitration payable to "Arbitration Account" regardless of the number of claims asserted in the Demand for Arbitration or the number of Claimant(s) or Respondent(s) named in the Demand for Arbitration.
- b. If Claimant(s) fails to pay the filing fee or obtain a waiver of that fee within seventy-five (75) days of the date of the Transmission Form, the Independent Administrator will not process the Demand and it shall be deemed abandoned.

13. **Waiver of Fees**

Any Claimant(s) who claims extreme hardship may request that the Independent Administrator waive the filing fee and Neutral Arbitrator's fee and expenses. A Claimant(s) who seeks such a waiver shall complete the Fee Waiver Form and submit it to the Independent Administrator and simultaneously serve it upon Respondent(s). The Fee Waiver Form sets out the criteria for waiving fees and is available from the Independent Administrator or by calling the Kaiser Permanente Member Service Customer Center at 1-800-464-4000. Respondent(s) may submit any response to the Independent Administrator within ten (10) days of the date of Claimant's Fee Waiver Form, and shall simultaneously serve any submission upon Claimant(s). Within fifteen (15) days of receipt of a Fee Waiver Form, the Independent Administrator shall determine whether the fees should be waived and notify the Parties in writing of the decision. In those cases where the Independent Administrator grants the waiver of fees, the Independent Administrator shall waive the filing fee and Health Plan shall pay the Neutral Arbitrator's fees and expenses.

**14. Number of Arbitrators**

- a. The Blue Ribbon Advisory Panel on Kaiser Permanente Arbitration concluded that Party Arbitrators increase the cost and cause more delay than would occur with a single Neutral Arbitrator. The Independent Administrator therefore encourages Parties to use a single Neutral Arbitrator to decide cases.
- b. The number of Arbitrators may affect the Claimant(s)' responsibility for paying the Neutral Arbitrator's fees and expenses, as set out in Rule 15.
- c. If the Demand for Arbitration seeks total damages of \$200,000 or less, the dispute shall be heard and determined by one Neutral Arbitrator, unless the Parties otherwise agree in writing that the arbitration shall be heard by two Party Arbitrators and a Neutral Arbitrator. Such Neutral Arbitrators shall not have authority to award monetary damages that are greater than \$200,000.
- d. If the Demand for Arbitration seeks total damages of more than \$200,000, the dispute may be heard and determined by one Neutral Arbitrator and two Party Arbitrators, one appointed by the Claimant(s) and one appointed by the Respondent(s). Parties who are entitled to select a Party Arbitrator under these Rules may agree to waive this right. If both Parties agree, these arbitrations will be heard by a single Neutral Arbitrator.
- e. A Party who is entitled to a Party Arbitrator and decides to waive this right shall sign a Waiver of Party Arbitrator Form and serve a copy of it upon the Independent Administrator, Neutral Arbitrator, and other Party. The Claimant(s) shall serve this form on the Neutral Arbitrator and Respondent(s) no later than the date of the Arbitration Management Conference set out in Rule 25 and shall serve the Independent Administrator no later than five (5) days after serving the other Parties. If a Claimant(s) serves Respondent(s) with a signed Waiver of Party Arbitrator Form, Respondent(s) shall inform Claimant(s) within five (5) days of the date of that Form if Respondent(s) will also waive the Party Arbitrator.

**15. Payment of Neutral Arbitrator Fees and Expenses**

- a. Health Plan shall pay for the fees and expenses incurred by the Neutral Arbitrator if
  - i. Claimant(s) agrees to waive any potential objection arising out of such payment, signs the Waiver of Objection Form, and serves a copy of it on the Independent Administrator and Respondent(s); and
  - ii. either the arbitration has only a single Neutral Arbitrator or the Claimant(s) has served a Waiver of Party Arbitrator Form as set out in Rule 14.d.
- b. In arbitrations where the Independent Administrator has granted Claimant's Fee Waiver request, Health Plan shall pay the fees and expenses incurred by the Neutral Arbitrator.
- c. In all other arbitrations, the fees and expenses of the Neutral Arbitrator shall be paid one-half by the Claimant(s) and one-half by the Respondent(s).
- d. Nothing in this Rule shall prohibit an order requiring the payment of the Neutral Arbitrator's fees and expenses which were incurred as a result of conduct which causes the Neutral Arbitrator to incur needless fees and expenses. Such conduct includes, but is not limited to, failure to respond to discovery requests, abusive discovery practices, and the filing of frivolous motions. In the event that such a finding is made by the Neutral Arbitrator, those fees and expenses shall be paid by the responsible Party or

counsel. The Neutral Arbitrator shall make such a finding in writing, shall specify what fees and expenses are covered by the order, and shall serve a copy of the finding on the Independent Administrator with the Parties' names redacted, for inclusion in the Neutral Arbitrator's file.

**16. List of Possible Arbitrators**

- a. Within three (3) business days after it has received both the Demand for Arbitration and the filing fee, or it has granted a request for waiver of fees, the Independent Administrator shall simultaneously send to each Party an identical List of Possible Arbitrators, along with the Application forms of and redacted Awards, if any, by each of the possible Neutral Arbitrators.
- b. The List of Possible Arbitrators shall contain the names of twelve (12) persons. The Independent Administrator will choose the twelve (12) names at random from the Independent Administrator's arbitration panel for Southern or Northern California, based on the location where the cause of action arose.
- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve the Independent Administrator with their response to the List of Possible Arbitrators within twenty (20) days of the date appearing on the List of Possible Arbitrators. Rules 17 and 18 specify how the Parties may respond.

**17. Joint Selection of the Neutral Arbitrator**

- a. The Parties may all agree upon a person listed on the List of Possible Arbitrators. If they do, the Parties shall contact the person they have chosen. If the person agrees to act as Neutral Arbitrator, the Parties and counsel shall sign the Joint Selection of Neutral Arbitrator Form and have the Neutral Arbitrator sign the Agreement to Serve Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve both forms on the Independent Administrator within twenty (20) days of the date appearing on the List of Possible Arbitrators.
- b. Rather than selecting a Neutral Arbitrator from the List of Possible Arbitrators, the Parties may agree to select another person to serve as Neutral Arbitrator, provided that the person agrees in writing to comply with these Rules. If the Parties collectively select a person not on the list, all the Parties and counsel shall complete and sign the Joint Selection of Neutral Arbitrator Form and have the Neutral Arbitrator sign the Agreement to Serve Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve both forms on the Independent Administrator within twenty (20) days of the date appearing on the List of Possible Arbitrators.
- c. After the Independent Administrator has received these forms, it will send a Letter Confirming Service to the person who has agreed to act as Neutral Arbitrator, with a copy to the Parties.

**18. Selection of the Neutral Arbitrator When the Parties Do Not Agree**

- a. If the Parties do not collectively agree upon a Neutral Arbitrator, the Neutral Arbitrator shall be selected from the List of Possible Arbitrators in the following manner. Claimant(s) and Respondent(s) may each strike up to four (4) names to which the Party objects and shall rank the remaining names in order of preference with "1" being the strongest preference. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve their preferences on the Independent Administrator within twenty (20) days of the date appearing on the List of Possible Arbitrators.

- b. Regardless of the number of Claimants or Respondents, the Claimant(s) shall return only one list of preferences and the Respondent(s) shall return only one list of preferences. All the counsel or all the Parties on one side must sign the list of preferences. If they do not, Rule 18.c will apply.
- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, if a Party does not serve the Independent Administrator with a response within the twenty (20) days from the date appearing on the List of Possible Arbitrators, all persons named on the List of Possible Arbitrators shall be deemed equally acceptable Neutral Arbitrators to that Party.
- d. At any time before the Party's response is due, a Party or representative may request to review further information, if any, which the Independent Administrator has in its files about the persons named on the List of Possible Arbitrators. Parties and their representatives may call the Independent Administrator at 213-637-9847 to request such information. The Parties and their representatives may review the information by going to the Independent Administrator's office. If requested, the Independent Administrator will also send the information to the Party or attorney by mail or fax. Parties who request that further information be sent to them shall be responsible for the Independent Administrator's cost of providing it, with no charge made for duplication of the first twenty-five (25) pages. Time spent requesting or waiting for the additional information shall not extend the twenty (20) day limit to respond to the List of Possible Arbitrators.
- e. Working from the returned Lists of Possible Arbitrators, the Independent Administrator shall invite the Neutral Arbitrator to serve, asking first the person with the lowest combined rank whose name has not been stricken by either Party. If the person with the lowest combined rank is not available, the Independent Administrator will ask the second lowest ranked person who was not stricken by either party, and will continue until a person whose name was not stricken agrees to serve. When the Independent Administrator contacts the persons, it shall inform them of the names of the Parties and their counsel and ask them not to accept if they know of any conflict of interest. If there is a tie in ranking, the Independent Administrator shall select a person at random from those choices who are tied.
- f. If, for any reason, a Neutral Arbitrator cannot be obtained from the first List of Possible Arbitrators, the Independent Administrator shall send a second List of Possible Arbitrators to the Parties. The procedure and timing in that case shall be the same as that for the first List of Possible Arbitrators. If, for any reason, a Neutral Arbitrator cannot be obtained from the second List of Possible Arbitrators, the Independent Administrator shall randomly select a Neutral Arbitrator from the other members on the panel who have not been named on either prior List of Possible Arbitrators.
- g. If a Neutral Arbitrator should die, become incapacitated, or otherwise become unable or unwilling to proceed with the arbitration after appointment, the Independent Administrator shall serve the Parties with a new List of Possible Arbitrators and the selection process as set out in Rules 16 through 18 shall begin again.

