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, 2010 - December 31, 2010

REPORT SUMMARY

This is the annual report the Office of the Independent Administrator (OIA) for 2010. It discusses 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:

- Over 90 percent of the neutral arbitrators and the parties said the OIA administered arbitration system was better than or the same as going to court.
- Most parties express satisfaction with the neutral arbitrators and would recommend them to others.
- With the consent of claimants, Kaiser paid all the neutral arbitrators' fees in 88% of the cases.
- Cases close, on average, in less than 12 months.
- The number of neutral arbitrators in the pool remains large, even as the number of demands for arbitrations has dropped.
- Approximately 25 percent of claimants bring cases without an attorney.

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

Developments in 2010

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

1. **Revised Handout for Claimants who are not Represented by Counsel.** The Arbitration Oversight Board (AOB), and the OIA again revised the handout sent to *pro pers* to further refine it and make it more complete. See Exhibit C.

[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.

2. **OIA Contract.** The AOB extended its contract with the OIA for another two years, to March 28, 2013.

3. **Comparison of Lien and Non-Lien Cases.** The AOB asked the OIA to analyze whether combining lien cases – brought by Kaiser – with the other cases – brought by members against Kaiser – affected the accuracy of the statistics in the annual report. The analysis showed there was no meaningful effect, given the small number of lien cases. See Exhibit D. Nevertheless, given the procedural differences between lien and non-lien cases, lien cases have been segregated out and are now discussed in a separate section. See Section IX.

4. **Background of Neutral Arbitrators.** The OIA sent a form asking the neutral arbitrators about their racial and ethnic background. See page 4.

5. **Solicitation of Women and Minority Neutral Arbitrators.** The OIA sent a notice to 49 minority and women's bar organizations in California advising them of the opportunity to apply to the pool, along with copies of the application and qualifications. See page 4.

Status of Arbitration Demands

The number of demands for arbitration continued to decline. Almost all of the claims are for medical malpractice. About 25% of claimants are not represented by counsel.

6. **Demands for Arbitration.** The number of demands continued to decline in 2010, when the OIA received 681 demands. This is 45 fewer than the OIA received in 2009. See pages 9 and 46.

7. **Types of Claims.** Almost 94% of the cases the OIA administered in 2010 involved allegations of medical malpractice. Less than 1% presented benefit and coverage allegations. Lien cases made up less than 4%. The remaining cases were based on allegations of premises liability and other torts, or unknown. The percentage of cases involving medical malpractice allegations has been consistent since the OIA began operations. See pages 9 and 48. Because lien cases differ significantly from cases brought by members, the statistics in this summary, like most of the statistics in the report, exclude lien cases.

8. **Proportion of Claimants Without Attorneys.** Nearly a quarter (24%) of the claimants were not represented in 2010. See pages 10 and 48.

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.

9. **Three-Quarters of Cases Closed by the Parties' Action.** During 2010, the parties settled 44% of the closed cases. The claimants withdrew 25% and abandoned another 4% by failing to pay the filing fee or get the fee waived. See pages 26 – 27.

10. **One-Quarter Closed by Decision of Neutral Arbitrator.** Eleven percent were closed through summary judgment, 3% were dismissed by neutral arbitrators, and 12% of cases closed after an arbitration hearing. In the cases that went to arbitration hearing, claimants prevailed in 33%. See pages 27 – 28.

11. **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 one award made after a hearing in 2010. A single neutral decided the other 75. See pages 19 – 20.

12. **Half of Claimants Received Some Compensation.** The most common way cases close (44%) is by the parties settling the dispute and the claimant receiving some money from Kaiser. Since one third of claimants win after an arbitration hearing, an additional 4% of all claimants received compensation. The average award was $392,461, the median was $250,000, and the range was from $20,000 to $2,110,000. See page 28 and Exhibit G.

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. Even with such requests, the process is expeditious.

13. **Almost Half of Neutral Arbitrator Selections Proceeded with No Delay; the Other Neutral Selections Had Delays Requested by Claimants.** Almost half (47.7%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (44.9%), a neutral arbitrator was disqualified (3.5%), or both (3.9%). Claimants requested all of the postponements. They also made 86% of the disqualifications. See pages 17 – 18. The percentage of cases in which the parties

chose to postpone the deadline has been roughly consistent since 2003. In 2010, it was 48.8%. See pages 18 – 19 and 49 – 50.

