TENTH 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

January 1, 2008 - December 31, 2008

REPORT SUMMARY

This is the tenth annual report the Office of the Independent Administrator (OIA) has issued on the arbitration system between Kaiser Foundation Health Plan and its affiliated groups of physicians and hospitals (collectively Kaiser) and its members.[1] Since 1999, the OIA has administered such arbitrations. Sharon Oxborough is the Independent Administrator. The data and analyses presented allow readers to gauge how well the OIA system is meeting its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. For example:

- A majority of the neutral arbitrators said the OIA administered arbitration system was better than going to court.
- Parties express satisfaction with the neutral arbitrators and would recommend them to others.
- None of the cases closed late and overall, they closed within 15 months, the fastest since 2003.
- With the consent of claimants, Kaiser paid all the neutral arbitrators fees in 85% of the cases.
- The average neutral arbitrators fees dropped from 2007.
- The number of neutral arbitrators in the pool remains large, even as the number of demands for arbitrations has dropped, giving parties a large choice.
- A significant percent of claimants continue to bring cases without an attorney.

These and other factors are discussed in greater detail below and in the report.

Developments in 2008

While the system has been relatively stable, the OIA and the Arbitration Oversight Board (AOB) strive to improve it and to provide more information about it to the public. The items below are consistent with these goals.

1. **New Evaluation of OIA and Arbitration System.** The OIA created a one page form that will ask counsel and *pro pers* to evaluate the OIA and the arbitration

[1]Kaiser has arbitrated disputes with its California members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's arbitration system, saying that it fostered too much delay in the handling of members' demands and should not be self-administered.

system. It will also ask whether they had any difficulties in obtaining medical records. See page 4.

2. **Opportunity to Opt Out of Mandatory Arbitration.** Kaiser began offering new individual Senior Advantage members the opportunity to opt out of mandatory arbitration. The OIA is receiving and tracking the forms. See page 4.

3. **Geographic Analysis of Cases.** The OIA analyzed differences in how cases close and how neutral arbitrators are chosen based on geographical area. See page 49 and Exhibit D.

Status of Arbitration Demands

The types of demands and the proportion where a claimant is not represented by an attorney is almost identical to last year. The number of demands for arbitration dropped by 55 last year.

4. **Demands for Arbitration.** After declining from 1,053 in 2002 to 861 in 2004, and then to 823 in 2007, the number of demands significantly declined again in 2008 to 768. This is 55 fewer than the OIA received in 2007. See page 46.

5. **Medical Malpractice Claims.** Ninety-one percent of the cases the OIA administered in 2008 involved allegations of medical malpractice. Less than 1% presented benefit and coverage allegations. Lien cases made up 6%. The remaining cases were based on allegations of premises liability, other torts, or unknown. See page 11. The percentage of cases involving medical malpractice allegations has been consistent since the OIA began operations.

6. **Lien Claims.** Lien claims are those demands for arbitration brought by Kaiser to recover money for services provided to the consumer for which Kaiser contends the consumer has been reimbursed in a lawsuit against a third party; for example, in a driver in a car accident. This is the first year lien cases constituted more than five percent.

7. **Proportion of Claimants Without Attorneys.** Nearly a quarter (23.5%) of the claimants were not represented in 2008. See pages 12, 47.

How Cases Closed

The purpose of an arbitration is to resolve a claim. The parties themselves resolved the vast majority of cases in the system. Neutral arbitrators decided the remaining cases; almost always with a single neutral arbitrator.

8. **Three-Quarters of Cases Closed by the Parties' Action.** During 2008, the parties settled 44% of the closed cases. The claimants withdrew 27% and abandoned another 5% by failing to pay the filing fee or get the fee waived. See pages 27 - 28.

9. **One-Quarter Closed by Decision of Neutral Arbitrator.** 8% were closed through summary judgment, 3% were dismissed by neutral arbitrators, and 13% of cases closed after an arbitration hearing. In the cases that went to arbitration hearing, claimants prevailed in 32%.

10. **Nearly All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** Most hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. A panel of three arbitrators signed only two awards made after a hearing in 2008. A single neutral decided the other 96. See pages 21 - 22.

11. **Almost Half of Claimants Received Some Compensation.** The most common way cases close is by the parties settling the dispute and the claimant receiving some money from Kaiser. In addition to this 44%, 4% win after an arbitration hearing. The average award was $349,431. The range was from $10,000 to $2,060,569. See page 29.

Meeting Deadlines

The timely selection of the neutral arbitrator is crucial to the timely resolution of the case. Nevertheless, the desire for efficiency must be balanced by the needs of the parties in particular cases. The OIA *Rules* allow the parties to delay the selection process and extend the completion date. Requests for delays are all made by claimants. Even with such requests, the process is expeditious.

12. **Slightly More than Half of Neutral Selections Proceeded with No Delay; the Other Neutral Selections Had Delays Requested by Claimants.** Slightly more than half (53%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (41%), a neutral arbitrator was disqualified (3%), or both (3%). Claimants requested all of the postponements. They also made 85% of the disqualifications. See pages 19 - 20. The percentage of cases in which the parties chose to postpone the deadline has increased over the years from 17% the first year of operation to 41% in 2008. See pages 19, 48 - 49.

13. **Overall Average Length of Time to Select Neutral Arbitrator Decreased One Day.** The average time to select a neutral arbitrator was 67 days, one less day than last year. For the cases without a disqualification or postponement (26 days) or only a postponement (114 days), the neutral arbitrators were selected in one

more day than last year. The 67 days to select a neutral arbitrator in 2008 is more than ten times faster than that described by the *Engalla* case. See pages 19, 20.

14. **Cases Closed on Time and Time to Close Decreased in All Categories Except Settlements.** In 2008, the cases closed, on average, in 325 days, or 11 months, down from 336 days in 2007. All cases closed on time. Over 90% of the cases closed within 18 months (the deadline for most cases) and 65% closed in a year or less. See pages 25 - 27.

15. **Hearings Completed Within Fifteen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 455 days (less than 15 months), down from 520 days in 2007. This average includes cases that were designated complex or extraordinary or that received a Rule 28 extension because they needed extra time. "Regular cases" closed in 276 days, or 9 months down , from 282 days in 2007. See pages 29, 30 - 31.

OIA's Pool of Neutral Arbitrators

A large and balanced pool of neutral arbitrators, among whom work is distributed, is a crucial ingredient to a fair system. It prevents the appearance and likelihood of a captive pool of neutral arbitrators, beholden to Kaiser for their livelihood. Neutral arbitrators continue to serve after making large awards against Kaiser. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties the freedom to select anyone they collectively want. The vast majority of neutral arbitrators the parties jointly select are in the OIA pool.

16. **Large Neutral Arbitrator Pool.** The OIA has 286 neutral arbitrators in its pool. Forty percent of them, or 114, are retired judges. See page 5.

17. **Applications Reveal Balanced Pool of Neutral Arbitrators.** The applications filled out by the members of the OIA pool show that 133 arbitrators, or more than 45%, spend all of their time acting in a neutral capacity. The remaining members divide their time almost equally between claimants' side and respondents' side work. See pages 5 - 7.

18. **Applications Reveal Medical Malpractice Experience by Neutral Arbitrators.** Neutral arbitrators' applications and updates also show that 262 of the arbitrators have medical malpractice experience. That is more than 90%. See page 6.

19. **Large Percentage of Arbitrators Served on Arbitrations and Heard Cases.** Fifty-eight percent of the neutral arbitrators in the OIA pool served on a case in 2008. Arbitrators averaged two assignments each in 2008. Seventy-two different neutrals, including arbitrators not in the OIA pool, decided the 98 awards made in 2008. See page 7.

20. **Seventy percent of Neutral Arbitrators Selected by Strike and Rank.** The parties chose more than 70% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 29%. Seventy-three percent of the arbitrators jointly selected were members of the OIA pool. In 27%, the parties chose a neutral arbitrator who was not a member of the OIA pool. See page 14.

Neutral Arbitrator Fees

While the OIA arbitration fee is less than the comparable court filing fee, claimants in arbitration can be faced with neutral arbitrator fees, which do not exist in court. Claimants in OIA cases, however, can and do shift the responsibility to pay the neutral arbitrator's fees to Kaiser.

21. **Kaiser Paid the Neutral Arbitrator's Fees in 84% of Cases Closed in 2008.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2008, Kaiser paid the entire fee for the neutral arbitrators in 84% of those cases that had fees. See page 34.

22. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from $125/hour to $800/hour, with an average of $374. For the 577 cases that closed in 2008 and for which the OIA has information, the average total fee charged by neutral arbitrators was $4,753.37. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was $5,274.41. The average fees in cases decided after a hearing were $15,887. See pages 34 - 35.

Evaluations

The parties continue to give their neutral arbitrators positive evaluations. Similarly, the neutral arbitrators report that the system itself works well. More than half of the parties returned their evaluations, while almost all neutral arbitrators returned theirs.

22. **Positive Evaluations of Neutral Arbitrators.** In 2008, the great majority of both claimants and counsel for both sides reported that they would recommend their neutral arbitrator to another individual with a similar case. See page 37.

23. **Positive Evaluations of the OIA.** Neutral arbitrators continue to evaluate OIA procedures positively. More than 53% said that the OIA experience was better than a court system, and 45% said it was about the same. See pages 37 - 38.

The OIA's Ten Years of Operation

This report marks the tenth anniversary of the OIA. During its existence, the OIA has collected and published a remarkable amount of data about this arbitration system. Thus, the report includes a section discussing trends and data over the last ten years.

25. **Most aspects of the system remain stable.** For example, the number of neutral arbitrators on the panel, the percent of claimants represented by counsel, how neutral arbitrators are selected, and how cases close have all remained relatively stable. See pages 41 - 45.

26. **A few elements have changed over time.** The most remarkable change is the decline in the number of demands for arbitration, mentioned above. Other changes in trends may be the result of parties becoming more familiar and comfortable with the system. For example, in the first year, only 17% of cases had a postponement of the selection of the neutral arbitrator. In 2008, 41% of the claimants choose a postponement. See pages 41, 43 - 44.

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Exhibits

Charts & Tables

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 & OVERVIEW

This is the tenth annual report issued by the Office of the Independent Administrator (OIA).[1] It describes an arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (Kaiser) or its affiliates.[2] Sharon Oxborough, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board, the OIA maintains a pool of neutral arbitrators to hear Kaiser cases and independently administers arbitration cases brought by Kaiser members. The contract also requires that Ms. Oxborough write an annual report describing the arbitration system. The report describes the goals of the system, the actions being taken to achieve them, and the degree to which they are being met. While the tenth annual report mainly focuses on what happened in the arbitration system during 2008, one section compares 2008 with earlier years. The final section finds that the system is continuing to achieve its goals.

The Arbitration Oversight Board (AOB), an unincorporated association registered with the California Secretary of State, provides ongoing oversight of the OIA and the independently administered system. Its activities are discussed in Section X.

The arbitrations are controlled by the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of January 1, 2007 (Rules)*. The *Rules* consist of 54 rules in a 20 page booklet and are available in English, Spanish, and Chinese. The English version is attached as Exhibit B.[3] Some important features they contain include:

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[1]The OIA has a website, www.oia-kaiserarb.com where this report can be downloaded, along with the prior annual reports, the *Rules*, various forms, and much other information, including organizational disclosures. A description of the OIA's staff is attached as Exhibit A. The OIA can be reached by calling 213-637-9847, faxing 213-637-8658, or e-mailing oia@oia-kaiserarb.com.

[2]Kaiser 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. Kaiser arranges for medical benefits by contracting exclusively with the The Permanente Medical Group, Inc. (Northern California) and the Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals, a California nonprofit public benefit corporation. Almost all of the demands are based on allegations against these affiliates.

[3]The *Rules* are also available from our website.

Deadlines requiring that cases have an arbitrator in place rapidly;[4]

Deadlines requiring that the majority of cases be resolved within 18 months;[5]

Procedures to adjust these deadlines when required;[6] and

Procedures under which claimants may choose to have Kaiser pay all the fees and expenses of the neutral arbitrator.[7]

The 18 month timeline that the *Rules* require in most cases is displayed on the next page. Details about each step in the process are discussed in the body of this report.

A. Goals of the Arbitration System Between Members and Kaiser

The system administered by the OIA is expected to provide a fair, timely, and low cost arbitration process that respects the privacy of all who participate in it. These goals are set out in Rules 1 and 3. As set out in the balance of this report, we believe that the goals are being achieved. The data in this report are collected and published to allow the AOB and the public to determine how well the arbitration system meets these goals.

B. Format of This Report[8]

The report first discusses developments in 2008. The next sections look at the OIA's pool of neutral arbitrators and the number and types of cases the OIA received. The parties' selection of neutral arbitrators is next discussed. That is followed by a short section on the monitoring of open cases, and a longer analysis of how cases are closed and the length of time to closure. The next section discusses the cost of arbitration in the system. The parties' evaluations of their neutral arbitrators and the neutral arbitrators' evaluations of the OIA system are summarized in the following sections. The report next compares the operation of the system for the past ten years. Finally, the report describes the AOB's membership and activities during 2008.

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[4]Exhibit B, Rules 16 and 18.

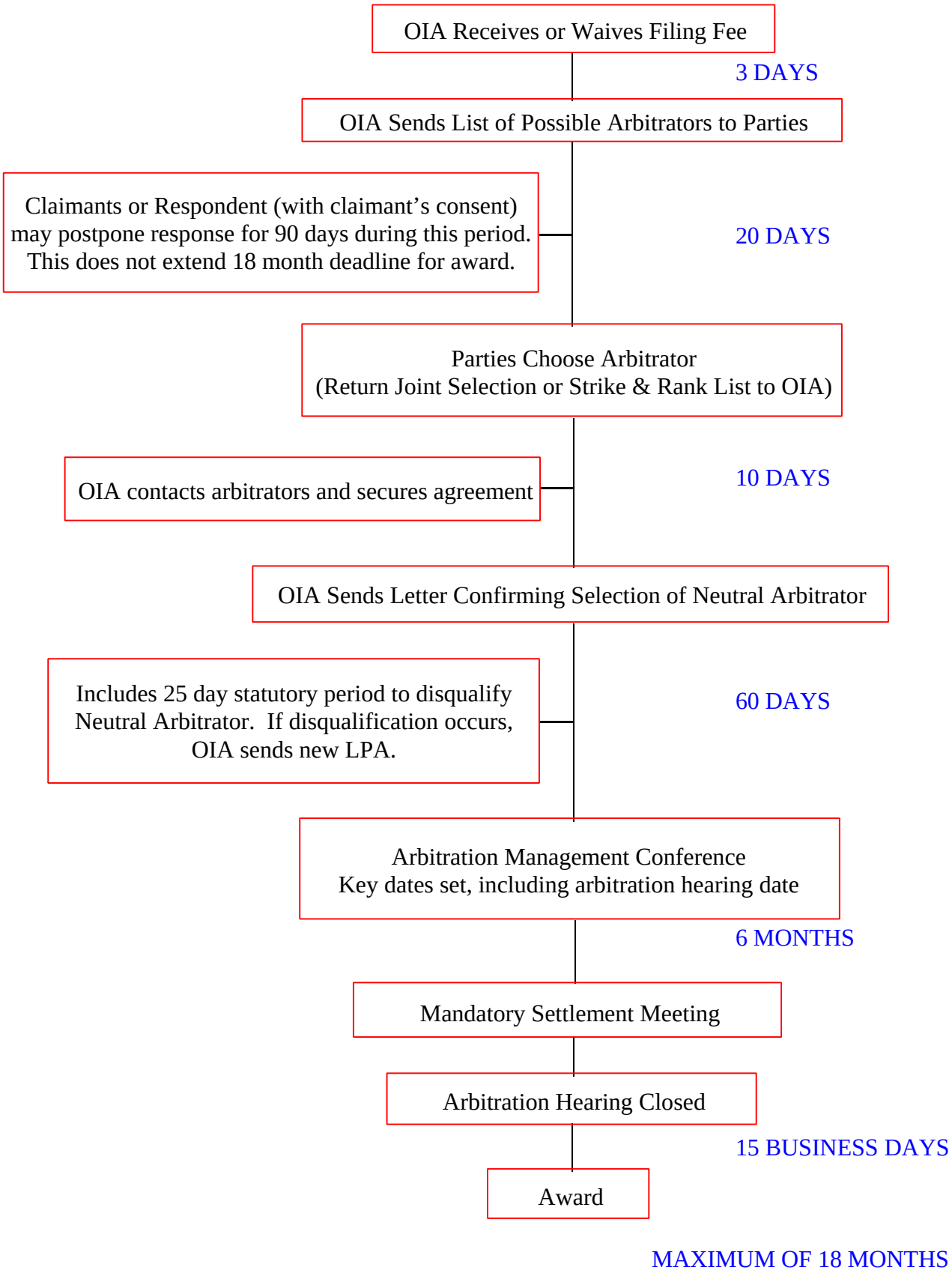
[5]Exhibit B, Rule 24.