**19. Acceptance by the Neutral Arbitrator**

When a person agrees to act as a Neutral Arbitrator under Rule 18, the Independent Administrator shall send the person a copy of these Rules, an Agreement to Serve Form, and a Letter Confirming Service. The Independent Administrator shall also serve the Parties with a copy of the Letter Confirming Service. The prospective Neutral Arbitrator shall sign and serve the Agreement to Serve Form as soon as possible.

**20. Disclosure and Challenge**

The person who has agreed to serve as Neutral Arbitrator shall make disclosures as required by law, including California Code of Civil Procedure Section 1281.9 or its successor statute, simultaneously upon the Parties and the Independent Administrator. Party responses, if any, shall be in accordance with the Code, with a copy served to the Independent Administrator. After the time for any response has passed, the Independent Administrator will deem that the Neutral Arbitrator has been appointed.

**21. Postponement of Selection of Neutral Arbitrator**

- a. The Claimant(s) may obtain a single ninety (90) day postponement of the appointment of the Neutral Arbitrator by serving a written request for postponement on the Independent Administrator before the date that the response to the List of the Possible Arbitrators is due under Rule 16. Claimant(s) shall serve a copy of this request for postponement on the Respondent(s). Regardless of the number of Claimants, Claimant(s) is entitled to only a single ninety (90) day postponement of the appointment of the Neutral Arbitrator.
- b. If the Claimant(s) agrees in writing, Respondent(s) may obtain a single ninety (90) day postponement of the appointment of the Neutral Arbitrator. Respondent(s) shall serve a written request for postponement on the Independent Administrator before the date that the response to the List of the Possible Arbitrators is due under Rule 16.
- c. There shall be only one postponement whether made by either Claimant(s) or Respondent(s) pursuant to this Rule in any arbitration.

**22. Selection of the Party Arbitrator**

- a. If the Parties are entitled to a Party Arbitrator and have not waived that right, the Claimant(s) and the Respondent(s) shall each select a Party Arbitrator and notify the Independent Administrator and the Neutral Arbitrator of the Party Arbitrator's name, address, and telephone and fax numbers. Each Party Arbitrator shall sign the Agreement to Serve, and submit it to the Independent Administrator before serving in the arbitration.
- b. If possible, the Parties should select the Party Arbitrators before the Arbitration Management Conference that is set forth in Rule 25. Any Party Arbitrator who is selected after the Arbitration Management Conference shall conform to any arbitration schedule established prior to his or her selection. Notwithstanding any other Rule, if a Party Arbitrator has not been selected, or has not signed the Agreement to serve, or does not attend a hearing, conference or meeting set by the Neutral Arbitrator of which the Party Arbitrator had notice, the remaining Arbitrators may act in the absence of such Party Arbitrator.



- c. Regardless of the number of Claimants or Respondents, all of the Claimant(s) are entitled to only one Party Arbitrator and all of the Respondent(s) are entitled to only one Party Arbitrator.
- d. No Claimant, Respondent, or attorney may act as Party Arbitrator in an arbitration in which he or she is participating in any other manner.

**23. Appointment of Chairperson**

In cases involving more than one Arbitrator, the Neutral Arbitrator will chair the arbitration panel. Absent objection by any Party, the Neutral Arbitrator shall have the authority to decide all discovery and procedural matters, but may not decide dispositive issues without the Party Arbitrators. Dispositive issues shall be decided by a majority of the Arbitrators. The Neutral Arbitrator will also set the time and location of hearings and be responsible for submitting all necessary forms to the Independent Administrator. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the Arbitrators or as otherwise agreed by them.

**C. RULES FOR REGULAR PROCEDURES**

**24. Deadline for Disposing of Arbitrations**

- a. Unless Rule 24.b, 24.c, or 33 applies, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within eighteen (18) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver.
- b. If all of the Parties and their counsel agree that the claim is a complex case and the Neutral Arbitrator agrees at the Arbitration Management Conference, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within twenty-four (24) to thirty (30) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Complex Case Designation Form upon the Independent Administrator.
- c. There may be some small number of extraordinary cases which cannot be disposed of within thirty (30) months, such as those where the damages or injuries cannot be ascertained within that time. If all the Parties, counsel, and Neutral Arbitrator agree, the Neutral Arbitrator may select a later date for disposition of the case. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Extraordinary Case Designation Form upon the Independent Administrator. This form will set forth the reason for this designation and the target disposition date.
- d. The Parties and Arbitrator are encouraged to complete the arbitration in less time than the maximums set forth in the Rule, if that is consistent with a just and fair result. While failure by the Parties, counsel, or Neutral Arbitrator to comply with this Rule may subject them to sanction, removal as Neutral Arbitrator, or removal from the pool of Neutral Arbitrators, this Rule is not a basis to dismiss an arbitration or a claim. Nothing in this paragraph affects the remedies otherwise available under law for violation of any other Rule.

25. **Arbitration Management Conference**

- a. The Neutral Arbitrator shall hold an Arbitration Management Conference with the Parties and their attorneys within forty-five (45) days of the date of the Letter Confirming Service. The Neutral Arbitrator shall give notice to the Parties of the time and location at least ten (10) days in advance. The Arbitration Management Conference may be conducted by telephone or by video conference if such facilities are available.
- b. The Neutral Arbitrator shall discuss, but is not limited to, the following topics:
  - i. the status of the Parties, claims, and defenses;
  - ii. a realistic assessment of the value of the case;
  - iii. any pending or intended motions;
  - iv. completed and intended discovery;
  - v. the procedures to be followed, including any written submissions the Neutral Arbitrator requires; and
  - vi. if appropriate, whether the Parties have or will waive any Party Arbitrator.
- c. At the Arbitration Management Conference, the Arbitrator shall establish:
  - i. the schedule for motions and the mandatory settlement meeting and
  - ii. the dates of the Arbitration Hearing. The Arbitrator and the Parties shall schedule the Arbitration Hearing for consecutive days if more than one day is necessary.
- d. If any of the Parties is not represented by counsel, the Neutral Arbitrator should explain the process to be followed at the Arbitration Hearing, use of motions, costs, etc.
- e. The Neutral Arbitrator shall record all deadlines established by the Neutral Arbitrator during the Arbitration Management Conference on the Arbitration Management Conference Form. The Neutral Arbitrator shall serve the Arbitration Management Conference Form on the Parties and the Independent Administrator within five (5) days of the Arbitration Management Conference. The Neutral Arbitrator shall also serve a copy of the Arbitration Management Conference Form on the Party Arbitrators if and when they are named.
- f. At any time after the Arbitration Management Conference, the Neutral Arbitrator may require, or the Parties may request, additional conferences to discuss administrative, procedural, or substantive matters and to assure that the case continues to move expeditiously. Such conferences may be conducted by telephone or video conference if facilities are available.

26. **Mandatory Settlement Meeting**

- a. No later than six (6) months after the Arbitration Management Conference, the Parties and their counsel shall conduct a mandatory settlement meeting. The Parties shall jointly agree on the form these settlement discussions shall take. The Neutral Arbitrator shall not take part in these discussions. Within five (5) days after the mandatory settlement meeting, the Parties and their counsel shall sign the Mandatory Settlement

Meeting Form and serve a copy on the Independent Administrator to confirm that the meeting occurred. If the Parties have settled the claim, they shall give notice as required in Rule 40.

- b. This Rule sets a deadline for the Parties to conduct a mandatory settlement meeting. The Parties are encouraged to engage in settlement discussions at an earlier date.

27. **Discovery**

- a. Discovery may commence as soon as the Health Plan serves Claimant(s) with a copy of the Transmission Form, unless some Party objects in writing. If a Party objects, discovery may commence as soon as the Neutral Arbitrator is appointed. Discovery shall be conducted as if the matter were in California state court. Any extension of time for completion of discovery shall not affect the date of the Arbitration Hearing.
- b. The Parties should address problems stemming from the discovery process to the Neutral Arbitrator for rulings. The time for serving any discovery motions shall commence as required by the California Code of Civil Procedure or upon the appointment of the Neutral Arbitrator, whichever is later.
- c. If the Claimant(s) requests and at the Claimant's expense, Health Plan or the affiliated entities that are named as Respondent(s) shall serve a copy of that portion of Claimant's medical records requested on the Claimant(s) within thirty (30) days of Claimant's request.
- d. At the request of the Parties, the Neutral Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive or private information.