14. **Average Length of Time to Select Neutral Arbitrator Decreased for Most Parties.** The time to select a neutral in cases with no delay or no disqualification decreased by one to three days from 2009. Because of a few cases with multiple disqualifications, however, the average length of time to select a neutral arbitrator increased by one day. In comparison with the time described in the *Engalla* case, the 71 days to select a neutral arbitrator in 2010 is nine times faster. See pages 19 and 50.

15. **Cases Close, on Average, in Less than Twelve Months.** In 2010, the cases closed, on average, in 336 days, or 11 months, down from 357 days in 2009. One case closed late. Nearly 90% of the cases closed within 18 months (the deadline for most cases) and 65% closed in a year or less. Fourteen percent of the cases that closed in 2010 were designated complex or extraordinary or had their 18 month deadline extended by the neutral arbitrator. See pages 26 – 29 and 51.

16. **Hearings Completed Within Sixteen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 483 days (less than 16 months). 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 386 days, or less than 13 months. See pages 28, 29, and 30.

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 minimizes the likelihood of a captive pool of neutral arbitrators, beholden to Kaiser for their livelihood. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties the choice to select anyone they collectively want. The vast majority of neutral arbitrators the parties jointly select are in the OIA pool.

17. **Neutral Arbitrator Pool.** The OIA has 299 neutral arbitrators in its pool. Thirty-nine percent of them, or 117, are retired judges. See page 5.

18. **Neutral Arbitrator Backgrounds.** The applications filled out by the members of the OIA pool show that 146 arbitrators, or 49%, spend all of their time acting as a neutral arbitrator. The remaining members divide their time almost equally between plaintiff's side and defendant's side work, though not necessarily medical malpractice litigation. Neutral arbitrators' applications and updates also show that 268 of the arbitrators have medical malpractice experience. That is 90%. See pages 5 – 6.

19. **Fifty-Five Percent of Arbitrators Served on Arbitrations and Heard Cases.** Fifty-five percent of the neutral arbitrators in the OIA pool served on a case in 2010. Arbitrators averaged two assignments each in 2010. Sixty-three different neutrals, including arbitrators not in the OIA pool, decided the 83 awards (including lien awards) made in 2010. See pages 7 – 8.

20. **Sixty-Eight Percent of Neutral Arbitrators Selected by Strike and Rank.** The parties chose 68% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 32%. Two neutral arbitrators were appointed by the court. Fifty-nine percent of the arbitrators jointly selected were members of the OIA pool. In the other cases, the parties chose a neutral arbitrator who was not a member of the OIA pool. See page 13.

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 Arbitrators' Fees in 88% of Cases Closed in 2010.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2010, Kaiser paid the entire fee for the neutral arbitrators in 88% of those cases that had fees. See page 33.

22. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from $150/hour to $900/hour, with an average of $400. For the 479 cases that closed in 2010 and for which the OIA has information, the average fee charged by neutral arbitrators was $6,256.25. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was $6,557.42. The average fee in cases decided after a hearing was $22,897.15. See pages 33 – 34.

Evaluations

The OIA sends the parties and neutral arbitrators evaluations in cases which have neutral arbitrator participation. They ask the neutral arbitrators to evaluate the OIA system and the parties to evaluate their neutral arbitrators, and, beginning in 2009, the OIA system. The parties continue to give their neutral arbitrators positive evaluations. Similarly, the neutral arbitrators report that the system itself works well. Less than half of the parties returned their evaluations, while almost all of the neutral arbitrators returned theirs.

23. **Positive Evaluations of Neutral Arbitrators.** In 2010, the great majority of counsel for both sides reported that they would recommend their neutral arbitrator to another individual with a similar case. See page 41.

24. **Positive Evaluations of the OIA by Neutral Arbitrators.** Neutral arbitrators continue to give OIA procedures positive evaluations. Fifty-eight percent said that the OIA experience was better than a court system, and 41% said it was about the same. See pages 41 – 43.