[6]Exhibit B, Rules 24, 28 and 33.

[7]Exhibit B, Rules 14 and 15; *see also* Section VIII.

[8]For a discussion of the history and development of the OIA and its arbitration system, please see prior reports. The OIA was created in response to the recommendation of a Blue Ribbon Panel (BRP). The Law Offices of Sharon Lybeck Hartmann served as the OIA from its inception until March 28, 2003. Sharon Oxborough has served as the Independent Administrator since then. The OIA met all of the recommendations that pertain to it since its first operating year. A full copy of the BRP report is available from the OIA and its website. In addition, a separate document that sets out the status of each recommendation is available from the OIA website.

Timeline for Arbitrations Using Regular Procedures



II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2008

A. Evaluation of the OIA and Arbitration System by Counsel and *Pro Pers*

The AOB was interested in whether claimants faced difficulties in obtaining medical records from Kaiser as part of the arbitration process. This is not something that the OIA tracks, as it happens without the OIA's involvement. In response, the OIA, with comments from the AOB, created a one page form for the parties at the end of the process.[9] The form asks the parties to evaluate the OIA and the arbitration system. While most of the questions are the same as those in the form sent to the neutral arbitrators, it also asks about the process for obtaining the medical records.

B. Opportunity to Opt Out of Mandatory Arbitration

Starting in January 2008, Kaiser began to allow new members who signed up for individual Senior Advantage policies to opt out of the arbitration process for future disputes. Kaiser sends the opt out form to members, along with other information about their policy. Members who opt out of the arbitration process, and choose to litigate any dispute they may have, then send their forms to the OIA. The OIA tracks the date the forms are received and names of those who opt out.

C. Geographic Analysis of Cases

The AOB was interested in whether there were differences in how neutral arbitrators were selected and how cases were resolved based on whether the demand for arbitration was made in Northern California, Southern California, or San Diego. The analysis for 2008 appears as Exhibit D.

[9] A copy of this form is attached as Exhibit C to this report.

III. POOL OF NEUTRAL ARBITRATORS

A. Turnover in 2008 and the Size of the Pool at Year-End

On December 31, 2008, there were 286 people in the OIA's pool of possible arbitrators. Of those, 114 were former judges, or 40%.

Members of the OIA pool are distributed into three geographic panels: Northern California, Southern California, and San Diego. Members who agree to travel for free may be listed on more than one panel. Exhibit E contains the names of the members of each panel.

Number of Neutral Arbitrators by Region

Total Number of Arbitrators in the OIA Pool:	**286**
Southern California Total:	**153**
Northern California Total:	**119**
San Diego Total:	**55**

***The three regions total 327 because 37 arbitrators are in more than one panel; 28 in So. Cal & San Diego, 5 in No. Cal & So. Cal, and 4 in all three panels.**

On January 1, 2008, the OIA had 278 people in its pool of possible arbitrators. During the year, 12 people left the pool. Twenty arbitrators joined the pool.[10] The OIA rejected six applicants in 2008 because they failed to meet the qualifications.[11]

B. Practice Background of Neutral Arbitrators

OIA applications ask the applicants to allocate the amount of their practice spent in various endeavors. Based on these responses, the "average" neutral arbitrator in the OIA pool

[10]The application can be obtained by calling the OIA or by downloading it from our website. If the application is accessed from the OIA website, it can also be filled in on-line rather than by hand or typewriter.

[11]The qualifications for neutral arbitrators are attached as Exhibit F. If the OIA rejects an application, we inform the applicant of the qualifications which he or she failed to meet.

spends 65% of his or her time acting as a neutral arbitrator, less than 1% acting as a respondent's party arbitrator, a claimant's party arbitrator, or an expert, 12% as a respondent (or defense) attorney, 10% as a claimant (or plaintiff) attorney, and 15% in other forms of employment, including non-litigation legal work, teaching, mediating, etc. One of the interesting facts about the "average" member of the OIA pool is that the amount of plaintiff work and defense work is closely balanced.

There is, of course, no such "average" neutral arbitrator, in part because a very substantial percentage of the pool spends 100% of their practice acting as neutral arbitrators. More than 45% of the pool, 133 members, reported that they spend 100% of their time that way.[12] The remainder are distributed as shown below.

Percent of Practice Spent As a Neutral Arbitrator

Percent of Time	0%	1 - 25%	26 - 50%	51 - 75%	76 - 99%	100%
Number of NAs	**11**	**86**	**26**	**9**	**20**	**133**

The members of the OIA pool who are not full time arbitrators primarily spend their time as litigators. Significantly, the composition is relatively balanced on both sides.

Percent of Practice Spent As an Advocate

Percent of Practice	Number of NAs Reporting Claimant Counsel Practice	Number of NAs Reporting Respondent Counsel Practice
0%	**209**	**210**
1 - 25%	**32**	**28**
26 - 50%	**31**	**24**
51 - 75%	**5**	**8**
76 - 100%	**9**	**16**

Finally, while the qualifications do not require that members of the OIA pool have medical malpractice experience, almost 92% of them do. At the time they filled out or updated their applications, 262 reported that they had such experience, while 24 stated they did not.

[12]This is not surprising as 114 members of the OIA pool are retired judges.

Members of the pool who have served on a Kaiser case since they joined the pool have most likely acquired medical malpractice experience since their initial report to us.[13]

C. How Many in the Pool of Arbitrators Have Served?[14]

One of the recurring concerns expressed about mandatory consumer arbitration is the possibility of a "captive," defense-oriented pool of arbitrators. The theory is that Kaiser is a "repeat player" but claimants are not; Kaiser therefore has the capacity to bring more work to arbitrators than claimants. Moreover, if the pool from which neutral arbitrators are drawn is small, some arbitrators could become dependent on Kaiser for their livelihood. A large pool of people available to serve as neutral arbitrators, and actively serving as such, is therefore an important tool to avoid this problem. If the cases are spread out among many neutrals, no one depends on Kaiser for his or her income and impartiality is better served. Thus, the large size of the OIA pool from which the OIA randomly compiles a List of Possible Arbitrators (LPA) and the ability for parties to jointly select arbitrators from both within and outside the pool are the two main factors which prevent possible bias.

1. The Number Who Have Served in 2008

In 2008, 193 different neutral arbitrators were selected to serve as neutral arbitrators in 671 OIA cases. The great majority (167) were members of the OIA pool. Thus, in 2008, 58% of the OIA pool were selected to serve in a case. The range in number of times parties selected a neutral in the OIA pool in 2008 is 0 to 16. The neutral arbitrator at the highest end was jointly selected 7 times. The average number of appointments for members of the pool in 2008 is 2, the median is 1, and the mode is 0.

2. The Number Who Wrote Awards in 2008

The group of neutral arbitrators deciding awards after hearing is similarly diverse. The 98 awards made in 2008 were decided by 72 different neutral arbitrators. Fifty-four of the arbitrators made a single award, while 13 decided 2. Two other neutral arbitrators decided three cases each, and three decided four. Two of these five neutral arbitrators made awards only in

[13]Of the 24 who reported no medical malpractice experience in their applications, all but 7 of them have served as a neutral arbitrator in an OIA case. Ten of these neutral arbitrators have decided one to three cases. While some of these could have been decided on purely procedural grounds, it is likely that their reports of medical malpractice experience are outdated.

[14]The procedure for selecting neutral arbitrators for individual cases is described below at Section V.A.

favor of Kaiser. All but one of these cases involved lien cases and in four of them, the consumer was in *pro per*.[15]

3. The Number Who Have Served After Making a Large Award

Critics have claimed that Kaiser will not allow neutral arbitrators who have made large awards to serve in subsequent arbitrations; its attorneys accomplishing this result by striking them from LPAs or disqualifying them if selected. The last four annual reports have looked at what has happened to neutral arbitrators after making an award of $500,000 or more.

Since the OIA has existed, 52 different neutral arbitrators have made 65 awards of $500,000 or more in favor of claimants.[16] Seven of these awards were made in 2008. The awards have ranged from $500,000 to $6,000,236. Since they made their awards, they have served 602 times, 293 times because the parties jointly selected.

Of the 52 neutral arbitrators, 7 were never members of the OIA pool and 17 have left the pool for various reasons. Thus, at the end of 2008, there were 28 neutral arbitrators in the pool who have made awards of $500,000 or more. Twenty-four neutral arbitrators who are still in the pool made awards prior to 2008. Only 7 of them have not served again.

4. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times in 2008 with Cases Closed by Other Neutral Arbitrators

There were 13 neutral arbitrators who were selected ten or more times in 2008. To compare their cases, the OIA reviewed the cases these 13 arbitrators closed in 2007 and 2008 with the other cases that closed in those years with a neutral arbitrator in place. The table on the next page shows the results.

[15]The word "consumer" is used because in lien cases, Kaiser brings the demand for arbitration and seeks to recover money for services provided to the consumer for which the consumer may have been reimbursed in a lawsuit against a third party, for example, a driver in a car accident.

[16]Nine neutral arbitrators have made more than one such award. Seven of these neutral arbitrators made such awards in different years.

Comparison of Cases Closed with Neutral Arbitrators Selected 10 or More Times in 2008 vs. Closed with Other Neutral Arbitrators

Cases Closed 2007 - 2008	Cases with Neutral Arbitrators Selected 10 or More Times		Cases with Other Neutral Arbitrators	
Settled	103	45.8%	527	48.0%
Withdrawn	55	24.4%	243	22.1%
Summary Judgment	28	12.4%	117	10.7%
Awarded to Respondent	25	11.1%	112	10.2%
Awarded to Claimant	4	1.8%	63	5.7%
Dismissed	9	4.0%	34	3.1%
Other	1	.4%	2	.2%
Total	225		1098	

5. The Number Named on a List of Possible Arbitrators in 2008

All but one of the neutral arbitrators in the OIA pool were named at least once on a List of Possible Arbitrators (LPA) sent to the parties by the OIA in 2008. The average number of Northern California arbitrators appearing on an LPA is 40, the median number is 43, and the mode is 44. The range of appearances is from 2 to 66 times.[17] In Southern California, the average number of appearances is 23, the median is 24, and the mode is 26. The range is from 0 to 38. In San Diego, the average is 10, the median is 11, and the mode is 11. The range of appearances is from 1 to 18. The one member of the pool who was not named on an LPA in 2008 joined the pool in Southern California on November 10, 2008.

D. "One Case Neutral Arbitrators"

Standard 12 of California's Ethics Standards for Neutral Arbitrators requires neutral arbitrators to disclose whether they will accept additional work from the parties or attorneys in the case while the case remains open. If a neutral arbitrator fails to disclose that he or she will accept such work, that neutral arbitrator is barred from doing so until the case closes or the

[17] In addition to chance, the range is affected by how long a given arbitrator has been in the pool, the number of members in each panel, and the number of demands for arbitration submitted in the geographical area for that panel. Some have been in the OIA pool since it started; one joined December 1, 2008, four weeks before the end date for this report. The number of times an arbitrator is selected also depends on whether the individual will hear cases where the claimant has no attorney (*pro per* cases). Slightly less than 20% of the pool will not.

neutral arbitrator resigns from it. Moreover, this particular disclosure must be made timely – a late disclosure is the same as no disclosure. A neutral arbitrator may also inform the parties that he or she will not accept any future work from the parties or attorneys while the present case remains open and some do. Neutral arbitrators who either fail to serve timely Standard 12 disclosures or who state that they will not accept such future work while the case is open are considered "one case neutral arbitrators."

The OIA tracks Standard 12 disclosures and removes "one case neutral arbitrators" from the pool while their cases are open. During 2008, eight neutral arbitrators were "one case neutral arbitrators" for part of the year. At the end of 2008, two remained "one case neutral arbitrators."

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 768 demands for arbitration in 2008. Geographically, 402 demands for arbitration came from Northern California, 317 came from Southern California, and 49 came from San Diego.[18]

A. Length of Time Kaiser Takes to Submit Demands to the OIA

Under the *Rules*, Kaiser must submit a demand for arbitration to the OIA within ten days of receiving it.[19] In 2008, the average length of time that Kaiser took to submit demands to the OIA is 4 days. The mode is one. This means that usually Kaiser sent the OIA a demand on the day after Kaiser received it. The median is 3 days. The range is 0 to 78 days.

There were 27 cases in 2008 in which Kaiser took more than ten days to submit the demand to the OIA. If only these "late" cases are considered, the average is 21 days, the median is 15 and the mode is 11 days. Twenty-two of the 27 "late" cases were lien cases, which means Kaiser, not a member, is bringing the demand for arbitration.

B. Mandatory Cases

Almost all Kaiser disputes with its members arising from events that occur after December 31, 2000 are subject to administration by the OIA. Cases involving such disputes are considered "mandatory." Of the 768 demands for arbitration the OIA received in 2008, 757 were mandatory and 11 could choose whether to have the OIA or Kaiser administer the

[18]The allocation between Northern and Southern California is based upon Kaiser's corporate division. Roughly, demands based upon care given in Fresno or north are in Northern California, while demands based upon care given in Bakersfield or south are in Southern California. Rule 8 specifies different places of service of demands for Northern and Southern California.

[19]Exhibit B, Rule 11.

arbitration. The latter group of cases are considered "opt-ins". At the end of 2008, 99% of the open cases were mandatory and 1% was opt in.

C. Opt In Cases

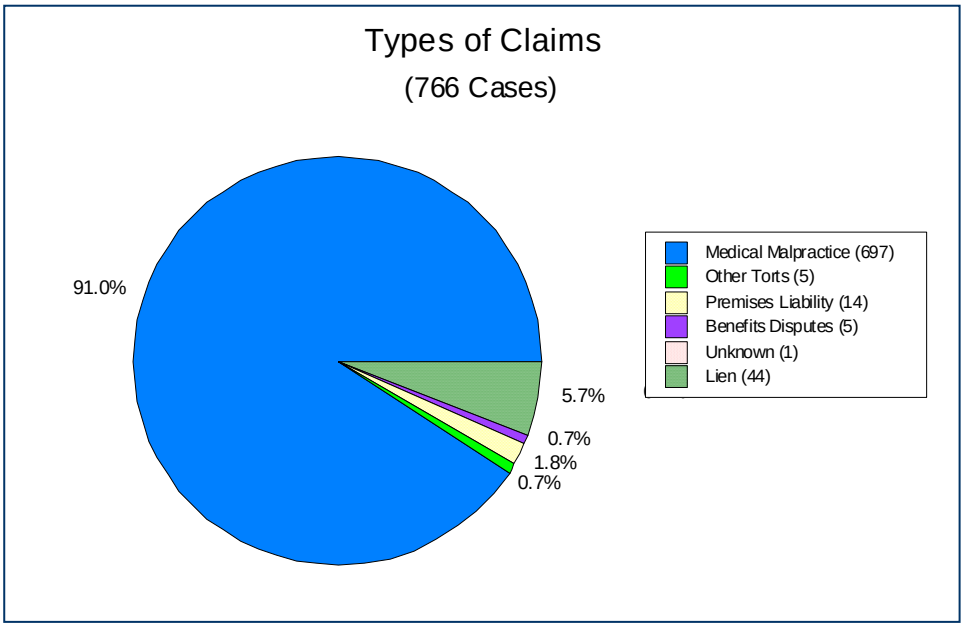
If a case is an "opt in," the OIA can administer it only if the claimant expressly agrees in writing. Therefore, when the OIA receives an opt in case from Kaiser, it asks the claimant to agree to opt in. Without agreement, Kaiser administers it.