28. **Postponements**

Any postponement of dates other than that set out in Rule 21 shall be requested in writing from the Neutral Arbitrator if one has been appointed or from the Independent Administrator if the Neutral Arbitrator has not been appointed or has become incapacitated. The request shall set out good cause for the postponement and whether the other Party agrees. Postponements, absent extraordinary circumstances, shall not prevent the Arbitration Hearing from being completed within the time periods specified in Rule 24.

29. **Failure to Appear**

- a. The arbitration may proceed in the absence of a Party, a Party's attorney, or a Party Arbitrator who, after due notice of the date, time, and location of the Arbitration Hearing, or any other conference or hearing, fails to be present and failed to obtain a postponement. If the date of the Arbitration Hearing has not been changed, service of the Arbitration Management Conference Form on a Party shall constitute due notice.
- b. An Award shall not be made solely on the default of a Party. The Arbitrator may require each Party who attends to submit such evidence as the Arbitrator requires for the making of an Award.

30. **Securing Witnesses for the Arbitration Hearing**

The Party's attorney, the Neutral Arbitrator, or other entity authorized by law may issue subpoenas for the attendance of witnesses or the production of documents. The Independent Administrator shall not.

**31. Close of Hearing or Proceeding**

- a. When the Parties have rested, the Neutral Arbitrator shall declare the Arbitration Hearing closed.
- b. The Neutral Arbitrator may defer the closing of the Arbitration Hearing until a date agreed upon by the Neutral Arbitrator and the Parties, to permit the Parties to submit post-Hearing papers. The date for the post-Hearing submissions shall not be more than fifteen (15) days after the Parties have rested. If post-Hearing papers are to be submitted, the Arbitration Hearing will be deemed closed on the date set for the submission. If a Party fails to submit the papers by the closing date, the Neutral Arbitrator need not accept or consider them.
- c. The time limit under Rule 37 for the Neutral Arbitrator to make the Award shall begin to run upon the closing of the Arbitration Hearing or proceeding. The late filing of a post-hearing paper shall not affect the deadline for making the Award.

**32. Documents**

After making the Award, the Neutral Arbitrator has no obligation to preserve copies of the exhibits or documents the Neutral Arbitrator has previously received.

**D. RULES FOR EXPEDITED PROCEDURES**

**33. Expedited Procedures**

- a. Expedited Procedures are available in an arbitration where the Claimant(s) requires an Award in less time than that set out in Rule 24.a. The need for the Expedited Procedures shall be based upon any of the following:
  - i. a Claimant or member suffers from an illness or condition raising substantial medical doubt of survival until the time set for an Award according to Rule 24.a; or
  - ii. a Claimant or member seeks a determination that he or she is entitled to a drug or medical procedure that the Claimant or member has not yet received; or
  - iii. other good cause.
- b. The Claimant(s) and Respondent(s) may submit evidence, including declarations by physicians or others, to establish any of these criteria.
- c. If either the Independent Administrator or the Neutral Arbitrator decide that Expedited Procedures are required, the arbitration shall be disposed of within the time set out in that order. No extension of that time is allowed.
- d. Except when inconsistent with orders made by the Neutral Arbitrator to meet the deadline for the disposition of the case, the other Rules shall apply to cases with Expedited Procedures.

**34. Seeking Expedited Procedures from the Independent Administrator**

- a. If Claimant(s) believes that Expedited Procedures are required and a Neutral Arbitrator has not yet been appointed, the Claimant(s) may serve a written request, with a brief statement of the reason for request for Expedited Procedures and the length of time in which an Award is required, on the Independent Administrator, with a copy to Respondent(s). Respondent(s) shall provide written opposition to the request for Expedited Procedures, if any, within seven (7) days of the date of the request. The Independent Administrator shall decide the request and inform the Parties of the decision no later than five (5) days after any opposition by Respondent(s) is due.
- b. Should the Independent Administrator determine that Expedited Procedures are necessary, the selection procedures set out in Section B of these Rules shall be followed except that no ninety (90) day continuance shall be allowed and the Independent Administrator shall require that the Neutral Arbitrator agree to render an Award within the period required.
- c. After the Neutral Arbitrator is appointed, he or she shall promptly confer with the Parties to decide what schedule, actions, or modifications of these Rules will be needed to meet the deadline. The Neutral Arbitrator shall issue any additional orders that are necessary to assure compliance with that deadline and serve the Independent Administrator with a copy of such orders. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions.

**35. Seeking Expedited Procedures from the Neutral Arbitrator**

If a Neutral Arbitrator has been appointed, the Party seeking Expedited Procedures may, at any time, petition the Neutral Arbitrator to proceed on an expedited basis. If the Neutral Arbitrator issues an order to proceed on an expedited basis, he or she shall issue any additional orders that are necessary to assure compliance with that decision. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions. The Neutral Arbitrator shall serve a copy of any such orders on the Independent Administrator, including the date by which such Award shall be served.

**36. Telephonic Notice**

When Expedited Procedures apply, the Parties shall accept all notices, process, and other communications (other than the List of Possible Arbitrators) from the Independent Administrator and Arbitrator by telephone. The Independent Administrator and the Arbitrator shall promptly confirm any such oral notices, process, and other communications in writing to the Parties.

**E. RULES ON AWARD AND ENFORCEMENT**

**37. Time of Award**

The Neutral Arbitrator shall serve the Award on the Parties and the Independent Administrator promptly. Unless otherwise specified by law, the Neutral Arbitrator shall serve the Award no later than ten (10) days after the date of the closing of the Arbitration Hearing.

38. **Form of Award**

A majority of the Arbitrators shall sign the Award. The Award shall specify the prevailing Party, the amount and terms of the relief, if any, and the reasons for the decision. The reasons for the decision will not become part of the Award nor be admissible in any judicial proceeding to enforce or vacate the Award. The Arbitrator may use the Arbitration Award Form. The Neutral Arbitrator shall be responsible for preparing the written Award.

39. **Delivery of the Award**

- a. The Neutral Arbitrator shall serve a copy of the Award on the Parties and Independent Administrator by mail.
- b. Respondent(s) shall redact the Award by eliminating the names of the enrollees, the plan, witnesses, attorneys, providers, health plan employees, and health facilities. Respondent(s) shall otherwise identify the name of the attorneys who represented Parties in the arbitration.
- c. Respondent(s) shall serve the redacted Award on the Independent Administrator and Claimant(s). The redacted version of the Award will become part of the Neutral Arbitrator's file.

40. **Notice after Settlement**

At any point in the proceedings, if the Parties reach a settlement, they shall promptly inform the Neutral Arbitrator and the Independent Administrator. Upon receiving such notice, the Independent Administrator shall deem the arbitration terminated.

41. **Sanctions**

The Neutral Arbitrator may order appropriate sanctions for failure of any Party to comply with its obligations under any of these rules or applicable law. These sanctions may include any sanction available under applicable law, as well as payment of all or a portion of the other Party's expenses for its Party Arbitrator or the Neutral Arbitrator's fees and expenses.

42. **Release of Documents for Judicial Proceedings**

The Independent Administrator shall, upon the written request of and payment by a Party, furnish to the Party, at the Party's expense, copies of any papers, notices, process or other documents in the possession of the Independent Administrator that may be required in judicial proceedings relating to that Party's arbitration.

**F. RULES OF ADMINISTRATION**

43. **Counting of Days**

- a. Unless a Rule specifies otherwise, "days" mean calendar days. Thus, all days, including holidays, Saturdays and Sundays are to be counted when counting the number of days. In determining the date an action is required, the date of the event or document that triggers the action is not included, but the date by which the action must occur is included.
- b. If a Rule refers to "business days," federal holidays, Saturdays and Sundays are excluded when counting the number of days.

- c. If the date on which some action is to be taken, or a notice, process, or other communication would otherwise be required to be sent or a period would otherwise expire, falls on a holiday, a Saturday, or a Sunday, the date is extended to the next succeeding business day.

44. **No Limit on Immunity**

Nothing in these Rules limits any statutory or common law immunity that the Independent Administrator or Neutral Arbitrator may otherwise possess.

45. **Neutral Arbitrator Fees**

- a. If the Neutral Arbitrator was selected from the List of Possible Arbitrators, the Neutral Arbitrator's compensation for an arbitration shall accord with the fees and terms sent out to the Parties by the Independent Administrator with the List of Possible Arbitrators.
- b. The Independent Administrator is not responsible for, or involved in the collection of, the Neutral Arbitrator's fees.

46. **Expenses**

The expenses of witnesses for any Party shall be paid by the Party producing them. The fees and expenses of the Party Arbitrator shall be paid by the Party who selected that Party Arbitrator.

47. **Forms**

The Parties and the Neutral Arbitrator may request blank copies of any forms mentioned in these Rules from the Independent Administrator.

48. **Questionnaire**

At the conclusion of the arbitration, the Neutral Arbitrator shall complete and timely return the arbitration questionnaire supplied by the Independent Administrator. This information may be used by the Independent Administrator to evaluate the arbitration system.

49. **Evaluation**

At the conclusion of the arbitration, each Party shall complete and timely return the evaluation form supplied by the Independent Administrator.