25. **Positive Evaluations of the OIA by Parties.** Forty-four percent of attorneys and *pro pers* said that the OIA system was better than the court system, and 48% said they were the same. See page 45.

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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

The Office of the Independent Administrator (OIA) issues this report for 2010.[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 between Kaiser members and Kaiser. The contract 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 this report mainly focuses on what happened in the arbitration system during 2010, one section compares 2010 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 XII.

The arbitrations were controlled by the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of April 1, 2011 (Rules)*. The *Rules* consist of 54 rules in a 21 page booklet and are available in English, Spanish, and Chinese.[3] Some important features they contain include:

Procedures for selecting a neutral arbitrator rapidly;[4]

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

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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. Kaiser arranges for medical benefits by contracting 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 attached as Exhibit B. In the AOB's March 2011 meeting, the Board amended Rule 54 to incorporate the new pro per handout. (See Section II.A and Exhibit C.) To avoid any possible confusion, Exhibit B sets out the amended Rules. The only change is Rule 54.

[4]Exhibit B, Rules 16 and 18.

[5]Exhibit B, Rule 24.

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* establish for 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. 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 2010. 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. These four sections exclude lien cases. The next section presents all the analyses for lien cases. See Sections II.C and IX. The parties' evaluations of their neutral arbitrators and the parties and neutral arbitrators' evaluations of the OIA system are summarized in the following sections.[9] The report then compares the operation of the system over time. Finally, the report describes the AOB's membership and activities during 2010.

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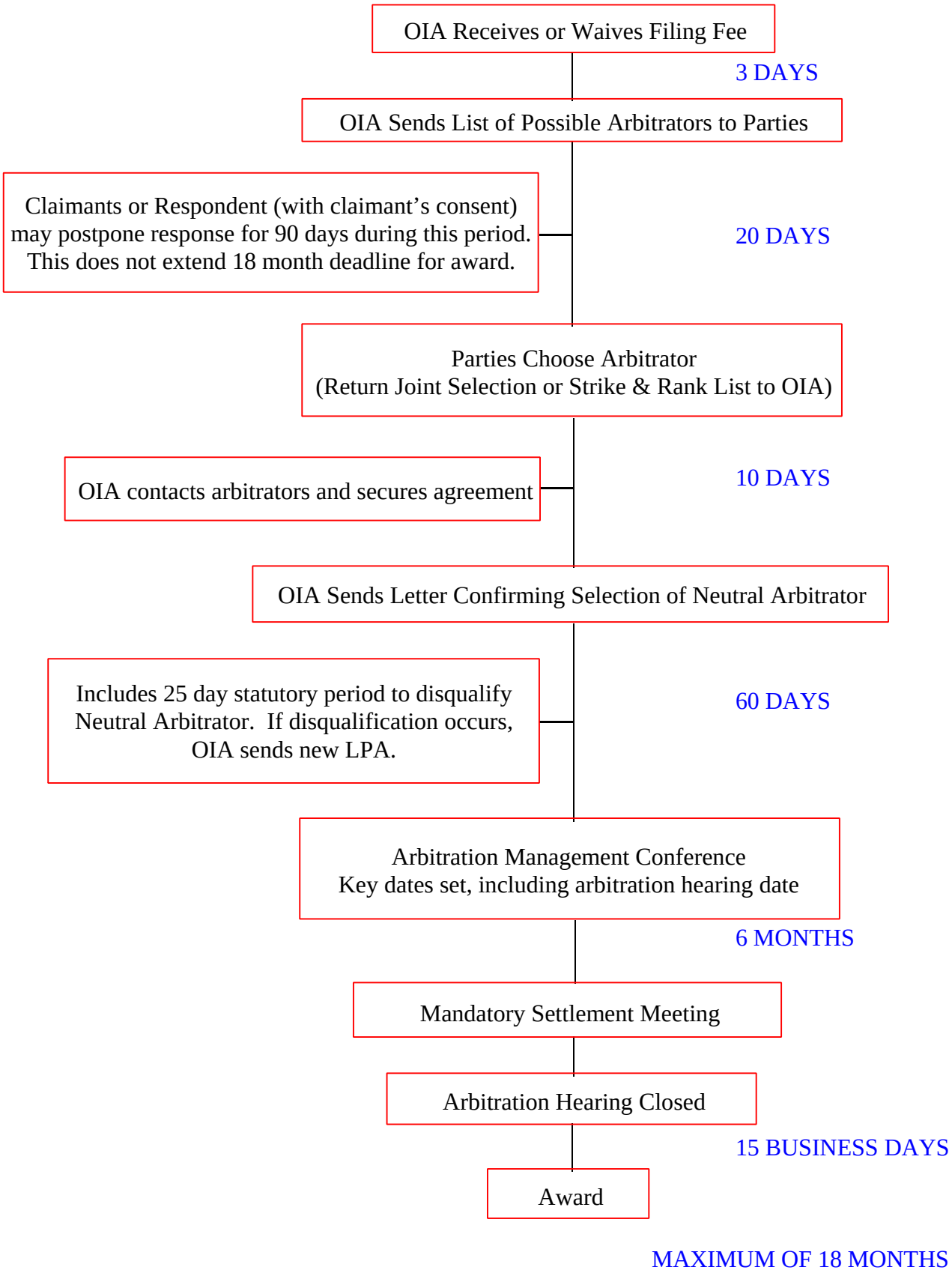
[6]Exhibit B, Rules 24, 28 and 33.