Of the 11 opt in demands the OIA received in 2008, 9 claimants decided to have the OIA administer their claims. None affirmatively opted out of the OIA. In one instance, the deadline had not occurred by the end of the year. One was returned to Kaiser for administration because the claimants did not affirmatively opt in to the OIA.

D. Types of Claims

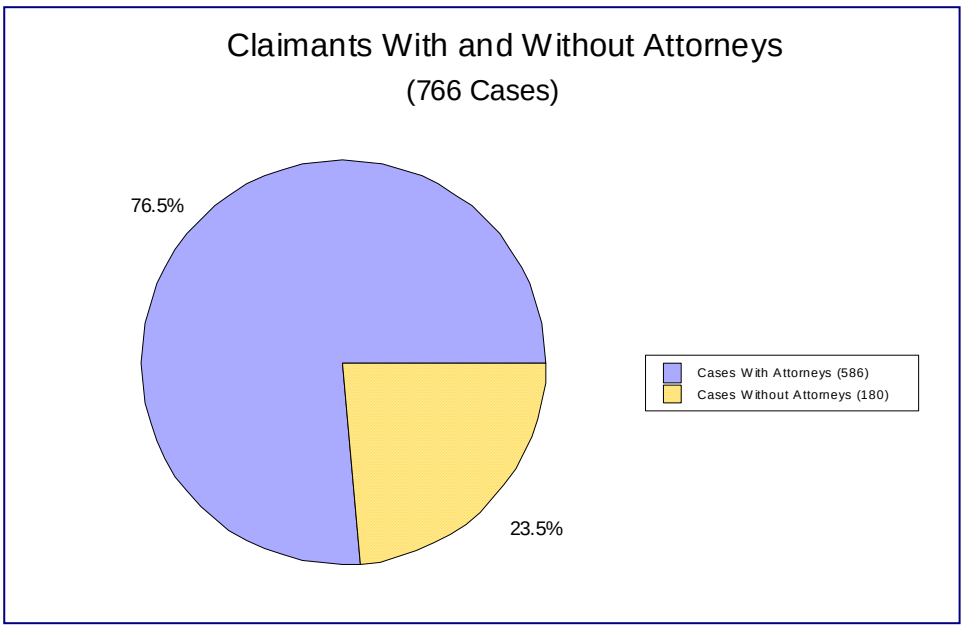
In 2008, the OIA administered 766 cases. The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage cases. Medical malpractice cases make up 91% (697 cases) in the OIA system. Benefits and coverage cases represent less than one percent of the system (5 cases).

The chart below shows the types of claims the OIA administered during 2008.



E. Claimants With and Without Attorneys

Claimants were represented by counsel in 76.5% of the cases the OIA administered in 2008 (586 of 766). In 23.5% of cases, the claimants represented themselves (or acted in *pro per*).



V. SELECTION OF NEUTRAL ARBITRATORS

One of the most important steps of the arbitration process occurs at the beginning: the selection of the neutral arbitrator. This section of the report first describes the selection process in general. The next four sub-sections discuss different aspects of the selection process in detail: 1) the manner in which the parties selected the neutral arbitrator – jointly agreeing or based upon their separate responses to the List of Possible Arbitrators (LPA); 2) the cases in which the parties - almost always the claimant - decided to delay the selection of the neutral; 3) the cases in which the parties - again, usually the claimant – disqualified a neutral arbitrator; and 4) the amount of time it took the parties to select the neutral arbitrator. Finally, the report examines cases in which parties have selected party arbitrators.

A. How Neutral Arbitrators Are Selected

The process for selecting the neutral arbitrator begins after a demand has entered the OIA system[20] and a claimant has either paid the $150 arbitration fee or received a waiver of that fee. The OIA sends both parties in the case an LPA. This LPA contains the names of 12 members from the appropriate panel of the OIA pool of neutral arbitrators. The names are generated randomly by computer.

Along with the LPA, the OIA sends the parties information about the people named on the LPA. At a minimum, the parties receive:

1) a copy of each neutral arbitrator's application and fee schedule, and

2) subsequent updates.

If a neutral arbitrator has served in any earlier, closed OIA case, the parties also receive:

1) copies of any evaluations previous parties have submitted about the neutral and

2) redacted copies of any awards or decisions granting summary judgment the neutral has prepared.

The parties have 20 days to respond to the LPA.[21] Parties can respond in one of two ways. First, both sides can jointly decide on the person they wish to be the neutral arbitrator. Such a neutral arbitrator does not have to be one of the names included in the LPA, be in the OIA pool, or meet the OIA qualifications.[22] Provided the person agrees to follow the OIA *Rules*, the parties can jointly select anyone they want to serve as neutral arbitrator.

On the other hand, if the parties do not jointly select a neutral arbitrator, each side submits a response to the LPA, striking up to four names and ranking the rest, with "1" as the top choice. When the OIA receives the LPAs, the OIA eliminates any names who have been

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[20]"Entered the OIA system" means that the case is mandatory or the claimant has opted-in. The OIA can take no action in a non-mandatory case before a claimant has opted in except to return it to Kaiser to administer.

[21]A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

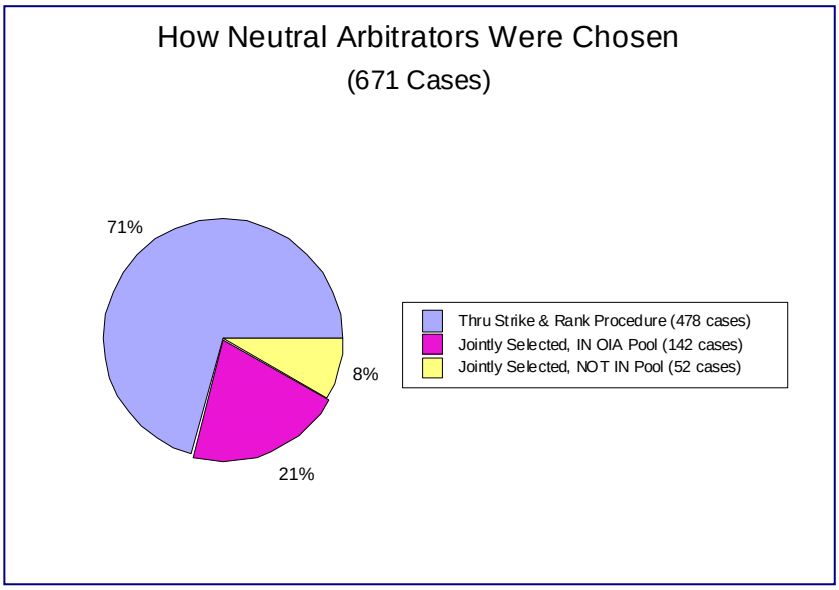
[22]Some neutral arbitrators who do not meet our qualifications – for example, they might have served as a party arbitrator in the past three years for either side in a Kaiser arbitration – do serve as jointly selected neutral arbitrators. There is, however, one exception: If a neutral arbitrator is considered a "one case neutral arbitrator" and we know the case is still open, the OIA would not allow the person to serve as a neutral arbitrator in a subsequent case. Section III.E explains "one case neutral arbitrators."

stricken by either side and then totals the scores of the names that remain. The person with the best score[23] is asked to serve. This is called the "strike and rank" procedure.

A significant number of OIA administered cases close before a neutral arbitrator is selected, and even before that process is begun. In 2008, 92 cases either settled (35) or were withdrawn (57) without a neutral arbitrator in place.[24] Before a neutral has been selected, the parties can request a postponement of the LPA deadline under Rule 21 of up to 90 days. In addition, after the neutral arbitrator is selected, but before he or she actually begins to serve, California law allows either party to disqualify the neutral arbitrator.

B. Joint Selections vs. Strike and Rank Selections

Of the 671 neutral arbitrators selected in 2008, 194 were jointly selected by the parties (29%) and 478 (71%) were selected by the strike and rank procedure. Of the neutral arbitrators jointly selected by the parties, 142 (73%), were members of the OIA pool, though not necessarily on the LPA sent to the parties. In 52 cases (27%), the parties selected a neutral arbitrator who was not a member of the pool.



[23]For example, a person who was ranked "1" by both sides, for a combined score of "2," would have the best score.

[24]These 92 cases included both cases with attorneys and cases where the claimant was in *pro per*. The disposition varied however. In the 38 *pro per* cases that closed without a neutral arbitrator selected, 7 settled and 31 were withdrawn. In the 54 cases with an attorney, 28 settled and 26 were withdrawn.

C. Cases with Postponements of Time to Select Neutral Arbitrators

Under Rule 21, a claimant has a unilateral right to a 90 day postponement of the deadline to respond to the LPA. If a claimant has not requested one, the respondent may request such a postponement, but only if the claimant agrees in writing. The parties can request only one postponement in a case – they cannot, for example, get a 40 day postponement at one point and a 50 day postponement later on. The postponement, however, does not have to be 90 days; it can be shorter, and many are. In addition to Rule 21, Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines. The OIA has used this power occasionally to extend the deadline to respond to the LPA. Generally, parties must use a 90 day postponement under Rule 21 before the OIA will extend the deadline under Rule 28. A Rule 28 extension is generally short – two weeks if the parties say that they have settled or the case is being withdrawn[25] – though it may be longer if, for example, it is based on the claimant's medical condition.

Claimants do not have to give a reason for why they want a 90 day postponement under Rule 21, though there must be a reason for a Rule 28 extension. The reasons for a Rule 28 extension are often the same as claimants volunteer for why they use Rule 21. In some cases, the parties are seeking to settle the case or to select a neutral arbitrator jointly. Some claimants or attorneys want a little more time to evaluate the case before incurring the expense of a neutral arbitrator. As noted above, parties in 92 cases either settled or withdrew them before a neutral arbitrator was put in place. Some claimants who do not have an attorney want time to find one. Occasionally the OIA has discovered at the deadline that an attorney no longer represents a claimant. There are also some unrepresented claimants who request more time for health reasons. One reason for Rule 21 postponements that does not justify a Rule 28 extension is that the claimants or their attorneys simply want more time to submit their LPA responses.

There were 340 cases in 2008 where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their responses to the LPA, or both. Claimants made all of the requests. In 337 cases, the claimants requested Rule 21 postponements. Respondents never made a request. Requests for a Rule 28 postponement were made in 13 cases. In some, the Rule 21 request was made in prior years. There was one case where a Rule 28 extension was given without a prior Rule 21 postponement.[26]

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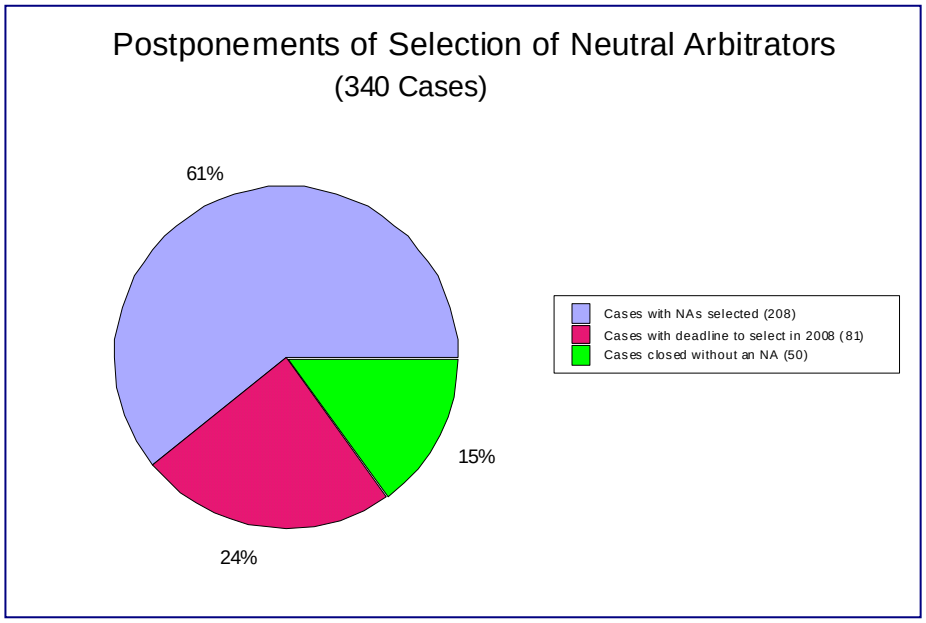
[25]The extension allows the claimant to send in a written notice of settlement or withdrawal without a neutral arbitrator being selected and sending out disclosure forms, reducing expenses generally.

[26]That case was a lien claim. The consumer's attorney contacted he OIA after being served with Kaiser's demand for arbitration and the LPA. The attorney protested that his client was not obligated to arbitrate and asked for a copy of the enrollment form. The OIA extended the deadline to select the neutral arbitrator and asked Kaiser's attorney for a copy. After several extensions of the time to provide the documents, the OIA closed the case. There was no request under Rule 21 in this case.

The following chart shows what has happened in those 340 cases. Two-hundred-eight (208) of them (61%) now have a neutral arbitrator in place. Fifty of them closed before a neutral arbitrator was ever selected. For the remaining 81 cases, the deadline to select a neutral arbitrator is after December 31, 2008.



D. Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators at the start of a case.[27] Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.[28] After they make these disclosures, the parties have 15 days to serve a disqualification of the neutral arbitrator. Additionally, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can disqualify neutral arbitrators in a given case.[29]

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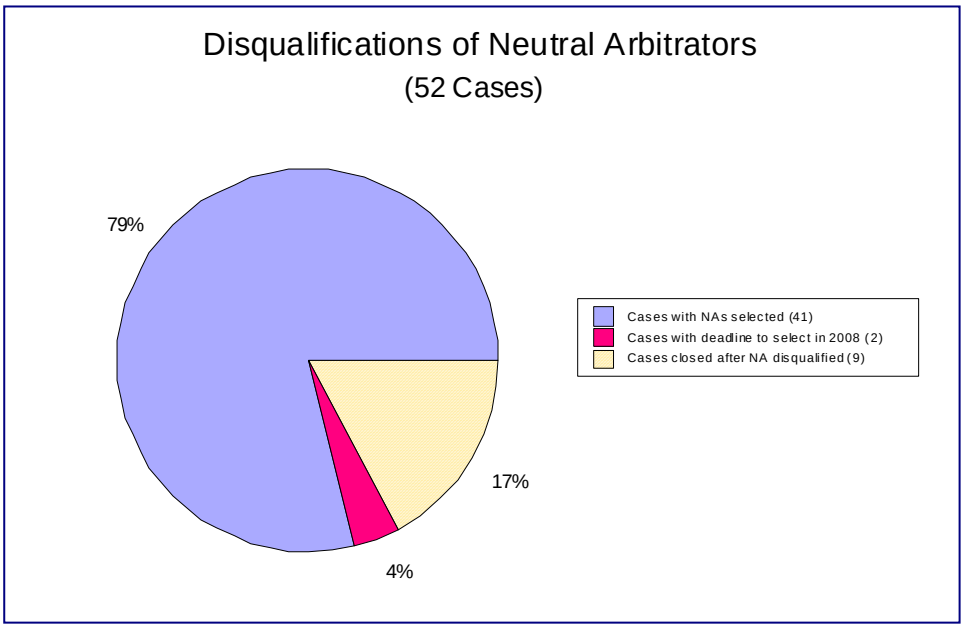
[27] California Code of Civil Procedure § 1281.91; see also Exhibit B, Rule 20.