50. **Amendment of Rules**

- a. The Independent Administrator may amend these Rules in consultation with the Arbitration Advisory Committee. The Rules in effect on the date the Independent Administrator receives the Demand for Arbitration will apply to that arbitration throughout unless the Parties agree in writing that another version of the Rules applies. The Parties shall serve a copy of that agreement on the Independent Administrator.
- b. If an event occurs which is not contemplated by these Rules, the Independent Administrator may adopt a new Rule(s) to deal adequately with that event. Any such new Rule(s) shall not be inconsistent with existing Rules and shall be created in consultation with the Arbitration Advisory Committee. The Independent Administrator

shall serve all Parties and Arbitrators in pending arbitrations with a copy of any such new Rule(s) and it shall be binding upon the Parties and Arbitrators.

51. **Conflict with Law**

If any of these Rules, or a modification of these Rules agreed on by the Parties, is discovered to be in conflict with a mandatory provision of applicable law, the provision of law will govern, and no other Rule will be affected.

52. **Acknowledgment of No Warranty**

The Independent Administrator makes no representation about, or warranty with respect to, the accuracy, or completeness of any information furnished or required to be furnished in any Application Form or with respect to the competence or training of any Neutral Arbitrator. Information is supplied to allow Parties to conduct their own inquiries.

53. **Public Reporting**

Annually, the Independent Administrator will report in a collective fashion the lengths of times it took to complete various tasks in the process of adjudicating the claims, how the arbitrations were disposed of, and the choices made by the Parties and Arbitrators. This report may be available to the public.



## **EXHIBIT E**

# **Qualifications for Neutral Arbitrators**

**Qualifications for Neutral Arbitrators  
for Kaiser Permanente's Mandatory Arbitration System**

1. Neutral arbitrators shall be members of the State Bar of California, members of the state bar of another state with extensive practice in California during the past five years, or retired state or federal judges.
2. Neutral arbitrators shall not have received public discipline or censure from the state bar of California or any other state bar in the past five years.
3. Neutral arbitrators shall
  - (a) have been admitted to practice for at least ten years, with substantial litigation experience; AND
  - (b) have had at least three civil trials or arbitrations within the past five years in which they have served as either (i) the lead attorney for one of the parties or (ii) an arbitrator; OR
  - (c) have been a state or federal judge; OR
  - (d) have completed within the last five years a program designed specifically for the training of arbitrators.
4. Neutral arbitrators shall provide satisfactory evidence of ability to act as an arbitrator based upon judicial, trial, or legal experience.
5. Neutral arbitrators shall not have served as party arbitrators on any matter involving Kaiser Permanente, or any affiliated organization or individual, within the last five years.
6. Neutral arbitrators shall not presently serve as attorney of record or an expert witness or a consultant for or against Kaiser Permanente, or any organization or individual affiliated with Kaiser Permanente, or have had any such matters at anytime within the past five years.
7. Neutral arbitrators shall successfully complete an application provided by the Independent Administrator.
8. Neutral arbitrators shall follow applicable arbitration statutes, substantive law of the issues addressed, and procedures of the Independent Administrator.
9. Neutral arbitrators shall comply with the provisions of code of ethics selected by the Office of the Independent Administrator.
10. Neutral arbitrators shall administer Kaiser arbitrations in a fair and efficient manner.

## **EXHIBIT F**

### **Application for Neutral Arbitrators**

**Neutral Arbitrator Application  
Kaiser Permanente Arbitration System**

**Answer each of the following questions completely. Type or clearly print your responses. Attach additional answer sheets as necessary. You may attach your resume, but please do not reference your resume in your answers unless a question specifically permits you to do so. Copies of your application will be provided to participants in Kaiser's arbitration system.**

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**I. PROFILE**

Name: \_\_\_\_\_

Title Preference: \_\_\_\_\_

Business or Firm Name: \_\_\_\_\_

Business or Firm Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_ Business Fax: \_\_\_\_\_

Business E-mail Address: \_\_\_\_\_

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**II. ADMISSIONS AND AFFILIATIONS**

Date admitted to the California Bar: \_\_\_\_\_ Bar No: \_\_\_\_\_

Active: \_\_\_ Inactive: \_\_\_ Date First Inactive (if judge, date of resignation): \_\_\_\_\_

Other state bars to which you are admitted (include states, dates of admission and bar numbers):

\_\_\_\_\_  
\_\_\_\_\_

Memberships and positions held in bar, ADR professional or other panels, boards, agencies and associations relevant to arbitration, health care, or medical malpractice law:

\_\_\_\_\_  
\_\_\_\_\_

Courts or organizations for which you serve as a neutral arbitrator (list court/organization and program):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**III. LANGUAGES** List any languages other than English which you speak and understand and in which you would be willing to conduct arbitrations:

\_\_\_\_\_  
\_\_\_\_\_

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**IV. KAISER MEMBERSHIP**

I \_\_\_\_\_ am/ \_\_\_\_\_ am not currently a member of Kaiser Foundation Health Plan

I \_\_\_\_\_ have/ \_\_\_\_\_ have not been a member of Kaiser Foundation Health Plan within the last five years.

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**V. EDUCATION** (College and Graduate) List all schools attended, degrees and years received:

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**VI. EMPLOYMENT** Set forth all employment (without omissions) for the last ten years. Provide employer, primary occupation, and dates of employment. \_\_\_\_\_

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**VII. LEGAL EXPERIENCE** Summarize your legal experience (including teaching) since admission to the bar, particularly in the past ten years. \_\_\_\_\_

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Percentage of practice in the last ten years representing: plaintiff \_\_\_\_\_ % defense \_\_\_\_\_ %

Percentage of federal or state court practice in the last ten years: federal \_\_\_\_\_ % state \_\_\_\_\_ %

Number of years in the last ten years in which litigation occupied more than 50% of your time: \_\_\_\_\_

I have had at least three civil trials or arbitrations within the past five years in which I have served as \_\_\_\_\_ the lead attorney for one of the parties or \_\_\_\_\_ an arbitrator.

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**VIII. CURRENT PRACTICE** State the percentages of your current practice in the following roles:

As a neutral arbitrator, judge, or hearing officer: \_\_\_\_\_ %

As a defense party arbitrator: \_\_\_\_\_ % As a plaintiff's party arbitrator: \_\_\_\_\_ %

As a defense attorney: \_\_\_\_\_ % As a plaintiff's attorney: \_\_\_\_\_ %

As an expert: \_\_\_\_\_ % As an \_\_\_\_\_ : \_\_\_\_\_ %  
(list other role)

In descending order, list the subject areas of law in which you are currently most active.

Area of Law	Percentage of Practice
a. _____	_____
b. _____	_____
c. _____	_____
d. _____	_____

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**IX. ARBITRATION EXPERIENCE** Summarize your arbitration experience in the last ten years. Include your role or roles (e.g., neutral arbitrator, party arbitrator, hearing officer, plaintiff’s counsel, defense counsel, expert, etc.), number of years in each role, approximate number of cases in which you have participated in each role, and whether you are currently serving in any of these roles. \_\_\_\_\_

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Have your actions as an arbitrator figured in a published legal opinion? If so, please provide the citation. \_\_\_\_\_

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**X. ARBITRATION TRAINING** Describe any arbitration training you have received. For each training, list the training provider’s name, length of training, dates of training, and a brief description of the training. You may reference a specific section of your resume that sets out your training related to arbitration. \_\_\_\_\_

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**XI. MEDICAL MALPRACTICE EXPERIENCE** Have you been involved in any medical malpractice case within the past ten years? If so, set forth the years of your involvement, your role (e.g., plaintiff’s counsel, defense counsel, neutral arbitrator, party arbitrator, hearing officer, expert, litigant, etc.), and the approximate number of cases in each role. \_\_\_\_\_

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**XII. OTHER RELEVANT EXPERIENCE** Describe any other relevant experience. \_\_\_\_\_

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**XIII. PREVIOUS INVOLVEMENT IN KAISER CASES** Set forth your involvement, if any, in any case involving Kaiser Permanente or any affiliated entity or individual within the past five years. For each case, identify your role (e.g., neutral arbitrator, plaintiff/claimant party arbitrator, defense party arbitrator, judge, hearing officer, plaintiff/claimant counsel, defense counsel, expert, litigant etc.), whether the case went to verdict and, if so, for which side the verdict was rendered (plaintiff or defense), and the amount of the award, if any. \_\_\_\_\_

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To the best of your recollection, were you involved in any Kaiser case prior to five years ago? If so, to the best of your recollection, state your role or roles. State the approximate number of cases in which you were involved. Be as specific as your records or recollection will permit.

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**XIV. EXPEDITED HEARINGS** Are you willing to act as a neutral arbitrator for expedited claims that must be completed within five months or less of the date you are appointed?

Yes \_\_\_\_\_ No \_\_\_\_\_

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**XV. PRO PER CASES** Are you willing to act as a neutral arbitrator for cases in which one or both parties are not represented by counsel?

Yes \_\_\_\_\_ No \_\_\_\_\_

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**XVI. INSURANCE** Do you carry insurance that covers your activities as a neutral arbitrator?