[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 website. In addition, a separate document that sets out the status of each recommendation is available from the website.

[9]Because these are anonymous, all of the evaluations are considered together, regardless of the type of cases.

Timeline for Arbitrations Using Regular Procedures



II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2010

A. Revised Handout for Claimants Who Are Not Represented by Counsel

As mentioned in prior reports, the AOB has expended considerable effort trying to make the system as easy as possible for claimants who are not represented by counsel. In 2010, the AOB and the OIA again revised the handout for *pro per* claimants. It is attached as Exhibit C.

B. OIA Contract Extended for Two More Years

The AOB's contract with the OIA was scheduled to end March 28, 2011. It was extended for another two years.

C. Comparison of Lien Cases with Non Lien Cases

The AOB was concerned whether aggregating lien and non-lien cases affected the accuracy of the statistics presented in the annual reports.[10] It asked the OIA to analyze this. The analysis, attached as Exhibit D, shows that there is little effect. Nevertheless, the AOB requested, and the OIA agreed, that it would segregate the lien cases in the annual report.

D. Background of Neutral Arbitrators

The OIA distributed a form to its neutral arbitrators asking them to voluntarily report their racial or ethnic background and included the form with its application for new neutral arbitrators. We have this information for 121 neutral arbitrators in the pool, or 41%. Eighty-three percent (100) identified themselves as Caucasian; seven as mixed (almost all Caucasian and Hispanic or Latino); four as African American; three as Hispanic or Latino, or Asian or Pacific Islander; and two each as Native American or declined to state.

E. Solicitation of Women and Minority Neutral Arbitrators

The OIA sent a notice to 49 minority and women's bar organizations in California, advising them of the opportunity to apply to the pool. They also received copies of the application and the qualifications.

[10]Lien cases are brought by Kaiser against its members. The bulk of the system's cases are brought by members against Kaiser and allege claims of medical malpractice

III. POOL OF NEUTRAL ARBITRATORS

A. Turnover in 2010 and the Size of the Pool at Year-End

On December 31, 2010, there were 299 people in the OIA's pool of possible neutral arbitrators. Of those, 117 were former judges, or 39%.

Members of the OIA pool are distributed into three geographic panels: Northern California, Southern California, and San Diego. Members who agree to travel without charge 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:	**299**
Southern California Total:	**143**
Northern California Total:	**143**
San Diego Total:	**58**

The three regions total 344 because 37 arbitrators are in more than one panel; 24 in So. Cal & San Diego, 4 in No. Cal & So. Cal, 1 in No. Cal & San Diego, and 8 in all three panels.

On January 1, 2010, the OIA had 275 people in its pool of possible arbitrators. During the year, 10 people left the pool. Thirty-three arbitrators joined the pool in 2010.[11] The OIA rejected two applicants because they failed to meet the qualifications.[12]

B. Practice Background of Neutral Arbitrators

OIA applications ask the applicants to allocate the amount of their practice spent in various professional endeavors. Based on these responses, the "average" neutral arbitrator in the OIA pool spends 64% 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, 11% as a respondent (or defense) attorney, 10% as a claimant (or plaintiff) attorney, and 12% in other forms of

[11]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 be filled in on-line rather than by hand or typewriter.