[28] California Code of Civil Procedure § 1281.9, especially California Code of Civil Procedure § 1281.9(b). In the OIA system, the ten days are counted from the date of the letter confirming service which we send to the neutral arbitrator, with copies to the parties, after the neutral arbitrator agrees to serve.

[29] Under Rule 18.f, after two neutral arbitrators have been disqualified, the OIA randomly selects subsequent neutral arbitrators, rather than continuing to send out new LPAs.

Multiple disqualifications occur infrequently. In 2008, neutral arbitrators were disqualified in 52 cases. Forty-eight cases had a single disqualification. Two cases had two disqualifications, one case had four, and one case had fifteen disqualifications.[30] In 41 cases with a disqualification, a neutral arbitrator had been selected at the end of 2008. In nine cases with a disqualification, the time for the neutral arbitrator selection had not expired by the end of the year. Two cases closed by the parties after a neutral arbitrator was disqualified.

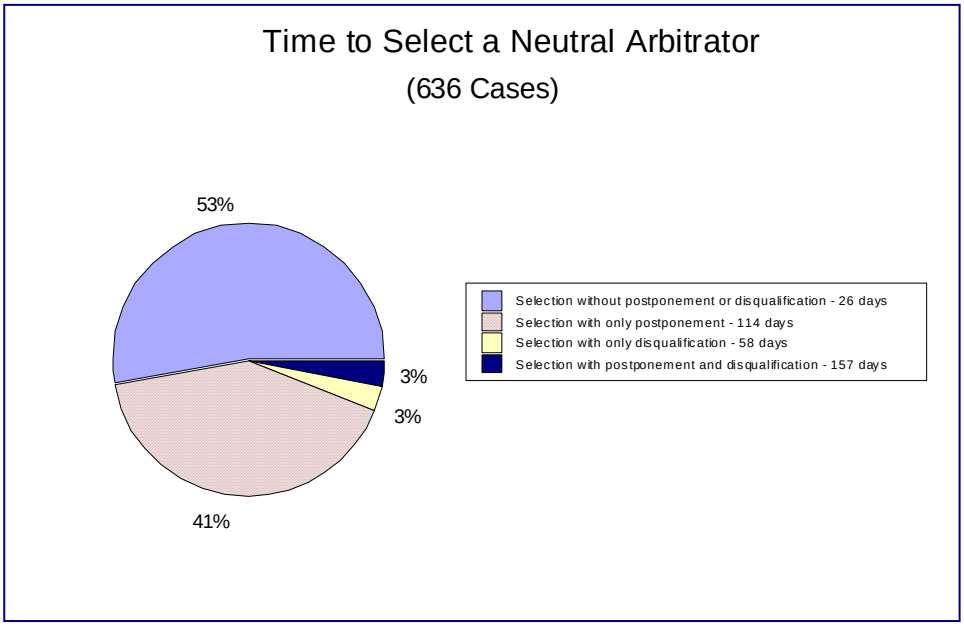
Because of these multiple disqualifications, these 52 cases represent 71 neutral arbitrators who were disqualified in 2008. The neutrals were disqualified by the claimants' side 60 times, and by the respondents' side 11 times.



[30] In cases with multiple disqualifications, one of the parties may petition the California Superior Court to select a neutral arbitrator. If the court grants the petition, a party is only permitted to disqualify one neutral arbitrator without cause; subsequent disqualifications must be based on cause. California Code of Civil Procedure §1281.9. The case with 15 disqualifications in 2008 and 29 total was a lien case. The Kaiser attorney never took court action, and a neutral arbitrators was not selected until the consumer party, an attorney representing herself, missed the deadline to disqualify the proposed neutral arbitrator.

E. Length of Time to Select a Neutral Arbitrator

This section considers 636 cases in which a neutral arbitrator was selected in 2008.[31] Because parties can postpone the deadline and disqualify a neutral arbitrator, the report divides the selections into four categories when discussing the length of time to select a neutral arbitrator. The first is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was extended, generally because the claimant requested a 90 day postponement before selecting a neutral arbitrator. The third category is those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator was selected. The fourth category is those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. Finally, we give the overall average for the 636 cases. The four categories are displayed in the chart below.



[31] Thirty-five cases in which a neutral arbitrator was selected in 2008 are not included in this section. In 33 cases, a neutral arbitrator had previously been appointed, had begun acting as the neutral arbitrator, but had subsequently been removed as the neutral arbitrator. These include cases where a neutral arbitrator died or became seriously ill, was made a judge, moved, etc. In addition, one neutral arbitrator made disclosures in the middle of a case, because of some event occurring after the initial disclosure, and was disqualified. In another case, discussed in footnote 30, 29 neutral arbitrators were disqualified before a neutral arbitrator was put in place. Because we count time from the first day that the case entered the OIA system, those cases are not included in these computations of length of time to select a neutral arbitrator.

1. Cases with No Delays

There were 338 cases where a neutral arbitrator was selected in 2008 in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator in those cases is 26 days, the mode is 27 days, the median is 27 days, and the range is 3-61 days.[32] This category still represents a slim majority, at 53%, after slipping below 50% in 2005.

2. Cases with Postponements

There were 262 cases where a neutral arbitrator was selected in 2008 and the only delay was a 90 day postponement and/or an OIA extension of the deadline under Rule 28. This includes cases where the request for the postponement was made in 2007, but the neutral arbitrator was actually selected in 2008. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in those cases is 114 days, the mode is 119 days, the median is 117 days, and the range is 25-216 days.[33] This category represents 41% of all cases which selected a neutral arbitrator in 2008.

3. Cases with Disqualifications

There were 17 cases where a neutral arbitrator was selected in 2008 and the only delay was that one or more neutral arbitrators were disqualified by a party. Again, this includes cases where a disqualification was made in 2007. Under the *Rules*, the maximum number of days to

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[32]The case that took 61 days to select a neutral arbitrator was a lien case that is, a case in which Kaiser serves a demand for arbitration against a member who, in a separate matter against a third party, recovered money for services Kaiser provided to the member. This means that Kaiser's attorney serves the consumer and/or the consumer's former attorney with the demand for arbitration and gives the OIA a proof of service with contact information. In this case, the LPA sent to the consumer's attorney was returned because of an incorrect address. Through the State Bar website, we found the correct address and resent it; giving more time to respond. The attorney then contacted our office, stating that he no longer represented the consumer. The OIA then resent the LPA packet to the consumer, giving the entire twenty days to respond. The consumer told the OIA that she had not been served and that the proof of service had the wrong address and an inaccurate physical description. The OIA gave her additional time if she wanted to do something. Immediately after a neutral arbitrator was selected, Kaiser's attorney withdrew the case when the consumer served a declaration that she had not been served.

[33]The case that took 216 days to select a neutral arbitrator involved a claimant who died in between the time the demand for arbitration was made and the time our office called to remind the claimant's counsel of the deadline for responding to the LPA. Although they had already obtained a 90 day postponement, the OIA gave a further 90 days so they could decide whether to amend or withdraw. The OIA called again after the 90 days, gave another week when told it would be withdrawn. When a withdrawal letter was not sent, a neutral arbitrator was selected. The case was then withdrawn.

select a neutral arbitrator is 96, if there is only one disqualification.[34] The average number of days to select a neutral arbitrator in the 17 cases is 58 days, the median is 63 days, the mode is 63, and the range is 34-91 days. Disqualification only cases represent 3% of all cases which selected a neutral arbitrator in 2008.

4. Cases with Postponements and Disqualifications

There were 19 cases where a neutral arbitrator was selected in 2008 after a postponement and the disqualification of a neutral arbitrator. Again, this includes cases where a postponement

or disqualification was made in 2007. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is both a 90 day postponement and a single disqualification is 186 days. The average number of days to select a neutral arbitrator in these cases is 157 days, the mode is 151, the median is 161 days, and the range is 84-201 days.[35] These cases represent 3% of all cases which selected a neutral arbitrator in 2008.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 67 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*[36] that the old Kaiser system averaged 674 days to select a neutral arbitrator over a period of two years in the 1980's. Thus, as shown on the chart on the next page, in 2008, the OIA system was 10 times faster.

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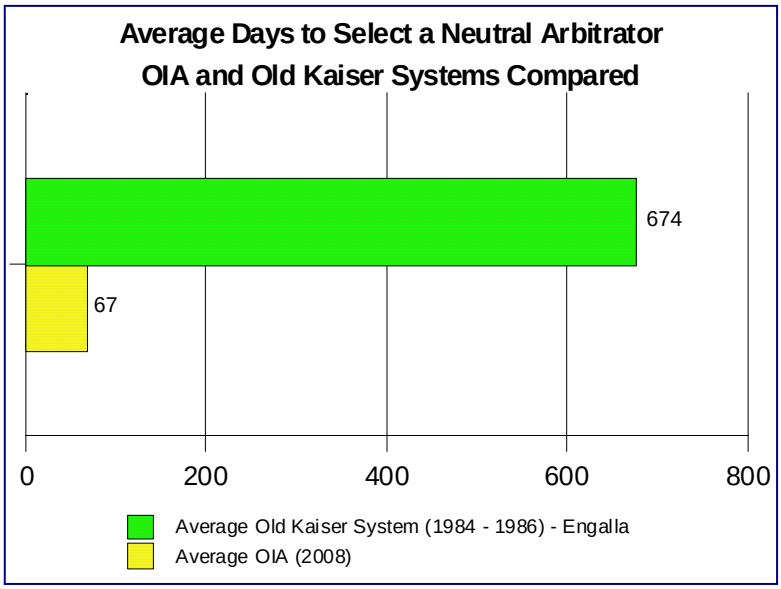
[34]The 96 days is comprised of the 33 days to select the first neutral arbitrator; the 30 days for the statutory periods for disclosure, disqualification, and service under the California Code of Civil Procedure; and then 33 days to select the second neutral arbitrator. The amount of time increases if there is more than one disqualification.

[35]In the case that took 201 days to select a neutral arbitrator, the claimant's counsel first requested a 90 day postponement and then an additional 75 days so that a court case could be completed. After Kaiser obtained an order compelling arbitration, the claimant's counsel disqualified the first neutral arbitrator. The second neutral went forward with the case.

[36]15 Cal. 4th 951, 64 Cal. Rptr. 2d 843, 938 P.2d 903. The California Supreme Court's criticism of the then self-administered Kaiser arbitration system lead to the creation of the Blue Ribbon Panel.



F. Cases With a Party Arbitrator

A California statute gives parties in medical malpractice cases where the claimed damages exceed $200,000 a right to proceed with three arbitrators: one neutral arbitrator and two party arbitrators.[37] The parties may waive this right. The Blue Ribbon Panel (BRP) that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with two more participants in the arbitration process. The BRP therefore suggested that the system create incentives for cases to proceed with one neutral arbitrator, by having Kaiser pay the neutral arbitrators' fees if the arbitration proceeds with a single neutral arbitrator.

Rules 14 and 15 provide such an incentive. Kaiser pays the full cost of the neutral arbitrator if the claimant waives the statutory right to a party arbitrator, as well as any court challenge to the arbitrator on the basis that Kaiser paid him/her. If both Kaiser and the claimant waive party arbitrators, the case proceeds with a single neutral arbitrator. Thus far, in all the cases where claimant has waived, Kaiser has also waived.

Few party arbitrators are being used in our system. In 2008, party arbitrators signed the award in only two of the 98 cases in which the neutral arbitrator made an award.[38] The remaining 96 cases were decided by a single arbitrator. The two cases with party arbitrators

[37] California Health & Safety Code §1373.19.

[38] In addition, one case that was settled also had party arbitrators.

closed in 254 and 493 days.[39] In both, the arbitrators found for the claimants, awarding $318,944 and $636,252, respectively.

Of the 735 cases that remained open at the end of 2008, party arbitrators had been designated in 16 of them. In 9 of those, the OIA had designations from both parties; in the other 7, only one side had designated a party arbitrator.

VI. MAINTAINING THE CASE TIMETABLE

This section briefly summarizes the methods for monitoring compliance with deadlines and then looks at actual compliance with deadlines at various points during the arbitration process.

The OIA monitors its cases in two different ways. First, when a case enters the system, the OIA computer system calendars a reminder for 12 months. As discussed in Section VII, most cases close before then. For those that remain, however, OIA attorneys call the neutral arbitrators to ensure that the hearing is still on calendar and the case is on track to be closed in compliance with the *Rules*. In addition, the Independent Administrator holds monthly meetings to discuss the status of all cases open more than 15 months. Cases that fall into this category generally require more OIA contact for a number of reasons, e.g., a claimant with a continuing medical problem which makes scheduling the hearing and maintaining scheduled dates difficult or the recusal or death of the neutral arbitrator late in the case and/or right before the scheduled hearing. OIA attorneys also review a neutral arbitrator's open cases when they offer him or her new cases.

In addition, through its software, 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 – occur on time. If arbitrators fail to notify us that a key event has taken place by its deadline, the OIA contacts them by phone, letter, or e-mail and asks for confirmation that it has occurred. In most cases, it has and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In some cases, the OIA sends a second letter and/or makes a phone call asking for confirmation. The second letter and/or phone call warns arbitrators that, if they do not provide confirmation that the event took place, the OIA will remove their names from the OIA panel until confirmation is received.

In a few cases, neutral arbitrators have not responded to a second communication. In those cases, the OIA removes the neutral arbitrators' names from the OIA panel until they take the necessary action. Thus, a neutral is not listed on any LPA when he or she is suspended and cannot be jointly selected by the parties. As detailed in the following sections, 9 different neutral arbitrators were suspended 16 times in 15 cases in 2008. No neutral arbitrator was still

[39]Cases with party arbitrators often take longer to have the arbitration hearing. The average for all cases to close is 455 days. (See generally Section VII.)

suspended at the end of the year. Most of the suspensions were caused by the neutral arbitrator's failure to hold a timely Arbitration Management Conference (AMC).

A. Neutral Arbitrator's Disclosure Statement

As discussed, once neutral arbitrators have been selected, they must make written disclosures to the parties within ten days. The *Rules* require neutral arbitrators to serve the OIA with a copy of these disclosures. The OIA monitors all cases to ensure that timely disclosures are made. In 2008, one neutral arbitrator was suspended until he made his disclosures. He was reinstated.

B. Arbitration Management Conference

The *Rules* require the neutral arbitrator to hold an arbitration management conference (AMC) within 60 days of his or her selection.[40] It was the feature of the OIA system that neutral arbitrators rated highly in their questionnaire responses. (See Section IX.B.)

The neutral returns the AMC form to the OIA within five days after the conference. The schedule set forth on the form establishes the deadlines for the rest of the case. It also allows the OIA to see that the case has been scheduled to finish within the time allowed by the *Rules*, usually 18 months. Receipt of the form is therefore important. Seven neutrals were suspended in 12 cases for failing to return an AMC form in 2008. All were reinstated.

C. Mandatory Settlement Meeting

Rule 26 instructs the parties to hold a mandatory settlement meeting (MSM) within six months of the AMC. It states that the neutral arbitrator is not present at this meeting.[41] The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. In 2008, the OIA received notice from the parties in 436 cases that they have held an MSM. Fifty-four of them reported that the case had settled at the MSM. One of these cases involved a *pro per* claimant. On the other hand, in 29 cases neither party returned the MSM form to the OIA despite requests.