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, do you intend to obtain such insurance before working on arbitrations administered by the Office of the Independent Administrator?

Yes \_\_\_\_\_ No \_\_\_\_\_

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**XVII. CONVICTIONS, SANCTIONS AND DISCIPLINE** Answer each question:

Have you ever been convicted of a crime? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, attach an explanation.

Have you ever been sanctioned by a court for \$1,000 or more? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, attach an explanation.

Have you ever been disciplined by any court, administrative agency, bar association, or other professional group? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, attach an explanation.

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**XVIII. REFERENCES**

I am providing references for my work (check your role(s) and provide references as set forth below):

\_\_\_\_\_ as an arbitrator. List the name, addresses, and telephone numbers of counsel for the plaintiff and the defense **in the last five** arbitrations or civil trials for which you served as a neutral arbitrator, judge or hearing officer. Provide a total of ten contacts.

\_\_\_\_\_ as an attorney. List the name, addresses, and telephone numbers of opposing counsel and neutral arbitrators, judges, or hearing officers **for the last five** arbitrations or civil trials in which you participated. Provide a total of ten contacts.

\_\_\_\_\_ as a \_\_\_\_\_. (Other - please describe.) List the names addresses, and telephone numbers of counsel and/or arbitrators, judges, or hearing officers **in the last five** arbitrations or civil trials in which you participated. These references must reflect different sides in the arbitration or civil trials and must be able to provide a report of how you handled yourself in an arbitration or civil trial:

You may provide references for yourself in different roles (e.g., two references for your work as an arbitrator and three references for your work as an attorney).

**Matter #1.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #2.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #3.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #4.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #5.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:



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**XIX. TRAVEL** Complete the following.

Check one. \_\_\_ I am applying to conduct arbitrations in Northern California.

Northern California includes Alameda, Contra Costa, Marin, San Francisco, San Mateo, Sonoma, Napa, Solano, Sacramento, Yolo, San Joaquin, Santa Clara, Stanislaus, Placer and Fresno counties.

\_\_\_ I am applying to conduct arbitrations in Southern California.

Southern California includes, Kern, Ventura, Los Angeles, Orange, San Bernardino, Riverside and San Diego counties.

Are you willing to travel anywhere within the half of the state you check above to hear arbitration cases? Yes \_\_\_\_\_ No \_\_\_\_\_

Check all that apply. I am willing to travel to the following counties without charging for travel time or travel expenses:

Northern California: Alameda County \_\_\_ Contra Costa County \_\_\_ Marin County \_\_\_

San Francisco County \_\_\_ San Mateo County \_\_\_ Sonoma County \_\_\_ Napa County \_\_\_

Solano County \_\_\_ Sacramento County \_\_\_ Yolo County \_\_\_ San Joaquin County \_\_\_

Santa Clara County \_\_\_ Stanislaus County \_\_\_ Placer County \_\_\_ Fresno County \_\_\_

Southern California: Kern County \_\_\_ Ventura County \_\_\_ Los Angeles County \_\_\_

Orange County \_\_\_ San Bernardino County \_\_\_ Riverside County \_\_\_ San Diego County \_\_\_

Indicate your terms and charges, if any, for time spent in transit. \_\_\_\_\_

\_\_\_\_\_

Indicate your terms and charges, if any, for transportation costs. \_\_\_\_\_

\_\_\_\_\_

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**XX. AFFIRMATION**

My signature on this form affirms that the foregoing statements and all attached information are true and correct to the best of my knowledge. I understand that any misrepresentation, or any failure on my part to supply information requested by the Office of the Independent Administrator may constitute a basis for my disqualification or withdrawal of my name as an arbitrator for Kaiser Permanente matters. I understand that if I am selected as a member of the Office of the Independent Administrator's panel of neutral arbitrators, copies of this application and all information I attach to it will be available to claimants, their attorneys, Kaiser Permanente, its attorneys, the Office of the Independent Administrator, and Kaiser Permanente's Arbitration Advisory Committee. I also understand that the Independent Administrator may attempt to verify any of the information contained in it. I consent to that process.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Schedule of Fees and Costs

Answer each of the following questions completely. Type or clearly print your responses. Attach additional answer sheets as necessary. Copies of this form will be provided to participants in Kaiser's arbitration program.

Arbitrator's Name \_\_\_\_\_

1. State the fees and charges for your services.

a. Hearing fees: \_\_\_\_\_ per hour or \_\_\_\_\_ per day

If daily, what are your charges for partial days? \_\_\_\_\_

b. Meeting fees: \_\_\_\_\_ per hour or \_\_\_\_\_ per day

If daily, what are your charges for partial days?

c. Fees for study or document review: \_\_\_\_\_ per hour or \_\_\_\_\_ per day

If daily, what are your charges for partial days? \_\_\_\_\_

d. Do you charge for travel time? Yes \_\_\_ No \_\_\_

If so, what do you charge? \_\_\_\_\_

e. Do you charge for expenses? Yes \_\_\_ No \_\_\_

If so, for what expenses, and how much? \_\_\_\_\_

f. Do you charge for any postponed or canceled proceedings (conference, telephone call, meeting, hearing, etc.) during the course of an arbitration? Yes \_\_\_ No \_\_\_

If so, what are the terms and charges? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

g. Do you charge a cancellation fee if a case settles before the hearing date?

Yes \_\_\_ No \_\_\_ If so, describe the terms and charges in this situation. \_\_\_\_\_

\_\_\_\_\_

h. Describe any requirements you have regarding the timing of payments. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

2. Can you provide space for any or all of the arbitration proceedings? Yes \_\_\_ No \_\_\_  
If so, set forth the location of the space and any applicable charges. Also, please state  
whether you require the use of such space. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Set forth any other fees, terms or conditions you require in the event that you are selected to sit  
as a neutral arbitrator for an arbitration administered by the Office of the Independent  
Administrator. Include a copy of any forms, stipulations or other agreements that you require  
be signed by the parties in order for you to serve as a neutral arbitrator in any such matter. \_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. My signature on this form affirms that the foregoing statements and all attached  
information is true and correct to the best of my knowledge. I understand that I may not  
change the fees I charge for arbitrations administered by the Office of the Independent  
Administrator during my first year of service, but may do so annually thereafter. I understand  
that any misrepresentation, or any failure on my part to supply information  
requested by the Office of the Independent Administrator may constitute a basis for my  
disqualification or withdrawal of my name as an arbitrator for matters administered by the  
Office of the Independent Administrator.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **Certificate of Veracity, Consent and Understanding**

**The information contained in my application, and any attachments thereto, is true and accurate to the best of my knowledge, information and belief. In addition, I consent to and understand the following:**

1. I understand that if my application is accepted, I will not be an employee or agent of the Office of the Independent Administrator. I understand that, if selected, I will become a member of the Neutral Arbitrator Panel organized and maintained by the Office of the Independent Administrator. The Office of the Independent Administrator may include my name on lists of neutral arbitrators from which claimants, their counsel, Kaiser Permanente, and its counsel will select one arbitrator.
2. I understand that submission of an application for the Neutral Arbitrator Panel does not guarantee that I will be accepted on the panel and that the Office of the Independent Administrator has complete discretion to make additions, changes and deletions to the composition of the Neutral Arbitrator Panel at any time.
3. I understand that my acceptance as a member of the Neutral Arbitrator Panel does not obligate the Office of the Independent Administrator to propose me for appointment as a neutral in any case, nor guarantee that I will be selected by the parties to serve as a neutral arbitrator. Further, I recognize that I am under no obligation to accept appointments.
4. I consent to disclosure of the information contained in my application to parties and their counsel, the Office of the Independent Administrator and Kaiser Permanente's Arbitration Advisory Committee. I further consent that the information in this application is subject to verification by any or all of them.
5. I understand that the Office of the Independent Administrator will undertake to update information contained in my application at least once per year. I consent to provide such updated information. Notwithstanding the annual update, I agree to promptly notify the Office of the Independent Administrator if there is any material change in the information provided in my application. I agree to notify the Office of the Independent Administrator and parties in any proceedings administered by it of any change of address, telephone number, or fax number within five days.
6. I understand and agree that I am responsible for billing and collecting fees and expenses directly from the parties to any arbitration. I understand that compensation that may become due me for services as a neutral arbitrator is the sole and direct obligation of the parties to the dispute and that the Office of the Independent Administrator has no liability to me for billing or payment.

7. I understand that I may not change the fees I charge for arbitrations administered by the Office of the Independent Administrator during my first year of service. Further, I understand that changes in the terms of my compensation, following my first year of acceptance to the panel, may be made once per year as part of the application update process conducted by the Office of the Independent Administrator.
  