D. Hearings, Awards, and the Aftermath

The neutral arbitrator is responsible for ensuring that the hearing occurs and an award is served within the time limits set out in the *Rules*. The OIA suspended two neutral arbitrators for

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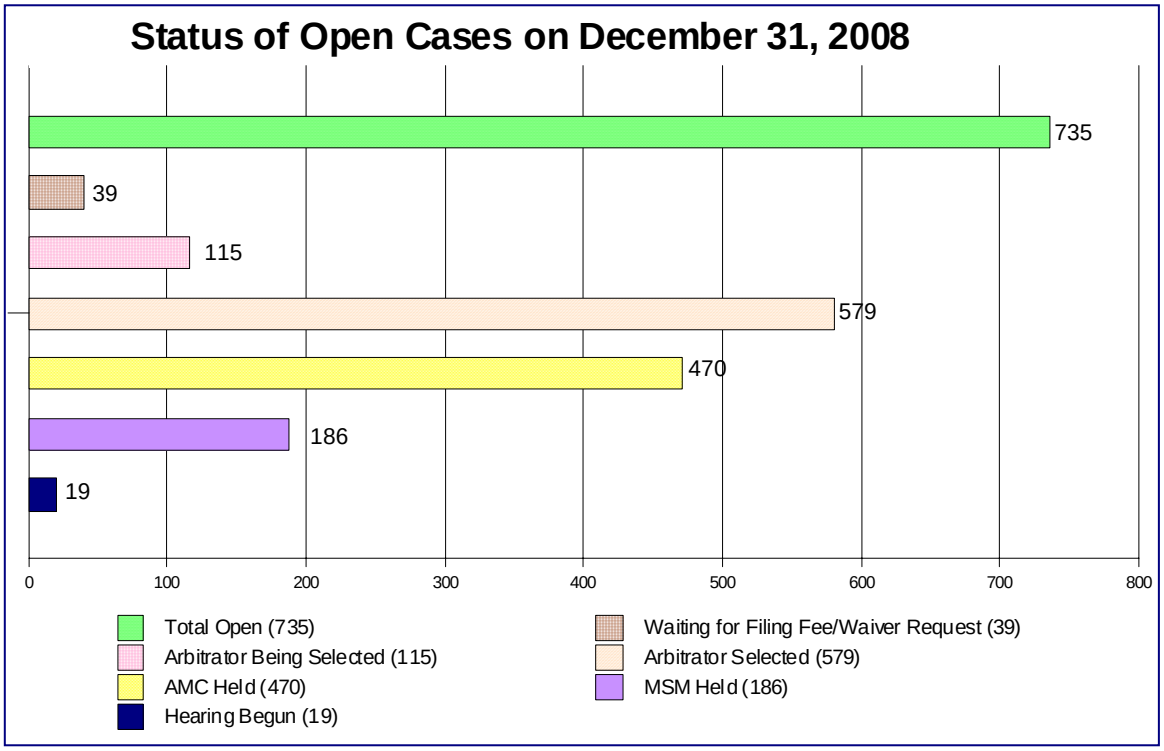
[40] Exhibit B, Rule 25.

[41] As the settlement conference is supposed to be conducted without the appointed neutral and in a form agreed upon by the parties, the OIA has no real way to track whether the event has occurred except for receiving the forms from the parties. The OIA has no power to compel them to report or to meet. A neutral arbitrator, on the other hand, can order the parties to meet if a party complains that the other side refuses to do so.

failing to set a hearing date. Both were reinstated. No neutral was suspended for failing to serve his award within the *Rules*' time limits. No neutral arbitrator was suspended for failing to provide the fee and fee allocation information required by California Code of Civil Procedure § 1281.96. One was, however, suspended for failing to return a questionnaire after a case closed. He was reinstated.

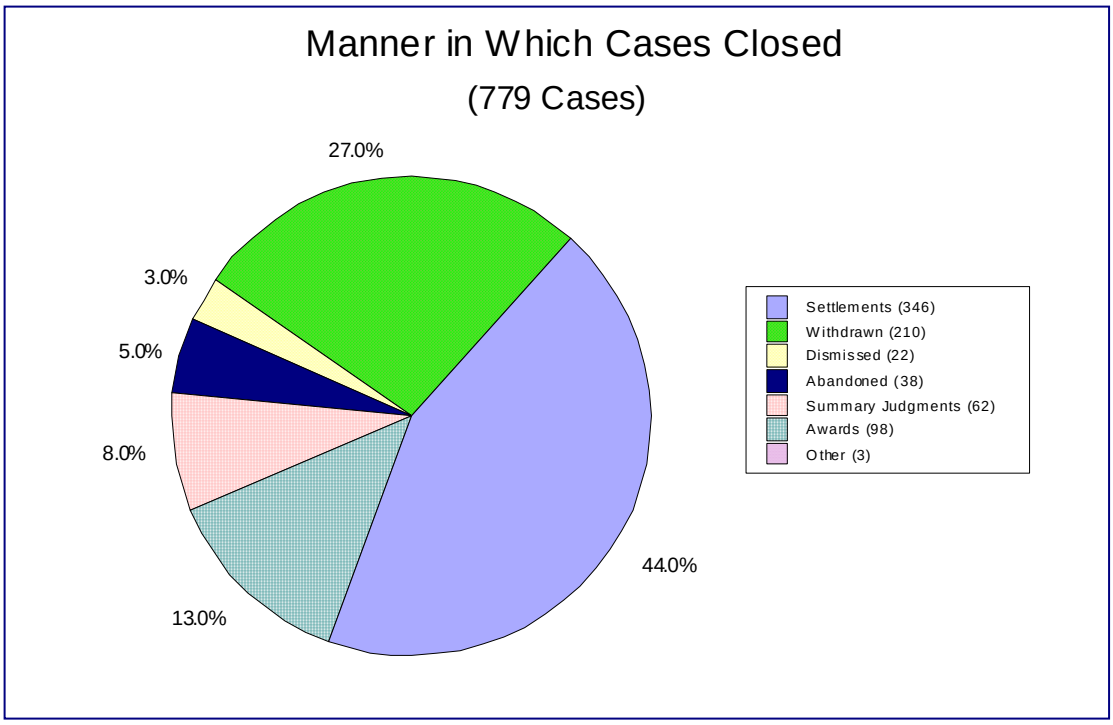
E. Status of Open Cases Administered by the OIA on December 31, 2008

As of December 31, 2008, there were 735 open cases in the OIA system. In 39 of these cases, the claimant had not yet sent in either the filing fee or the paperwork to waive it so the LPA could be sent. In 115 cases, the parties were in the process of selecting a neutral arbitrator. In 579 cases, a neutral arbitrator had been selected. Of these, an arbitration management conference had been held in 470. This is 64% of all open cases. In 186 cases, the parties had held the mandatory settlement meeting. In 19 cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the decision. The following graph illustrates the status of open cases.



VII. THE CASES THAT CLOSED

In 2008, 779 cases closed. Cases close either because of (1) action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of fees), or (2) action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). This discussion begins on page 27 and looks at each of these methods, how many closed, and how long it took. The discussion of cases that closed after a hearing also includes the results: who won and who lost. The following chart displays how cases closed, while the graph on page 26 shows the length of time to close, again by manner of closure.[42]

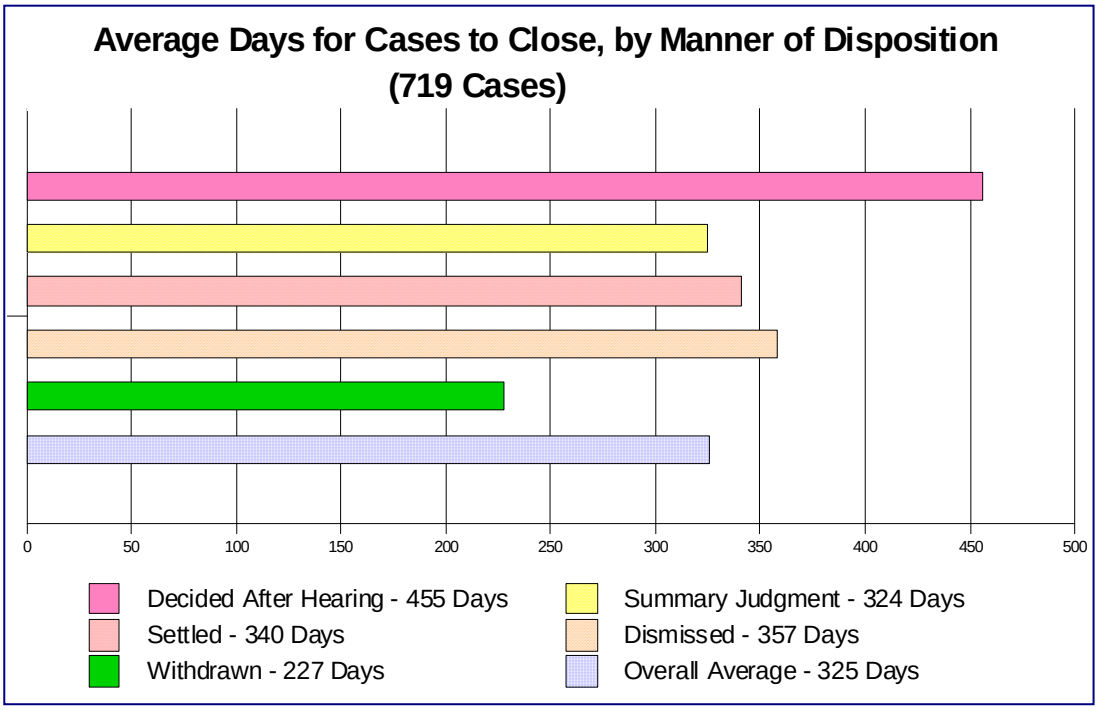


As shown on the chart on the following page, cases closed on average in 325 days, or 11 months.[43] This includes all cases regardless of procedure: regular, expedited, complex,

[42]There were three cases that closed because the case was consolidated with another, had a split outcome, judgment on the pleadings, or other rare result. (A split outcome means that there was more than one claimant and they had different outcomes.) As they represent less than one percent of the total of all closed cases, they are not further discussed in this section.

[43]As mentioned before, the OIA does not begin measuring the time until the fee is either paid or waived. Therefore, the next chart refers to 719 closed cases, not 779. It excludes 38 abandoned cases, 21 cases that were withdrawn or settled before the fee was paid, and 1 case closed in another way.

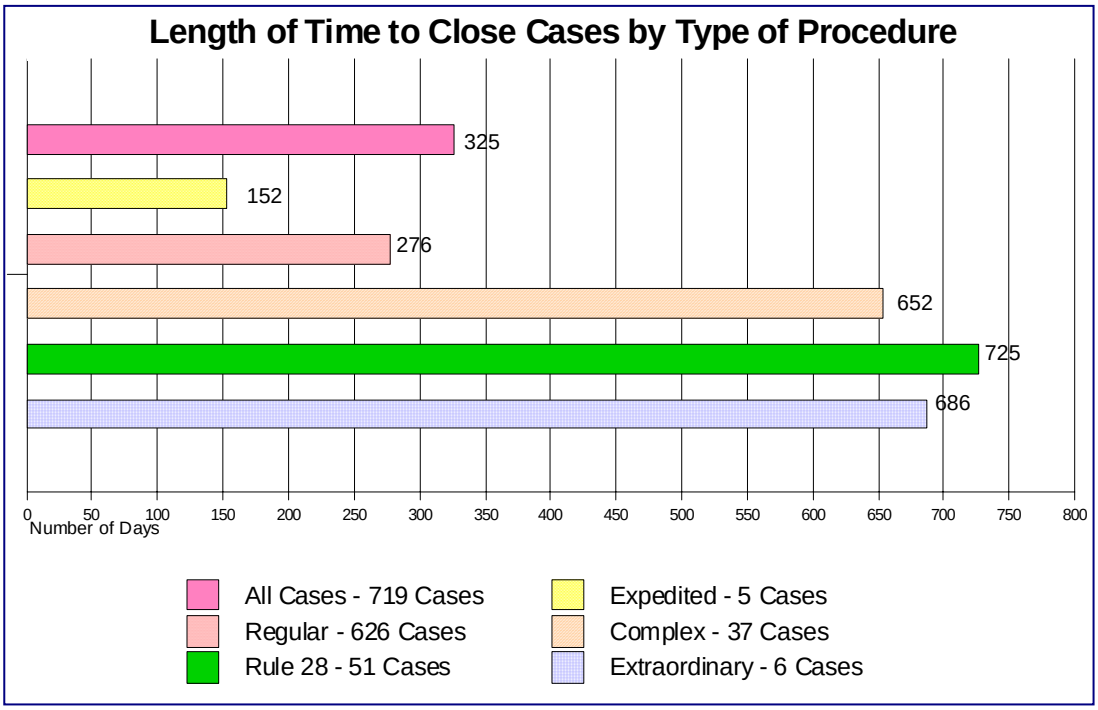
extraordinary, and cases whose deadlines were extended under Rule 28. The median is 308 days. The mode is 302 days. The range is 4 to 1,436 days. No case closed late.



The second half of this section discusses cases that employed special Rules to either have the cases decided faster or slower than most. This begins on page 29. Under the *Rules*, cases ordinarily must be completed within 18 months. Over 90% of the cases are closed within this period, and more than sixty percent (65%) close in a year or less. If a claimant needs a case decided in less time, the case can be expedited. If the case needs more than 18 months, the parties can classify the case as complex or extraordinary, or the neutral arbitrator can order the deadline to be extended under Rule 28.[44]

The graph on the next page shows the average time to close based by type of procedure.

[44]Complex cases can also be the subject of a Rule 28 extension if it turns out the case requires more than 30 months to close. They are also included in the discussion of complex cases. Six cases that closed in 2008 were both complex and the subject of a Rule 28 extension. They are included in both Sections VII.B.2 and VII.B.4 and in the chart on page 27.



A. How Cases Closed

1. Settlements – 44% of Closures

During 2008, 346 of the 779 cases settled. This represents 44% of the cases closed during the year. The average time to settlement was 340 days, or about eleven months. The median is 322, the mode is 337, and the range is 4 to 1,253 days.[45] In 20 settled cases (6%), the claimant is in *pro per*. Fifty-four of these cases closed at the mandatory settlement meeting.

2. Withdrawn Cases – 27% of Closures

In 2008, the OIA received notice that 210 claimants had withdrawn their claims. In 70 (33%) of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons, but the OIA has only anecdotal information on this point. We categorize a case as withdrawn when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice from the parties. When we receive a "dismissal with prejudice," we call the parties to ask whether the case was "withdrawn," meaning voluntarily dismissed, or "settled" and enter the closure accordingly. Twenty-seven percent of closed cases were withdrawn.

[45] The case that took 1,253 days to settle was continued five times by the parties – from an original hearing date in June 2006 to January 2009 – before it was settled in November 2008.

The average time for a party to withdraw a claim in 2008 is 227 days. The median is 206 days. The mode is 264 days, and the range is 10 to 1,027 days.[46]

3. Abandoned Cases – 5% of Closures

Claimants failed to either pay the filing fee or obtain a waiver in 38 cases.[47] These were therefore deemed abandoned for non-payment. In 24 of the 38 cases (63%), the claimants were in *pro per*. Before claimants are excluded from this system for not paying the filing fee, they receive four notices from the OIA and are offered the opportunity to apply for fee waivers. Those excluded have failed to pay or to apply for a waiver. We denied four fee waiver applications. The claimants subsequently paid the $150 fee and continued with the arbitration.

4. Dismissed Cases - 3% of Closures

In 2008, neutral arbitrators dismissed 22 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Twelve of these closed cases (55%) involved *pro pers.*

5. Summary Judgment – 8% of Closures

In 2008, 62 cases were decided by summary judgments granted to the respondent. In 46 of these cases (74%), the claimant was in *pro per*. Failing to have an expert witness (22 cases), failing to file an opposition (16 cases), exceeding the statute of limitations (8 cases), and no triable issue of fact (13 cases) were the most common reasons given by the neutrals in their written decisions for the grant of summary judgment. The reasons parallel summary judgments granted in the courts.

The average number of days to closure of a case by summary judgment in 2008 is 324 days. The median is 311 days. The mode is 378. The range is 124 to 883 days.[48]

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[46]The case that was withdrawn after 1,027 days had been designated extraordinary because the claimant was too young to determine her damages. The case was ultimately dismissed without prejudice so the minor could file again if appropriate.

[47]The arbitration filing fee is $150 regardless of how many claimants there may be in a single case. This is significantly lower than court filing fees except for small claims court. If a Kaiser member's claim is within small claims court's jurisdiction of $7,500, the claim is not subject to arbitration. Both the OIA and Kaiser inform these claimants of their right to go to small claims court.

[48]The case that was decided by summary judgment after 883 days was continued several times by the neutral arbitrator under Rule 28 for the claimant's incarceration and a pending court case involving third party defendants and its appeal. Though the claimant was represented, the summary judgment motion was not opposed.

6. Cases Decided After Hearing – 13% of Closures

a. Who Won

About 13% of all cases closed in 2008 (98 of 719) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 67 of these cases, or 68%. In 17 of these cases, the claimant was in *pro per*. The claimant prevailed in 31 of them, or 32%.[49] One of these cases involved a *pro per* claimant.

b. How Much Claimants Won

Thirty-one cases resulted in awards to claimants. One claimant was awarded more than $2 million. The range of relief is $10,000 to $2,060,569. The average amount of an award is $349,431. The median is $252,319. There is no mode. A list of the awards made in 2008 is attached as Exhibit G.

c. How Long It Took

The 98 cases that proceeded to a hearing in 2008, on average, closed in 455 days. The median is 446 days. The mode is 254 days. The range is 173 to 1,436 days.[50]

B. Cases Using Special Procedures

1. Expedited Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expedition 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.[51]

In 2008, nine claimants requested that their cases be resolved in less than the standard eighteen months. The OIA received all of those requests from claimants before a neutral was

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[49]In this section, "claimant" means "member." Lien cases, where Kaiser makes the demand for arbitration and receives an award for money if successful, are excluded. In these lien cases, Kaiser prevailed in each of the 16 lien cases that went to hearing. Its awards ranged from $6,042.75 to $43,154.05.

[50]The case that took 1,436 days to close after a hearing involved a companion court case involving other defendants that was heard and then appealed. A new demand for arbitration was then treated as amending the original. Two months before the hearing, the claimant fired the attorney and the new attorney was given some time to get acquainted with the case. The hearing date was moved again when the claimant attorney's brother died and the respondent attorney's mother was very ill. The hearing occurred in January 2008 and resulted in an award for Kaiser.

[51]Exhibit B, Rules 33-36.

selected in the case. In such cases, under Rule 34, the OIA makes the decision. The OIA granted seven of them, and denied two without prejudice to the neutral arbitrator reconsidering the issue.[52] Kaiser objected to two of these requests, one of which the OIA granted. No requests were made to neutral arbitrators.

The OIA had two open expedited cases on January 1, 2008. Five expedited cases closed in 2008, including the two cases that were open at the beginning of the year. Four cases settled, and the other was withdrawn. The average for the 5 cases to close is 152 days (five months), the median is 193 days, and the range is from 26 to 281 days.[53] Four expedited cases remained open at the end of 2008.

Although originally designed in part to decide benefit claims quickly, none of the expedited cases in 2008 involved benefit or coverage issues.

2. Complex Procedures

The *Rules* also include provisions for cases that need more time. In complex cases, the parties believe that they need 24 to 30 months.[54] In 2008, 70 cases were designated as complex. The designation does not have to occur at the beginning of a case. It may be made as the case proceeds and the parties develop a better sense of what evidence they need. In addition to the 70 cases designated in 2008, at the beginning of 2008, there were 30 open cases designated as complex. Thirty-seven complex cases closed in 2008 and the designation of one case was changed to extraordinary. The average length of time for complex matters to close in 2008 is 652 days, about twenty-one months. The median is 590 days. The mode is 783. The range is from 485 to 1,154[55] days (about 38 months).

Considering the cases designated as complex in 2008, 9 cases were designated as complex because of medical issues; 5 had complex discovery; 4 had procedural problems; 47 were designated by order of the neutral; and 5 by stipulation of the parties. Complex medical issues include cases where multiple liability issues exist, or the nature or amount of damages is difficult to ascertain. Complex discovery includes cases involving large document productions, many depositions, or extensive travel to complete discovery.

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[52]If the OIA denies a request for expedited status, it is usually because the claimant failed to give a time frame to the OIA for the closure of the case. This denial is without prejudice and the claimant can make another request to the neutral arbitrator.

[53]In the case that took 281 days to close, the OIA granted expedited status. The hearing was set within the time requested by the claimant attorney but was settled before it occurred.

[54]Exhibit B, Rule 24(b).

[55]The complex case that took 1,154 days to close was given a complex designation at the parties' request and the hearing continued from September 2006 to May 2007 because of the unavailability of claimant attorney and subsequently continued to January 2008. The hearing resulted in an award for Kaiser.

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.[56] Fourteen cases were designated extraordinary in 2008. There were four extraordinary cases open at the beginning of 2008. Six cases closed this year, three settled, two were dismissed, and one was withdrawn. The average number of days for an extraordinary case to close is 686 days, or 21 months. The range is 531 to 1,027 days (34 months).[57]

4. Rule 28 Extensions of Time to Close Cases

Rule 28 allows neutral arbitrators to extend the deadline for a case to close past the eighteen month deadline if there are "extraordinary circumstances" that warrant it. In 2008, the neutral arbitrators made Rule 28 determinations of "extraordinary circumstances" in 63 cases and extended these cases beyond their limit. In addition, 39 such cases remained open at the end of 2007. At the end of 2008, 45 cases remained open, with 54 cases having closed during the year. The average time in 2008 to close cases with a Rule 28 order is 705 days, about 23 months. The median is 666 days. The mode is 648 days. The range is 193 to 1,436 days.[58]

According to the neutral arbitrator orders granting the extension, the respondents side never requested an extension, the claimants side requested 16, and the parties stipulated 7 times. The neutral arbitrator ordered it on his or her own 40 times. Extensions were ordered 5 times over the respondents' objections and never over the claimants' objections. Fifteen orders noted that there was no objection. Forty-seven orders merely recited there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reason, the most common reason was unanticipated scheduling conflicts (5). The next most common were multiple neutral arbitrators (3), and change or illness of a party or attorney (3).

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[56]Exhibit B, Rule 24(c).

[57]The case that closed after 1,027 days is described in footnote 46.

[58]This case is discussed in footnote 50.

VIII. THE COST OF ARBITRATIONS IN THE OIA SYSTEM

A. What Fees Exist in OIA Arbitrations

Whether a claimant is in court or in private arbitration, a claimant faces certain fees. In an OIA arbitration, in addition to attorney's fees and fees for expert witnesses, a claimant must pay a $150 arbitration filing fee and half of the neutral arbitrator's fees. State law provides that neutral arbitrator's fees should be divided equally between the claimant and the respondent.[59] In addition, state law provides that if the claim is for more than $200,000, the arbitration panel will consist of three arbitrators – a single neutral arbitrator and two party arbitrators, one selected by each side. Parties may waive their right to party arbitrators.

The OIA system provides mechanisms for a claimant to request a waiver of either the $150 arbitration filing fee and/or the claimant's portion of the neutral arbitrator's fees and expenses. These provisions are discussed below. When claimants ask for waiver information, they receive information about the types of waiver and the waiver forms. The claimants can thus choose which they want to submit.

B. Mechanisms Claimants Have to Avoid These Fees

There are three mechanisms for waiving some or all of these fees. The first two are based on financial need and required by statute. The third is open to everyone, and is voluntary on Kaiser's part.

1. How to Waive Only the $150 Arbitration Filing Fee

This waiver is available to individuals whose gross monthly income is less than three times the national poverty guidelines. If granted, the OIA's $150 arbitration fee is waived. We inform claimants of the existence of this waiver in the first letter we send to them. They have 75 days to submit the form, from the date the OIA receives their demands for arbitration. This waiver was created in 2003.[60] According to statute and Rule 12, this completed form is confidential and only the claimant and claimant's attorney know if a request for the waiver was made or granted.

2. How to Waive Both the Arbitration Filing Fee and the Neutral Arbitrator's Fees and Expenses

This type of fee waiver, which has existed since the OIA was created and is required by state law, depends upon the claimants' ability to afford the cost of the arbitration fee and neutral arbitrator. Claimants must disclose certain information about their income and expenses. If this

[59]California Code of Civil Procedure § 1284.2.

[60]California Code of Civil Procedure §1284.3; Exhibit B, Rule 12.

waiver is granted, the claimant does not have to pay either the neutral arbitrator's fee or the OIA $150 arbitration filing fee, even if the claimant has a party arbitrator. This waiver form is the same as that used by the state court to allow a plaintiff to proceed *in forma pauperis.* According to the *Rules*, the form is served on both the OIA and Kaiser. Kaiser has the opportunity to object before the OIA decides whether to grant this waiver.[61] A claimant who obtains this waiver is still entitled to have a party arbitrator, but must pay for the party arbitrator.

3. How to Waive Only the Neutral Arbitrator's Fees and Expenses

As discussed above, the *Rules* contain provisions to shift the cost to Kaiser for the full payment of neutral arbitrators' fees and expenses.[62] For claims under $200,000, the claimant must agree in writing not to object later that the arbitration was unfair because Kaiser paid the fees and expenses of the neutral arbitrator. For claims over $200,000, the claimant must also agree not to use a party arbitrator.[63] No financial information is required. These forms are served on Kaiser, the neutral arbitrator, and the OIA.

C. Number of Cases in Which Claimants Have Shifted Their Fees

1. The $150 Arbitration Filing Fee

In 2008, the OIA received 34 completed forms requesting waiver of the $150 filing fee. The OIA granted 30 and denied 4.[64] Fifteen of these claimants received both a waiver of the $150 arbitration filing fee and the waiver of the filing fee and neutral arbitrator's fees and expenses. By obtaining the waiver of the $150 fee, the neutral arbitrator selection process can begin immediately, without waiting for the second waiver to be granted.

2. The $150 Arbitration Filing Fee and the Neutral Arbitrator's Fees and Expenses

In 2008, the OIA received 52 completed fee waiver applications. The OIA granted 49 waivers of the arbitration fees and neutral arbitrator fees, denied 2,[65] and 1 remains to be decided. Kaiser objected to one request, which the OIA denied.

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[61]See Exhibit B, Rule 13.

[62]See Exhibit B, Rules 14 and 15.

[63]While it has never happened, if a claimant waived and Kaiser elected not to waive, the claimant would be able to have a party arbitrator, whom he or she would have to pay, but Kaiser would still pay the full cost of the neutral arbitrator.

[64]All four stayed in the system. Three of them paid the $150 fee and the other had the fee waived through the other waiver.

[65]In both cases, the claimant paid the filing fee.

3. The Neutral Arbitrators' Fees and Expenses

Arbitration providers such as the OIA are required to disclose neutral arbitrators' fees and fee allocation for closed cases that they received after January 1, 2003.[66] We received fee information from neutral arbitrators in 577 cases that closed in 2008.

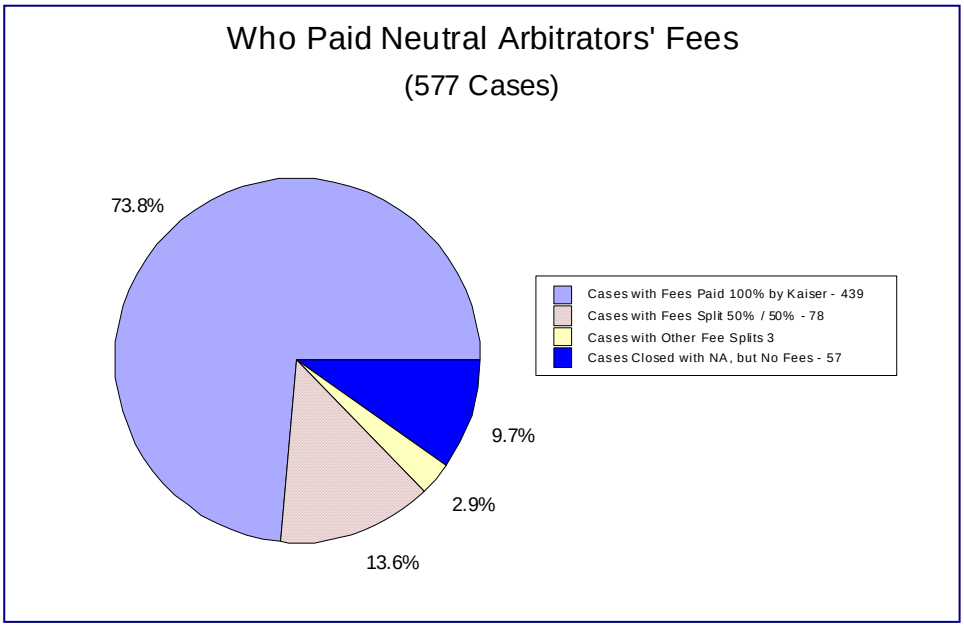
Of these 577 cases, 439 (76%) reported that fees were allocated 100% to Kaiser. Fifty-seven (10%) reported that no fees were charged. The claimant paid nothing in these cases. Seventy-eight (14%) reported that the fees were split 50/50, while the fees were allocated in different percentages in three cases. Of the 520 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 84% of the cases. As shown in the chart on the next page, claimants paid neutral fees in only 14% of cases that closed in 2008.

D. The Fees Charged by Neutral Arbitrators

Members of the OIA pool set their own fees. They are allowed to raise their fees once a year, but the increases do not affect cases on which they have begun to serve. The fees range from $125/hour to $800/hour. The average hourly fee is $374, the median is $375, and the mode is $400.[67] Neutral Arbitrators also often offer a daily fee. This ranges from $600/day to $8,000/day. The average daily fee is $3,123, the median is $2,700, and the mode is $2,000.

[66] California Code of Civil Procedure §1281.9.

[67] According to the 2004 RBZ Law Firm compensation Survey for Southern California, the average billing was $390/hour.



Looking at the 520 cases in which neutral arbitrators charged fees, the average neutral arbitrator's fee is $5,274.41. The median is $1,617.50 and the mode is $1050.00. This excludes the 57 cases in which there are no fees. The average for all cases, including those with no fees, is $4,753.37.

The arbitrators' fees described in the last paragraph include many cases where the neutral arbitrator performed very little work. If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee is $15,886.73, the median is $13,725.00, and the mode is $1,600. The range is $300 to $54,385.65.

IX. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

At the end of a case where a neutral arbitrator has been selected, the OIA sends forms to its parties or attorneys to allow them to evaluate the neutral arbitrator. It also sends a different form to the neutral arbitrator to ask his or her opinions about the OIA system, suggestions for improvement, and comparison between the OIA and the court system. This section discusses the highlights of the responses we received in 2008 from the parties and the neutrals. The complete statistics and copies of the forms are set out in Exhibits H and I, respectively.

A. The Parties or Their Counsel Evaluate the Neutral Arbitrators

Under Rule 49, at the close of an arbitration in which a neutral arbitrator has been appointed and held an arbitration management conference, the OIA sends an evaluation form to

each attorney. If the claimant did not have an attorney, we send an evaluation to the claimant. The form asks them to evaluate their experience with the neutral appointed in the matter in eleven different categories 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, they are asked whether they would recommend this neutral to another person with a similar case. The inquiries appear in the form of statements, and all responses appear on a scale of agreement to disagreement with 5 being agreement and 1 disagreement. The evaluations are anonymous, though the people filling it out are asked to identify themselves by category and how the case closed.

During 2008, the OIA sent out 900 evaluations and received 466 responses in return, or 52%.[68] One-hundred-eighty-two identified themselves as claimants (25) or claimants' counsel (157), and 278 identified themselves as respondent's counsel. Six did not specify a side.[69]

The responses have been quite positive overall, and they are encouragingly similar for both claimants and respondents. In 2008, the mode and median for all respondents for the following questions was 5. The mode is important because it means that the most common answer to all the questions was the most favorable response possible. Since the mode and median are uniformly 5 for all the questions, this is not repeated in the individual items.