8. I understand that when being considered as a neutral arbitrator by prospective parties, I will be required to disclose any potential conflicts of interest either I or my firm or my employer may have. I understand that these conflicts may result in my disqualification by one or more of the parties.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

# **EXHIBIT G**

## **Instructions and Application for Fee Waiver**

**INFORMATION SHEET AND INSTRUCTIONS FOR WAIVER OF FILING FEE  
AND FEES AND EXPENSES OF THE NEUTRAL ARBITRATOR**

**Criteria:** If you wish to arbitrate a claim in this system but cannot afford to pay the filing fee or the fees and expenses of the Neutral Arbitrator, you may not have to pay them if you establish:

***EITHER***

1. You are receiving financial assistance under any of the following programs:
  - SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
  - CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF (Temporary Assistance for Needy Families))
  - The Food Stamps Program
  - County Relief, General Relief (G.R.) or General Assistance (G.A.)

If you are claiming eligibility for a waiver of these fees because you receive financial assistance under one or more of these programs, you must produce ***either*** a letter confirming benefits from a public assistance agency ***or*** one of the following documents:

<b>Program</b>	<b>Verification</b>
SSI/SSP	MediCal Card <b><i>or</i></b> Notice of Planned Action <b><i>or</i></b> SS Computer Generated Printout <b><i>or</i></b> "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	MediCal Card <b><i>or</i></b> Notice of Action <b><i>or</i></b> Income and Eligibility Verification Form <b><i>or</i></b> Monthly Reporting Form <b><i>or</i></b> Electronic Benefit Transfer Card <b><i>or</i></b> "Passport to Services"
Food Stamp Program	Notice of Action <b><i>or</i></b> Food Stamp ID Card <b><i>or</i></b> "Passport to Services"
General Relief /General Assistance	Notice of Action <b><i>or</i></b> copy of check stub <b><i>or</i></b> County voucher

***OR***

2. Your total gross monthly household income is less than the following amounts:

<b>Number in Family</b>	<b>Family Income</b>		<b>Number in Family</b>	<b>Family Income</b>		<b>Number in Family</b>	<b>Family Income</b>
One	\$ 838.54		Four	\$1,713.54		Seven	\$2,588.54
Two	\$1,130.21		Five	\$2,005.21		Eight	\$2,880.21
Three	\$1,421.88		Six	\$2,296.88		Each Add'l Person	\$ 291.87

***OR***

3. Your income is not enough to pay for the common necessities of life for yourself and the people you support and also to pay arbitration fees and costs.

**Instructions:** To apply, fill out the “Request Form for Waiver of Filing Fees and Fees and Expenses of the Neutral Arbitrator” (“Fee Waiver Form”). A copy of the Fee Waiver Form can be obtained by calling the Kaiser Permanente Member Service Call Center at 1-800-464-4000 or the office of the Independent Administrator at 213-637-9847.

1. All of the Claimants must fill out a Fee Waiver Form, include copies of the necessary documents, sign it, and return a copy to the Independent Administrator at:

Law Offices of Sharon Lybeck Hartmann  
Independent Administrator  
3580 Wilshire Blvd., Suite 2020  
Los Angeles, CA 90010  
Fax: 213-637-8658

2. If you seek a fee waiver because you are receiving financial assistance, you will need to fill out items 1-3 on the Fee Waiver Form.  
If you seek a fee waiver because of the number of persons in your family and your family’s gross monthly income, you will need to fill out items 1, 2, 4, 6, and 7 on the Fee Waiver Form.  
If you seek a fee waiver because your income is not enough to pay for the common necessities of life and the fees of the arbitration, you will need to fill out items 1-2, and 5-10 on the Fee Waiver Form.
3. When you return a copy of the Fee Waiver Form to the Independent Administrator, also serve a copy on the Respondent(s). Send it to the same address you used to serve your “Demand for Arbitration.” The Independent Administrator, Respondent(s), and counsel shall keep the information provided on the Fee Waiver Form confidential.
4. Health Plan is entitled to file a response to your request for a fee waiver. The Independent Administrator will make a decision about your request for a fee waiver within fifteen days of the date you sent your Fee Waiver Form and notify both you and the Respondent(s).

**Note:** If your request for a fee waiver is denied, you will be required to pay the filing fee or your “Demand for Arbitration” will be deemed abandoned. If you waive your right to a Party Arbitrator, you will not be required to pay the Neutral Arbitrator’s fees and expenses. If your request for a fee waiver is granted, you will be required to pay any attorney’s fees and Party Arbitrator fees.

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal service office, or lawyer referral service in your county. (These services may be listed in the yellow pages of your telephone book under “Attorneys.”)



## Request Form for Waiver of Filing Fee and Fees and Expenses of Neutral Arbitrator

*All information on this form is kept confidential.*

My Name \_\_\_\_\_

Arbitration Name \_\_\_\_\_

Arbitration Number \_\_\_\_\_ Date \_\_\_\_\_

**I request an order by the Independent Administrator indicating that I do not have to pay the \$150 filing fee or the fees and expenses of the Neutral Arbitrator.**

1. a. My current street or mailing address is: (Please include apartment number, if any, city, and zip code.) \_\_\_\_\_  
\_\_\_\_\_

b. My attorney's name, address and phone number is: \_\_\_\_\_  
\_\_\_\_\_

2. a. My occupation, employer, and employer's address is: \_\_\_\_\_  
\_\_\_\_\_

b. My spouse's occupation, employer, and employer's address is: \_\_\_\_\_  
\_\_\_\_\_

3. I am receiving financial assistance under one or more of the following programs:

\_\_\_\_ **SSI and SSP:** Supplemental Security Income and State Supplemental Payments Programs.

\_\_\_\_ **CalWORKs:** California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Need Families, (formerly AFDC.)

\_\_\_\_ **Food Stamps:** The Food Stamps program.

\_\_\_\_ **County Relief:** General Relief (G.R.), or General Assistance (G.A.).

*For each line checked above, attach copies of documents to verify receipt of each benefit (the "Information Sheet and Instructions for Waiver of Filing Fee and Fees and Expenses of the Neutral Arbitrator" explains the acceptable documents), and sign the next page.*

4. \_\_\_\_ My total gross monthly household income is less than the amount shown on the “Information Sheet and Instructions for Waiver of Filing Fee and Fees and Expenses of the Neutral Arbitrator” form.

**Note:** *If you checked line 4 above, skip item 5, complete items 6 and 7, and sign below.*

5. \_\_\_\_ My family income is not enough to pay for the common necessities of life for me and the people in my family, plus also paying for the filing fee and the fees and expenses of the Neutral Arbitrator.

**Note:** *If you checked line 5 above, complete the rest of this form and sign below.*

I declare under penalty of perjury, under the laws of the State of California that the information provided on this form and all attachments are complete, true and correct.

I waive any claim I may have based on Kaiser Foundation Health Plan, Inc., paying the Neutral Arbitrator’s fees.

<b>Type or Print Name</b>	<b>Signature</b>	<b>Date</b>

6. \_\_\_\_ My pay changes considerably from month to month.

**Note:** *If you check this line, each of the amounts reported in item 10 should be your average for the past 12 months.*

7. Monthly Income

a. My gross monthly pay is: \$\_\_\_\_\_.

b. My payroll deductions are: (specify purpose and amount.)

- i. \_\_\_\_\_ \$\_\_\_\_\_
- ii. \_\_\_\_\_ \$\_\_\_\_\_
- iii. \_\_\_\_\_ \$\_\_\_\_\_
- iv. \_\_\_\_\_ \$\_\_\_\_\_
- v. \_\_\_\_\_ \$\_\_\_\_\_
- vi. \_\_\_\_\_ \$\_\_\_\_\_

c. My total Net Income is: (a. minus the total of b.) \$\_\_\_\_\_

d. Other money I receive each month is: (indicate source and amount)

i. \_\_\_\_\_ \$ \_\_\_\_\_

ii. \_\_\_\_\_ \$ \_\_\_\_\_

iii. \_\_\_\_\_ \$ \_\_\_\_\_

iv. \_\_\_\_\_ \$ \_\_\_\_\_

Total of other money received each month is: \$ \_\_\_\_\_

e. My total Monthly Income is: (add c. + d.) \$ \_\_\_\_\_

f. Number of persons living in my home: \_\_\_\_\_

List all the persons living in your home, depending on you for support, or on whom you depend for support:

Name	Age	Relationship	Gross Monthly Income

Total amount of money earned by all the persons living in your home is: \$ \_\_\_\_\_

g. The Total Gross Monthly Household Income is: \$ \_\_\_\_\_  
(add items a., d., and f. for this total)

8. I own or have an interest in the following:

a. Cash \$ \_\_\_\_\_

b. Checking, savings, and credit union accounts (list the banks):

i. \_\_\_\_\_ \$ \_\_\_\_\_

ii \_\_\_\_\_ \$ \_\_\_\_\_

iii \_\_\_\_\_ \$ \_\_\_\_\_

c. Cars and other vehicles; boats and RVs (make, year, fair market value, and loan balance on each):

Property	Fair Market Value	Loan balance
1.		
2.		

d. Real estate (list address, full market value, and loan balance):

Property	Full Market Value	Loan Balance
1.		
2.		
3.		

e. Other personal property, such as jewelry, furniture, furs, stocks, bonds, etc.:

Property	Full Market Value	Loan Balance
1.		
2.		
3.		
4.		

9. My monthly expenses not already listed in item 7., b. are the following:

- a. Rent or house payment and maintenance \$ \_\_\_\_\_
  - b. Food and household supplies \$ \_\_\_\_\_
  - c. Utilities and telephone \$ \_\_\_\_\_
  - d. Clothing \$ \_\_\_\_\_
  - e. Laundry and cleaning \$ \_\_\_\_\_
  - f. Medical and dental payments \$ \_\_\_\_\_
  - g. Insurance (life, health, accident, etc.) \$ \_\_\_\_\_
  - h. School, child care \$ \_\_\_\_\_
  - i. Child, spousal support (prior marriage) \$ \_\_\_\_\_
  - j. Transportation and auto expenses (insurance, gas, repairs) \$ \_\_\_\_\_
  - k. Monthly installment payments: (indicate purpose & amount)
    - 1. \_\_\_\_\_ \$ \_\_\_\_\_
    - 2. \_\_\_\_\_ \$ \_\_\_\_\_
    - 3. \_\_\_\_\_ \$ \_\_\_\_\_
- Total amount of all monthly installment payments is: \$ \_\_\_\_\_

l. Amount deducted for wage assignments and earning withholding orders: \$ \_\_\_\_\_

m. Other expenses (specify):

1.	\$
2.	\$
3.	\$

n. My Total Monthly Expenses are: \$ \_\_\_\_\_

(add 9.a. through 9.m.)

10. Other facts that support this application:

Describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the Independent Administrator understand your budget. (If more space is needed, please add another page and label it "Attachment to Item 10.")

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# **EXHIBIT H**

## **Lists of Neutral Arbitrators on the OIA Panel**

## OIA Panel of Neutral Arbitrators

### Northern California

Justice Nat Anthony Agliano  
Judge Demetrios P. Agretelis, (Ret.)  
Judge Paul J. Aiello  
Mr. Roger F. Allen, Esq.  
Justice Carl West Anderson, (Ret.)  
Ms. Karen G. Andres, Esq.  
Mr. William H. Bachrach, Esq.  
Judge Michael E. Ballachey, (Ret.)  
Ms. Eileen Barker, Esq.  
Judge Michael J. Berger  
Judge William L. Bettinelli  
Mr. Daniel V. Blackstock, Esq.  
Mr. Brenton A. Bleier, Esq.  
Judge Allan J. Bollhoffer  
Mr. Barri Kaplan Bonapart, Esq.  
Judge Cecily Bond, (Ret.)  
Mr. Marc P. Bouret, Esq.  
Mr. Thomas J. Brewer, Esq.  
Mr. Robert J. Brockman, Esq.  
Mr. Bruce Bryson, Esq.  
Ms. Kay Burningham, Esq.  
Mr. Fred D. Butler, Esq.  
Judge Robert K. Byers  
Justice Walter P. Capaccioli  
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**EXHIBIT H**

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**EXHIBIT H**

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## OIA Panel of Neutral Arbitrators

### Southern California

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Mr. Philip C. Blanton, Esq.  
Mr. Terrence J. Bonham, Esq.  
Mr. Thomas W. Borden, Esq.  
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Mr. James M. Eisenman, Esq.  
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Ms. Margaret Esquiroz, Esq.  
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Mr. William D. Johnson, Esq.  
Mr. Samuel D. Kahn, Esq.  
Mr. Raymond T. Kaiser, Esq.  
Mr. Kevin M. Kallberg, Esq.  
Mr. John G. Kerr, Esq.

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Mr. Jeffrey P. Palmer, Esq.  
Mr. Samuel C. Palmer III  
Mr. Roger A. Parkinson, Esq.  
Mr. Carl B. Pearlston, Esq.  
Mr. David C. Peterson, Esq.  
Mr. David Pettit, Esq.

**EXHIBIT H**

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Mr. Amil Roth, Esq.  
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Judge Don A. Turner  
Mr. Stephen P. Webb, Esq.  
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Ms. Elta M. Wilson, Esq.  
Mr. Joseph Winter, Esq.  
Mr. Alan E. Wisotsky, Esq.  
Ms. Deborah Z. Wissley, Esq.  
Mr. William R. Wolanow, Esq.  
Judge Leonard S. Wolf  
Judge Delbert E. Wong  
Judge Charles H. Woodmansee  
Mr. Julius G. Wulfsohn, Esq.  
Judge Eric E. Younger  
Mr. John Zanghi, Esq.  
Ms. Irene E. Ziebarth, Esq.  
Judge Kenneth G. Ziebarth, (Ret.)

## OIA Panel of Neutral Arbitrators

### San Diego, California

Mr. Marc D. Adelman, Esq.  
Mr. Richard N. Appleton, Esq.  
Mr. Hadley Batchelder, Esq.  
Ms. Randi R. Bradstreet, Esq.  
Mr. Robert Burns, Esq.  
Mr. J.W. Carver, Esq.  
Mr. Richard R. Castillo, Esq.  
Ms. Toni Diane Donnet, Esq.  
Mr. Alfred G. Ferris, Esq.  
Ms. Virginia H. Gaburo, Esq.  
Ms. Greta Glavis, Esq.  
Mr. Thomas E. Gniatkowski, Esq.  
Mr. James Gorman, Esq.  
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Mr. Charles D. Richmond, Esq.  
Mr. Michael F. Saydah, Esq.  
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Mr. William J. Tucker, Esq.  
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Mr. Lloyd Yost, Esq.

**EXHIBIT H**



# **EXHIBIT I**

## **List of All Awards to Claimants (Redacted)**

**List of All Awards to Claims (Redacted)**

**Amounts of Awards**

<b>Case Number (not actual OIA case number)</b>	<b>Amounts of Awards</b>	<b>Month/Year</b>
1	\$ 12,500.00	10/99
2	\$ 6,560 .00	12/99
3	\$ 30,000.00	02/00
4	\$ 102,740.00	03/00
5	\$ 175,000.00	03/00
6	\$ 17,706.76	04/00
7	\$ 10,000.00	04/00
8	\$ 109,773.06	04/00
9	\$ 25,000.00	05/00
10	\$ 125,000.00	05/00
11	\$ 5,594,605.00	06/00
12	\$ 20,202.58	06/00
13	\$ 125,000.00	06/00
14	\$ 96,000.00	06/00
15	\$ 176,500.00	06/30
16	\$ 17,000.00	07/00
17	\$ 75,627.00	07/00
18	\$ 427,110.00	07/00
19	\$ 442,400.00	07/00
20	\$ 200,000.00	08/00

21	\$ 201,572.00	08/00
22	\$ 28,900.00	09/00
23	\$ 25,000.00	09/00
24	\$ 37,950.00	09/00
25	\$ 311,362.39	09/00
26	\$ 200,000.00	10/00
27	\$ 40,000.00	10/00
28	\$ 110,738.00	10/00
29	\$ 165,832.00	10/00
30	\$ 59,817.25	11/00
31	\$ 8,120.00	11/00
32	\$ 30,975.00	11/00
33	\$ 251,440.00	11/00
34	\$ 175,000.00	12/00
35	\$ 271,000.00	12/00
36	\$ 340,000.00	12/00
37	\$ 53,500.00	12/00

# **EXHIBIT J**

## **Party & Attorney Evaluation of Neutral Arbitrators**



2. The neutral arbitrator treated all parties with respect.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_

---

3. The neutral arbitrator kept the case moving in a timely fashion.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_

---

4. The neutral arbitrator responded within a reasonable time to telephone calls or written communications.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_

---

5. The neutral arbitrator explained procedures and decisions clearly.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_

---

6. The neutral arbitrator understood the applicable law governing my case.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_

---



# OIA - Party Evaluation / Total Counts

As of 12/29/00

## General Counts

	<u>Sent</u>	<u>Received</u>	<u>Blanks</u>	
Cnt Evaluations	1,112	435	82	(of these the # of Settled or Withdrawn Early is 50)
Cnt of Pro Pers	167	26	4	
Cnt of Claimant Counsel	389	116	28	
Cnt of Respondents	556	276	43	
Cnt Anonymous		17	7	

## Counts of Received

### By Disposition

Cnt Disp Withdrawn	74	Cnt Disp Hearing Claimant	40
Cnt Disp Settled	181	Cnt Disp Hearing Respondent	56
Cnt Disp Dismissed by NA	9	Cnt Disp Hearing	1
Cnt Disp MSJ	44	Cnt Disp Other	0

### Comments

Cnt NoComments	205
Cnt Any Comments	148
Cnt All POS	43
Cnt All NEG	47
Cnt All BOTH	21
Cnt All N/A	37

### By Method Neutral Chosen

Cnt JOINT	135
Cnt STRIKE	212



**OIA - Party and Attorney Evaluations of Neutrals; Statistical Summary of Responses and their Statistics**  
 As of 12/29/00