Here are the responses to some of the inquiries.
Respond from 5 (Agree) to 1 (Disagree).

Item 2: "The neutral arbitrator treated all parties with respect." – 4.8 Average

The average of all responses is 4.8 out of a possible maximum of 5. Claimants counsel average 4.8. *Pro pers* average 4.4. Respondents counsel average 4.9.

Item 5: "The neutral arbitrator explained procedures and decisions clearly." – 4.6 Average

The average of all responses is 4.6. Claimants counsel average 4.6. *Pro pers* average 4.0. Respondents counsel average 4.7.

Item 7: "The neutral arbitrator understood the facts of my case." – 4.5 Average

The average of all responses is 4.5. Claimants counsel average 4.4. *Pro pers* average 3.5. Respondents counsel average 4.8.

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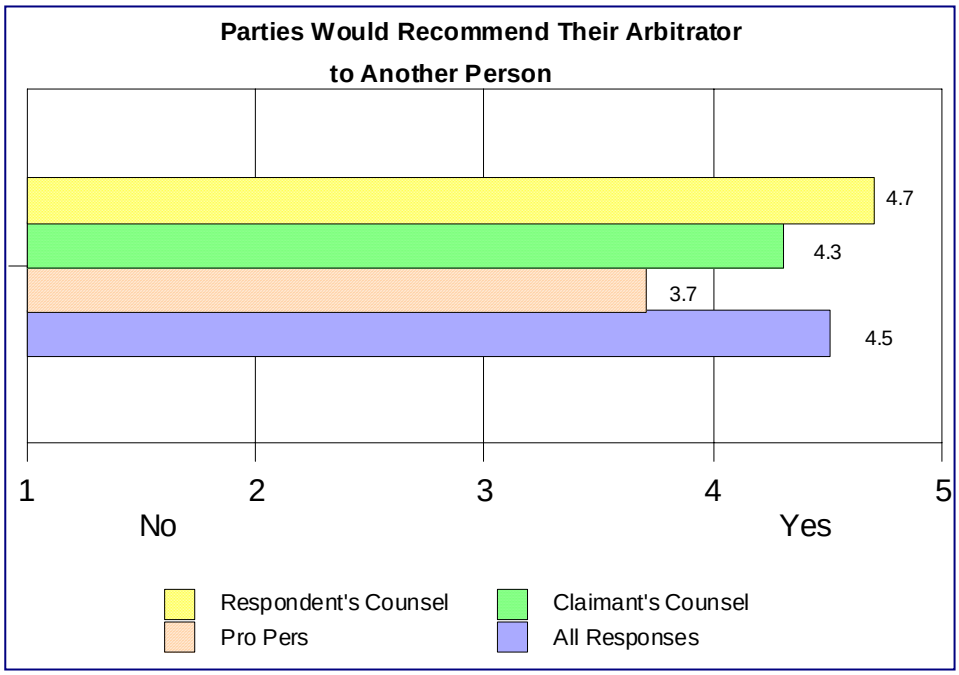
[68]The response rate has climbed from 28% in 2005.

[69]Their responses are included only in the overall averages.

Item 11: "I would recommend this arbitrator to another person or another lawyer with a case like mine." – 4.5 Average

The average on all responses to this question is 4.5. Claimant attorneys average response of 4.3. *Pro pers* average 3.7. Respondents counsel average 4.7.



B. The Neutral Arbitrators Evaluate the OIA System

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and improve the system. During 2008, the OIA sent out the questionnaire in 450 closed cases and received 379 responses.[70] The results continue to show a high degree of approval of, and satisfaction with, the *Rules* and the OIA.

As does the form sent to parties and their attorneys, the questionnaires sent to the neutral arbitrators include statements and ask them to state whether, on a scale from 1 to 5, they agree or disagree. Similarly, 5 represents the highest level of agreement.

The neutrals average 4.9 in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses average 4.9 in saying that based on this experience they would participate in another arbitration in the OIA system. They average 4.9 in saying that the OIA had accommodated their own questions and concerns in the specific case. The median and the mode for all questions are 5.

The questionnaires also include two questions that ask arbitrators to check off features of the system which worked well or poorly in the specific case. The vast majority of those who responded were positive.

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[70] This report has previously reported that 779 cases closed in 2008. The OIA does not send questionnaires if the case closed without a neutral arbitrator in place or where the case was closed soon after an arbitration management conference was held. This eliminates cases that settle or are withdrawn shortly after the arbitrator is selected. This policy took effect after the first year of mailing them. Large numbers of questionnaires were returned blank with a note from the neutral saying he or she had never met with the parties and had nothing to say about the case.

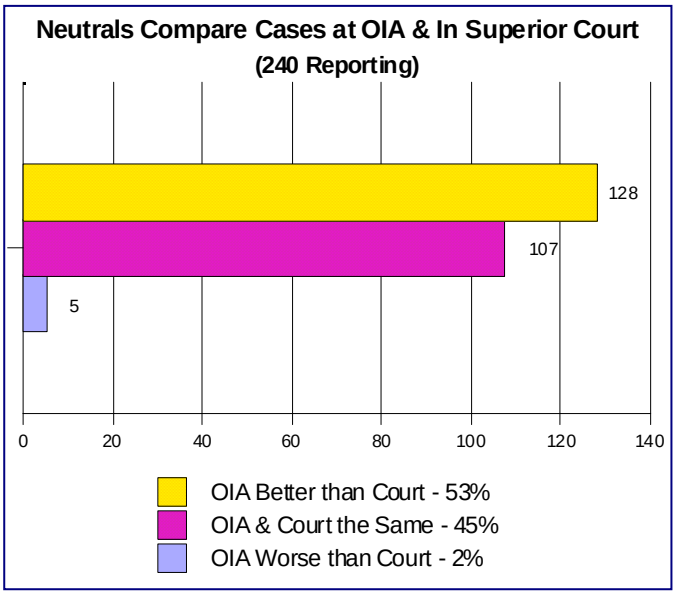
The actual number returned in 2008 was 442. Sixty-three were blank and are not included in the following discussion.

As mentioned in Section II.A, a shorter form of this evaluation will be sent out to the parties beginning in January 1, 2009. See Exhibit C.

Neutral Arbitrators' Opinions Regarding OIA System

Feature of OIA System	Works Well	Needs Improvements
Manner of NA's appointment	268	2
Early Management Conference	282	1
Availability of expedited proceedings	71	1
Award within 15 business days of hearing closure	85	10
Claimants' ability to have Kaiser pay NA	186	10
System's rules overall	255	5
Hearing within 18 months	131	2
Availability of complex/extraordinary proceedings	26	2

Finally, the questionnaires asked the neutrals whether they would rank the OIA experience as better or worse than or about the same as a case tried in court. For the first time, a majority of the neutral arbitrators judged the system to be better than a court trial. Fifty-four percent of the neutral arbitrators (240) made the comparison. One hundred twenty-eight, or 53%, said the OIA experience was better. One-hundred-seven, or 45%, said it was about the same. Only five -- two percent -- said the OIA experience was worse. Those who believe it was better said it was faster, more convenient, and economical, and praised its flexibility to accommodate the needs of individual cases. Three neutral arbitrators specifically praised the attorneys involved in the arbitrations, calling them more competent and professional, better prepared, and staying abreast of the case. One of the neutral arbitrators who rated it worse said that eighteen months to the hearing was too long and that neutral arbitrators should be given the e-mail addresses for attorneys. Overall, they rated the OIA's system and service highly. Other than the above comments, there were no comments about improvements.



The vast majority of the neutral arbitrators' comments were compliments on how well the *Rules*, system, or the OIA staff works or assurances that no changes need to be made. Those comments are deeply appreciated. The most common other comment was that 15 business days is too short for awards in complicated cases (12). The next most common comment (8) referred to difficulties involved with *pro per* claimants. There were five comments about the billing process this year; they did not refer specifically to either Kaiser or claimants. Four comments referred to e-mail, either obtaining the attorneys' e-mail addresses, getting documents by e-mail rather than hard copies, or that the OIA should have a better e-mail address.

X. TRENDS AND DATA OVER THE OIA'S TEN YEARS OF OPERATION.[71]

Since the OIA began operating on March 28, 1999, claimants have made 9,125 demands for arbitrations, 539 different people have served as neutral arbitrators, and 7,525 arbitrations have been resolved, either by the parties or by the neutral arbitrators.[72] This section uses the tenth anniversary and the remarkable amount of data that has been collected and published about this

[71]Technically, at the end of 2008, the OIA has administered arbitrations for 9 years and 9 months. The first year's report covered 12 months, but not a calendar year. The second report covered only nine months. Since the third report, covering 2001, the reports have concerned calendar years. For the sake of simplicity, however, the report will refer to 10 years.

If readers want a copy of the tables that contain statistics set out in the prior reports, as well as the statistics for this report, they are available from the OIA website or from the OIA.

[72]In 865 cases, the claimants did not opt in to the OIA and the demands were either returned to Kaiser for administration, settled or withdrawn. The OIA received one opt in in 2008 who had until some time in 2009 to decide.

arbitration system to highlight those elements that have shown change as well as the many more that have been relatively stable. For example, the number of neutral arbitrators, the percentage of neutral arbitrators who are retired judges, how neutral arbitrators are selected, the percent of claimants represented by counsel, and how cases close all have remained relatively stable. Many of the changes that do appear may be the result of parties becoming more familiar and comfortable with the arbitration system. Some may be the result of the sharp decline, since 2002, in the number of demands for arbitration.

A. While the Number of Demands for Arbitration Has Dropped, the Number of Neutral Arbitrator Has Remained Relatively Steady.

One of the most striking facts is the extent to which the number of demands for arbitrations has declined since 2002. The number reached a high of 1,053 in 2002.[73] In 2008, the OIA received 768. As the graph shows, the sharpest decline occurred between 2003 and 2004 (a decrease of 128), followed by the decrease between 2007 and 2008 of 55.

Even though the number of demands for arbitration has declined, the number of neutral arbitrators has stayed relatively stable. For the most part, the pool has contained between 280 - 310 people and 30 - 40% have been retired judges. The pool has ranged from 349 at the end of 2000 to 278 in 2007.

The percentage of neutral arbitrators who have served in any given year has dropped with the number of demands, since there are fewer opportunities to serve. It reached a high of 70% in 2003, when the OIA received 989 demands for arbitration and had 287 neutral arbitrators in its pool.[74] For the most part, the percent of neutral arbitrators who have served in any given year has been 57 - 63%. If the entire time is considered, 86% of the pool in 2008 has served at some time and the average number of selections is 16, or slightly more than 1.5 appointments a year. The number of neutral arbitrators who write awards also remained high, ranging from 72 (2008) to 93 (in 2004). Over the ten years, 319 different neutral arbitrators have written awards. Equally important, the vast majority of those neutral arbitrators, 68 - 79%, only wrote a single award in any year.[75] This wide spread distribution of work among members of the pool and corresponding

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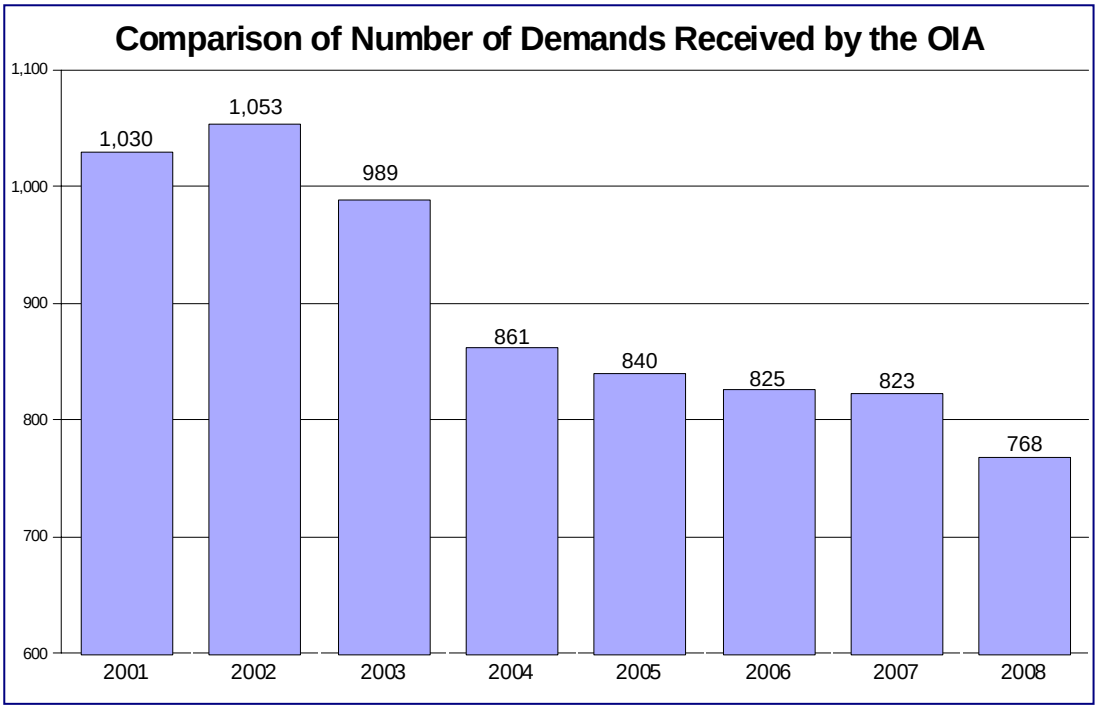
[73]In the first twelve months of operation, Kaiser sent not only 944 new demands for arbitration, but also 215 demands that had been made before the OIA existed. At that time, all claimants had to opt into the OIA system. The OIA administered only those cases when the claimants affirmatively agreed. Indeed, one of the biggest changes from the first year to the present is the almost complete switch from an "opt-in" system in 1999 (where arbitration is mandatory, but the claimant had to agree to have the OIA administer it) to the present where almost all arbitration demands arise from contracts which require OIA administration.

[74]In 2008, by contrast, there were 768 demands for arbitration and 286 neutral arbitrators in its pool. Thus, there were 221 fewer demands but only 1 fewer neutral arbitrator.

[75]If the entire period is considered, 108 of the 319 NAs, or 34%, have written only one. This number decreases each year.

lack of concentration are protections against "captive" neutrals, a key concern when the OIA was created.



B. Claims Overwhelmingly Allege Medical Malpractice

The overwhelming majority of demands for arbitration are, and have always been, claims for medical malpractice. This has ranged from 86 - 94%.[76] Benefit claims are generally less than two percent. This is the first year that lien cases comprised more than five percent. Lien cases are cases in which Kaiser serves a demand against a member who has, in a separate matter against a third party, such as a motorist, recovered money for services Kaiser provided the member. Although the Blue Ribbon Panel gave much attention to benefit claims, there have actually been more lien cases (162) than benefit cases (127), most in the past few years.

C. Approximately Seventy-Five Percent of Claimants Have an Attorney

The percent of cases with claimants who are not represented by an attorney has generally remained between 20 - 25%, reaching 29% the first year and dropping to 17% in 2004. Dealing with the concerns raised by *pro per* claimants has been a continuing issue for the OIA, the AOB, and neutral arbitrators. The OIA staff has spent many hours answering their questions. Both the

[76] The range may actually be smaller because during the early years the OIA categorized a larger percentage as "unknown" when the demand gave no specifics. Now, Kaiser provides information as to the type of claim being made.

AOB and the OIA have revised forms and the "pro per hand out"[77] to make them easier for *pro per* claimants to understand.

D. The Parties Select the Neutral Arbitrators by Strike and Rank in Seventy Percent of the Cases

The percentage of neutral arbitrators chosen by strike and rank versus those jointly selected has ranged from 65% (the first year) to 74% (2003). Since 2001, it has consistently been 70% or more. Similarly, the percentage of neutral arbitrators jointly selected who are members of the OIA pool has ranged from 62% (again, the first year) to 82% (2006). This suggests that attorneys who use our system now have a high level of comfort with the members of the OIA pool.[78]

E. Half of the Claimants Use Procedures to Delay Selecting The Neutral Arbitrator, but Time to Select Remains Consistent

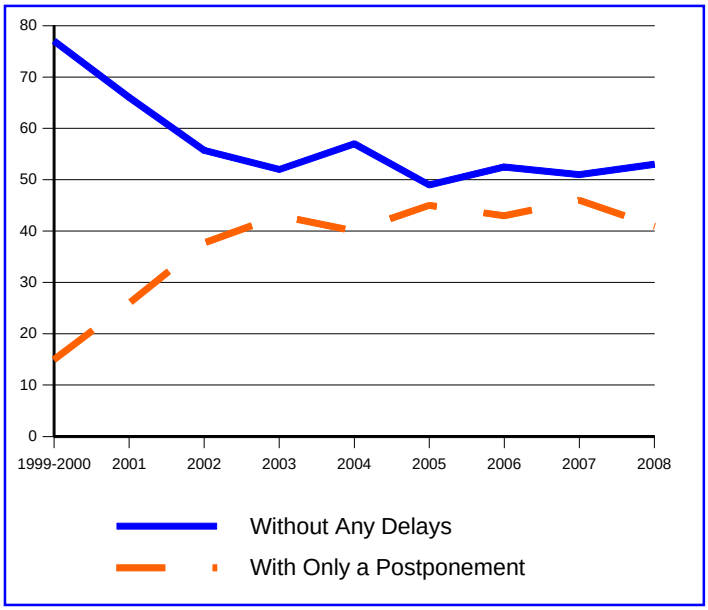
This is a second area where there has been a marked change from the first few years. Here the explanation seems to be that the parties, particularly the claimants, have learned the mechanisms (postponement and disqualification) that allow more time to select a neutral arbitrator.[79] In the first years, use of these tools was not that common. Since 2003, 43 - 51% of the cases had one or both. In 2000, only 23% did. Claimants made almost all of the postponements (3,251 out of 3,269) and the vast majority of disqualifications (480 out of 589). These trends are graphed on the next page:

[77]This is included as part of Rule 54, Exhibit B.

[78]There have only been eight cases in which the parties had to go to court to have a neutral arbitrator selected.

[79]We also began calling the parties to remind them of the deadline to return the list of possible arbitrators. During this call, we remind claimants that they can seek a postponement if they are not able to return their responses by the deadline.

Comparison of Percentage of Neutral Arbitrators Selected Without Delay vs. Neutral Arbitrators Selected With Only A Postponement



The length of time to select a neutral arbitrator, however, has remained consistent since 2003: 24 - 26 days for cases with no postponements and 111 - 114 days for cases where the claimants seek a 90 day postponement. The table below compares the differing forms of selecting a neutral arbitrator since 2003.

Comparison of No Delay vs. Delays and Average Number of Days to Select Neutral Arbitrators

	2003	2004	2005	2006	2007	2008	1999 - 2008
No delay	25 days 52%	24 days 57%	24 days 49%	25 days 53%	25 days 51%	26 days 53%	25 days, 58%
Only Postponement	114 days 43%	111 days 40%	111 days 45%	111 days 43%	113 days 46%	114 days 41%	112 days 37%
Only Disqual.	75 days 2%	51 days 1.5%	68 days 2.3%	59 days 2%	72 days 1%	58 days 3%	64 days 3%
Postponement & Disqual	162 days 4%	160 days 1.5%	173 days 3.7%	171 days 2%	155 days 2%	157 days 3%	161 days 3%
Total Selections	69 days	61 days	70 days	66 days	68 days	67 days	61 days

F. The Parties Consistently Close Most Cases Themselves

The most common way cases close has always been settlement (40 - 49%). This is followed by cases withdrawn by the claimant (20 - 28%); cases decided after a hearing (12 - 16%); and summary judgment (8 - 14%). The remaining cases were abandoned by the claimant at the beginning or dismissed by the neutral arbitrator.

In those cases in which the claimant won after a hearing, the awards have ranged from a single dollar to more than $6,000,000. The average is $344,216. Because the number of cases in any given year is small, the average can fluctuate quite a bit from year to year. The lowest average, $156,001, occurred in 2001, when the largest award was over $1,000,000. The largest, $587,616, was in 2007, which had the $6,000,000 award.

The percent of cases in which consumers prevailed after an award fell to 32% in 2008. This is the lowest percentage since 1999. One reason for this is that 16 lien cases went to hearing in 2008,[80] and all of them were decided in Kaiser's favor. If these 16 cases are excluded, consumers prevailed after an award 38% of the time.

Comparison of How Cases Closed

	2003	2004	2005	2006	2007	2008
Settlements	49 %	41%	40%	42%	42%	44%
Withdrawn	23 %	27%	27%	28%	26%	27%
Abandoned	4 %	4%	4.5%	5%	5%	5%
Dismissed	2 %	4%	2%	3%	3%	3%
Summary Judgment	9 %	8%	9%	8%	10.5%	8%
Awards	12 %	16%	16%	13%	13.5%	13%

G. Cases Close in Less Than A Year

For the most part, the length of time for cases to close has been growing steadily - though slowly - over the years. This can be seen by looking at the averages for the entire period, or for all cases, regardless of the type of closure. The average for all cases (which is the least susceptible to the influence of a single old case closing in a year) - was 319 in 2003 and reached 342 (the longest) in 2006. Since the number of cases in which parties believe that more than 18 months is needed to

[80] In all the prior years the OIA has operated, only eight lien cases total have gone to hearing.

close increases, it is not surprising that the average then increases. In 2008, however, the time to close decreased, over all and for all categories except cases that settled, which increased by 3 days.

Comparison of Average Number of Days to Close, by Disposition

	2003	2004	2005	2006	2007	2008	All
Settlements	317 days	320 days	311 days	325 days	337 days	340 days	309 days
Withdrawn	231 days	247 days	254 days	262 days	242 days	227 days	235 days
Summary Judgment	333 days	355 days	377 days	355 days	333 days	324 days	323 days
Awards	461 days	456 days	470 days	533 days	520 days	455 days	438 days
All Cases	319 days	326 days	330 days	342 days	336 days	325 days	311 days

The OIA closely follows each case that is still open after 15 months to make sure that the neutral arbitrator is managing it and that the case is not drifting. Because of this type of diligence by the neutral arbitrators and the OIA, only 33 cases – less than half of one percent – have closed late.

H. Claimants Shift Cost of Arbitration to Kaiser in Vast Majority of Cases

California law provides that, absent any other arrangement by the parties, the fees of the neutral arbitrator will be split evenly between the parties. The OIA *Rules*, however, provide several ways to shift those fees to Kaiser and most claimants use them. Thus, Kaiser has paid all of the neutral arbitrators' fees in 80 - 85% of the cases.[81] This is done most easily, and most commonly, by the claimants signing a form and agreeing not to use party arbitrators. However, each year in 5 - 8% of the cases, the claimants have requested a waiver based on financial hardship which also exempts them from paying the $150 filing fee or giving up the right to party arbitrators. In addition, a waiver created in 2003 by the California Legislature allows claimants who meet certain tests to avoid the $150 filing fee.[82] While some claimants file for both waivers, between 12 and 19 claimants each year request that only the $150 fee be waived, relying on the standard forms to shift the neutral arbitrators' fees to Kaiser.

[81]Statistics for costs really only exist for demands received after January 1, 2003, when state law required the OIA to disclose the amount of neutral arbitrators' fees and how the fees were split and therefore required the neutral arbitrators to inform the OIA. Prior to this, the OIA only had good records of the number of requests to waive these expenses for financial hardship.

[82]The filing fee has not increased in the 10 years of OIA operation.

I. Neutral Arbitrators and the OIA System Consistently Receive Positive Evaluations

The OIA has been sending out evaluations of the neutral arbitrators and the OIA since 2000. After the first year, the response rate was in the 50 percent range for the two years, dropping to the 40 percent range for the next two years, until it fell to 28% in 2005. After the OIA called the parties to request greater participation, the response rate has returned to the 50 percent range again. This is impressive as some of the attorneys have participated in the system for years, giving many evaluations of the same neutral arbitrators.

The evaluations ask, among other things, whether the neutral arbitrator treated them with respect, explained the process, and understood the facts and whether the parties would recommend them to others. The responses to the evaluations have generally been quite positive, especially from the attorneys. For them, the average for most questions range between 4.4 and 4.8, quite close to 5 (on a 1 - 5 range). The differences between years are quite small,[83] while the modes and medians are 5. This means that the most common response is the most positive. Fewer *pro per* claimants answer the evaluation,[84] and thus the average responses are more susceptible to a few lower rated evaluations. The averages are traditionally lower than responses from attorneys, though the modes and medians are generally 5. In 2008, however, the average responses increased for *pro per* claimants significantly on the most important questions.

The OIA began asking neutral arbitrators to evaluate the OIA system in 2000. The questions ask them to identify whether particular policies are useful or not, whether the OIA is helpful or responsive, and to compare the OIA system with the court system. The neutral arbitrators' evaluations have always been positive. Response rates average in the 80 percent range.

Based upon comments by neutral arbitrators, the time to prepare the award was changed in 2002 from 10 calendar days to 15 business days, essentially doubling the time. While almost all of the neutral arbitrators who compare the OIA system with court say that it is as good or better, in 2008, a majority answered that it was better.

[83]For example, an average would change from 4.7 to 4.8 or 4.6.

[84]In 2006, for example, only 15 responded.

XI. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

The Arbitration Oversight Board (AOB) is chaired by David Werdegar, M.D. M.P.H. Dr. Werdegar is the former director of California's Office of Statewide Health Planning and Development and is Professor of Family and Community Medicine, *Emeritus*, at the University of California, San Francisco, School of Medicine. The Vice-Chair of the AOB is Cornelius Hopper, M.D., Vice President for Health Affairs, *Emeritus*, of the University of California System.

The membership of the AOB is a distinguished one. There are eleven board members, besides the two officers. The members represent various stakeholders in the system, such as Kaiser Health Plan members, employers, labor, plaintiff bar, defense bar, physicians, and hospital staff. There are also outstanding public members. Only three of the thirteen are attorneys. No more than four may be Kaiser affiliated. Changing the *Rules* requires the agreement of two-thirds of all the members of the AOB, as well as a majority of the non-Kaiser related board members.

The members are, in alphabetical order:

Terry Bream, R.N., M.N. Administrator, Department of Clinical Services, Southern California Permanente Group, Pasadena.

Lark Galloway-Gilliam, MPA, Executive Director, Community Health Councils, Inc., Los Angeles.

Tessie Guillermo, President and CEO, Community Technology Foundation of California, San Francisco.

Dan Heslin, former Director of Employee Benefits at Boeing, Murrieta.

Mary Patricia Hough, medical malpractice attorney representing plaintiffs, San Francisco.

Bruce R. Merl, M.D., Director of The Permanente Medical-Legal/Risk Management/Patient Safety Group, Oakland.

Rosemary Manchester, MBA, a member of Kaiser for many years. She is a volunteer counselor with HICAP, the Health Insurance and Counseling Program, which does Medicare counseling, Sebastopol.

Kenneth Pivo, medical malpractice attorney representing respondents, Costa Mesa.

Honorable Cruz Reynoso, Professor of Law, King Hall School of Law, University of California, Davis, and former California Supreme Court Justice, Davis.

Charles Sabatino, Vice-President, Claims, Kaiser Foundation Health Plan, Oakland.

Al Ybarra, Secretary-Treasurer, Orange County Central Labor Council, AFL-CIO, Orange.

B. Activities

The AOB takes an active role. It meets quarterly to review operation of the OIA and receive reports from OIA staff. This includes quarterly reports of statistics similar to those included in the annual reports. The AOB also requested information about how the system operated in different geographic areas of the state. Charts comparing whether claimants are represented, how neutral arbitrators are chosen or cases close, and how long this takes on a geographic basis are included as Exhibit D. They provide the information for 2008 and the entire period are set out in the prior section. The AOB also requested information about the turn over in the neutral arbitrator pool, as opposed to merely totals. AOB questions about the efficacy of the Mandatory Settlement Meeting (MSM) led the OIA to realize that it was incorrectly including cases in which MSMs did not occur because the cases closed.

During 2008, the AOB had several discussions concerning Kaiser's process for providing medical records to members who ask for them both pre and post-arbitration. This resulted in the new form that asks claimants or the attorneys to evaluate the arbitration system, including the process for obtaining medical records, and their contact with the OIA.[85]

The AOB also spent considerable time discussing the types of waivers available to claimants to shift the cost of the neutral arbitrator or the arbitration filing fee to Kaiser. The Board was particularly concerned that they be explained as clearly as possible and considered changes in the forms themselves.

Officers of the AOB are in regular contact with the OIA by e-mail and by telephone. The AOB also reviews the draft annual report and comments upon it. Exhibit J is the AOB Comments on the Tenth Annual Report. Consistent with the AOB's suggestion in 2006, it is also separately available on the OIA website, www.oia-kaiserarb.com and will be sent to the neutral arbitrators, along with the summary and table of contents.

[85] Exhibit C.

XIII. CONCLUSION

This tenth annual report describes a mature arbitration system. While continually subject to further refinements, these improvements are often small and subtle. Again, as far as the data is able to measure the arbitration process, this report shows the goals of a fair, timely, low cost arbitration system that protects the privacy interests of the parties are being met.

Timeliness is the easiest to measure. The time to select a neutral arbitrator and to go through the arbitration process is many times faster than the pre-OIA system, and delay largely disappeared as an issue. The fact that no case closed after its time limit is good evidence that the arbitration process meets expectations of timeliness.

Cost is an area the OIA now measures. The $150 filing fee is lower than court filing fees (other than small claims). Only one claimant who sought a waiver of this fee was denied it and that claimant continued the case. In 85% of the cases with fees that began after January 1, 2003 and ended in 2008, the neutral arbitrators were paid by Kaiser.

The OIA continues to protect the confidentiality of the parties in this system. The OIA publishes information about cases on its website in response to California law, but no names of individual claimants or respondents are included, only corporate respondents.

Finally, the *Rules* and OIA procedures seek to promote fairness in the arbitration process and in its outcomes.

The selections are being spread out to a large number of neutral arbitrators. This includes a large number who preside over hearings. Spreading the work helps reduce the possibility of neutral arbitrators being dependent upon Kaiser for work.

The *Rules* give both parties the power to determine who their neutral arbitrator will be – or at least who their neutral arbitrator will not be. The OIA gives both parties identical information about the neutral arbitrators. This includes evaluations of the neutral arbitrators by the parties in earlier cases and redacted awards. The parties can jointly select anyone who agrees to follow the *Rules*, and either party can timely disqualify a neutral arbitrator after the selection.

The California Legislature and the Judicial Council have decided that disclosures about organizations involved in arbitrations helps promote fairer arbitrations. The OIA posts this information on our website for all to see and helps the neutral arbitrators comply with their obligations. The amount of information available to the parties has increased dramatically over the past ten years.

The composition of the pool of neutral arbitrators is balanced between those who have plaintiff's side experience and those who have defendant's side experience. More than 90% report medical malpractice experience.

The system is easier than a court system to access: the fee is only $150, no particular forms are required to demand arbitration, most documents can be faxed to the OIA (or arbitrators), and the neutral arbitrators' fees can be and generally are paid by Kaiser.

The OIA is evaluated by neutral arbitrators at the conclusion of cases. Next year, evaluations will be sent to the parties.

The OIA reports to the AOB regularly about the arbitration process.

The OIA publishes this report on the internet and sends a copy to the California Legislature and others who have asked for it. The annual reports provide more information about arbitrations involving Kaiser Permanente than any other arbitration system provides about its arbitrations.