Claimant or Respondent?	Evals Rcvd	Comments					Fair	Respectful	Timely	Response	Explained	Knew Law	Knew Facts	Decision	Fees		Recommend	Cnt/ Avg
		Any Comm.	No Comm.	All POS	All NEG	All MIXED									All N/A's	Q9		
Anonymous Count	17	5	12	1	3	1	10	10	10	10	10	10	10	10	10	10	10	
Anonymous Average							3.3	4.4	4.3	4.4	4.1	3.3	3.5	3.7	4.6	4.7	3.3	3.8
Anonymous Median							4.5	5.0	5.0	5.0	5.0	4.5	4.5	4.0	5.0	5.0	4.5	4.5
Anonymous Mode							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Claimant Attorney Count	116	52	64	17	10	8	93	92	91	92	92	90	87	85	84	84	90	95
Claimant Attorney Average							4.4	4.7	4.6	4.8	4.4	4.5	4.6	4.6	4.5	4.1	4.2	4.4
Claimant Attorney Median							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	4.9
Claimant Attorney Mode							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Pro Per Count	26	16	10	3	7	6	22	22	22	22	22	19	20	20	18	16	16	23
Pro Per Average							2.9	3.7	4.2	4.2	3.8	4.1	3.6	3.9	3.8	3.4	3.2	3.6
Pro Per Median							2.5	4.5	5.0	5.0	5.0	5.0	4.0	5.0	5.0	5.0	5.0	3.3
Pro Per Mode							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Respondent Count	276	75	201	22	27	6	248	247	244	247	247	245	245	246	239	237	242	249
Respondent Average							4.6	4.9	4.7	4.8	4.7	4.6	4.6	4.7	4.8	4.6	4.5	4.5
Respondent Median							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Respondent Mode							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Total Count	435	148	287	43	47	21	333	333	318	322	306	279	261	207	248	258	327	353
Total Average							4.4	4.7	4.6	4.8	4.6	4.5	4.5	4.6	4.7	4.5	4.4	4.4
Total Median							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	4.9
Total Mode							5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0

# **EXHIBIT K**

## **Neutral Evaluation of OIA Procedures and Rules**



4. Based on my experience in this case, I found the that the following characteristics of the system **worked well**. (Check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> manner of neutral arbitrator's appointment                           | <input type="checkbox"/> the system's rules overall                       |
| <input type="checkbox"/> early management conference  | <input type="checkbox"/> hearing within 18 months                         |
| <input type="checkbox"/> availability of expedited procedures                                 | <input type="checkbox"/> availability of complex/extraordinary procedures |
| <input type="checkbox"/> award within 10 days of hearing                                      | <input type="checkbox"/> other (please describe): _____                   |
| <input type="checkbox"/> claimant's ability to have respondent pay cost of neutral arbitrator |   |

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Based on my experience in this case, I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> manner of neutral arbitrator's appointment                           | <input type="checkbox"/> the system's rules overall                       |
| <input type="checkbox"/> early management conference  | <input type="checkbox"/> hearing within 18 months                         |
| <input type="checkbox"/> availability of expedited procedures                                 | <input type="checkbox"/> availability of complex/extraordinary procedures |
| <input type="checkbox"/> award within 10 days of hearing                                      | <input type="checkbox"/> other (please describe): _____                   |
| <input type="checkbox"/> claimant's ability to have respondent pay cost of neutral arbitrator |   |

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Have you had experience with a similar case in Superior Court?  Yes  No  
If yes, what was your role? \_\_\_\_\_  
If yes, was your experience in this system with this case:  
 better  worse  about the same?

Please comment: \_\_\_\_\_  
\_\_\_\_\_

7. Please give us any suggestions you may have for improving the communications with our office.

\_\_\_\_\_  
\_\_\_\_\_

8. Please set forth any suggestions for improving the system administered by this office.

\_\_\_\_\_  
\_\_\_\_\_

9. Please set forth any suggestions for improvement or change in the rules.

\_\_\_\_\_  
\_\_\_\_\_

# Neutral Arbitrator Questionnaire / Count by Disposition

As of 12/29/00

<b>Disposition</b>	<b>Count</b>
Blank	7
Decided After Hearing	98
Decided After MSJ	64
Dismissed by NA	13
Settled	207
Withdrawn	79
<b>Total Mailed</b>	<b>556</b>
<b>Total returned</b>	<b>468</b>

Neutral Arbitrator Questionnaire - Responses to Questions 1 thru 3

As of 12/29/00

Disp. Count	Disposition	Q1	Comments			Q2	Comments			Q3	Comments		
			Q1 POS	Q1 NEG	Q1 BOTH		Q2 POS	Q2 NEG	Q2 BOTH		Q3 POS	Q3 NEG	Q3 BOTH
98	Decided After Hearing Count	97	3	2	1	97	1	0	0	92	3	0	0
	Decided After Hearing Average	4.6				4.7				4.2			
	Decided After Hearing Median	5.0				5.0				5.0			
	Decided After Hearing Mode	5.0				5.0				5.0			
	Decided After Hearing Min	0.0				0.0				0.0			
	Decided After Hearing Max	5.0				5.0				5.0			
64	Decided After MSJ Count	63	0	4	0	64	1	1	0	62	2	0	0
	Decided After MSJ Average	4.7				4.9				3.4			
	Decided After MSJ Median	5.0				5.0				5.0			
	Decided After MSJ Mode	5.0				5.0				5.0			
	Decided After MSJ Min	2.0				2.0				0.0			
	Decided After MSJ Max	5.0				5.0				5.0			
13	Dismissed by NA Count	13	1	0	0	12	0	0	0	13	1	0	0
	Dismissed by NA Average	4.7				5.0				4.2			
	Dismissed by NA Median	5.0				5.0				5.0			
	Dismissed by NA Mode	5.0				5.0				5.0			
	Dismissed by NA Min	3.0				5.0				0.0			
	Dismissed by NA Max	5.0				5.0				5.0			
207	Settled Count	198	9	5	0	195	5	3	0	195	5	2	0
	Settled Average	4.2				4.6				3.4			
	Settled Median	5.0				5.0				5.0			
	Settled Mode	5.0				5.0				5.0			
	Settled Min	0.0				0.0				0.0			
	Settled Max	5.0				5.0				5.0			
79	Withdrawn Count	72	1	1	1	72	0	2	0	71	1	0	0
	Withdrawn Average	4.5				4.8				3.5			
	Withdrawn Median	5.0				5.0				5.0			
	Withdrawn Mode	5.0				5.0				5.0			
	Withdrawn Min	0.0				0.0				0.0			
	Withdrawn Max	5.0				5.0				5.0			
7	BLANK Count	5	0	0	0	5	0	0	0	5	0	0	0
	BLANK Average	3.4				5.0				3.0			
	BLANK Median	4.0				5.0				5.0			
	BLANK Mode	5.0				5.0				5.0			
	BLANK Min	0.0				5.0				0.0			
	BLANK Max	5.0				5.0				5.0			
468	Total Count	448	14	12	2	445	7	6	0	438	12	2	0
	Total Average	4.4				4.7				3.6			
	Total Median	5.0				5.0				5.0			
	Total Mode	5.0				5.0				5.0			
	Total Min	0.0				0.0				0.0			
	Total Max	5.0				5.0				5.0			

# NA Questionnaire / Count of Questions 4-5

As of 12/29/00

4. I found the that the following characteristics of the system **worked well**. (Check all that apply):  
 5. I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

	<b>4. Worked Well</b>	<b>5. Needs Change/Improvement</b>
a.) manner of neutral arbitrator's appointment	328	7
b.) early management conference	334	8
c.) availability of expedited procedures	115	0
d.) award within 10 days of hearing	89	28
e.) claimant's ability to have respondent pay cost of neutral arbitrator	164	10
f.) the system's rules overall	253	9
g.) hearing within 18 months	159	10
h.) availability of complex/extraordinary procedures (more time)	17	1
<b>COMMENTS:</b>		
<b>Positive</b>	35	25
<b>Negative</b>	9	52
<b>Both</b>	1	1

6. Have you had experience with a similar case in Superior Court?

If yes, what was your role?

If yes, was your experience in this system with this case Better, Worse or About the Same?

<u>Role</u>	<u>CntQ6a is Yes</u>	<u>Cnt Better</u>	<u>Cnt Worse</u>	<u>Cnt Same</u>	<u>Cnt BLANK</u>
<i>Attorney</i>	58	28	3	19	8
<i>Judge</i>	183	53	2	110	18
<i>Mediator</i>	8	4	0	4	0
<i>Neutral Arbitrator</i>	38	16	0	20	2
<i>Referee</i>	1	0	0	1	0
<i>Role is BLANK</i>	28	13	1	11	3
<b>TOTALS</b>	<b>316</b>	<b>114</b>	<b>6</b>	<b>165</b>	<b>31</b>



1. Anything positive		121
2. Time for final decision must be greater than 10 days		33
3. System encourages settlement/early settlement		28
4. System needs help for pro pers		23
5. Any negative remarks		98
6. Asked for e-mail		6
7. Liked faxing		3
8. NO comments at all		195
9. Problems collecting money owed to them by	Claimant:	2
	Kaiser:	4
	Both:	2
10. Have OIA include claimant's demand initially		6
11. Want way beyond voicemail to contact OIA		12
12. Improve notification to Neutral of settlement		3