[12]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.

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. Forty-nine percent of the pool, 146 members, report that they spend 100% of their time that way.[13] 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	**12**	**82**	**31**	**12**	**16**	**146**

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

Percent of Practice Spent as an Advocate

Percent of Practice	Number of NAs Reporting Plaintiff Counsel Practice	Number of NAs Reporting Defendant Counsel Practice
0%	**227**	**231**
1 – 25%	**30**	**20**
26 – 50%	**24**	**24**
51 – 75%	**4**	**8**
76 – 100%	**14**	**16**

Finally, while the qualifications do not require that members of the OIA pool have medical malpractice experience, 90% of them do. At the time they filled out or updated their applications, 268 reported that they had such experience, while 31 stated they did not. 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.[14]

[13]One-hundred-seventeen members of the OIA pool are retired judges.

[14]Of the 31 who reported no medical malpractice experience in their applications, 20 of them have served as a neutral arbitrator in an OIA case. Eight of these neutral arbitrators have decided one to five cases. While some of these could have been decided on purely procedural grounds, their reports of medical malpractice experience may be outdated. Four of the 11 who had never served joined the pool in 2010.

C. How Many in the Pool of Arbitrators Have Served?[15]

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 of parties to jointly select arbitrators from both within and outside the pool are the two main factors which minimize possible bias.

1. The Number Who Served in 2010

In 2010, 179 different neutral arbitrators were selected to serve as neutral arbitrators in 579 OIA cases. The great majority (163) were members of the OIA pool. Thus, in 2010, 55% of the OIA pool served in a case. The number of times a neutral in the OIA pool served ranged from 0 to 22. The neutral arbitrator at the highest end was jointly selected 13 times. The average number of appointments for members of the pool in 2010 is 2, the median is 1, and the mode is 0.

2. The Number Who Wrote Awards in 2010

The group of neutral arbitrators deciding awards after hearing is similarly diverse. The 83 awards made in 2010 were decided by 63 different neutral arbitrators. Forty-eight of the arbitrators made a single award, while ten decided two. Five other neutral arbitrators decided three cases each, four of them writing awards in favor of both sides.

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 six 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, 68 different neutral arbitrators have made 83 awards of $500,000 or more in favor of claimants. Eight of these awards were made in 2010.

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

The awards have ranged from $500,000 to $6,000,236. After making an award for $500,000 or more, neutral arbitrators have served 849 times; 420 times because the parties jointly selected them. In 2010, 23 of them were selected in 135 cases, being jointly selected 72 times.

Of the 68 neutral arbitrators, 9 were never members of the OIA pool and 19 have left the pool for various reasons. Thus, at the end of 2010, there were 40 neutral arbitrators in the pool who have made awards of $500,000 or more. Thirty-two of the 40 neutral arbitrators made awards prior to 2010. Twelve of them have not served again.[16]

4. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times in 2010 with Cases Closed by Other Neutral Arbitrators

There were 9 neutral arbitrators who were selected 10 or more times in 2010. To compare their cases, the OIA reviewed the cases these arbitrators closed in 2009 and 2010 with the other cases that closed in those years with a neutral arbitrator in place. The following table shows the results.

Comparison of Cases Closed with Neutral Arbitrators Selected 10 or More Times in 2010 vs. Closed with Other Neutral Arbitrators

Cases Closed 2009 – 2010	**Cases with Neutral Arbitrators Selected 10 or More Times in 2010**		**Cases with Other Neutral Arbitrators**	
Settled	101	53.2%	517	48.9%
Withdrawn	35	18.4%	235	22.2%
Summary Judgment	19	10%	105	9.9%
Awarded to Respondent	23	12.1%	108	10.2%
Awarded to Claimant	5	2.6%	49	4.6%
Dismissed	3	1.6%	32	3%
Other	4	2.1%	12	1.1%
Total	190		1,058	

[16]Three of them, having left the pool for various reasons shortly after making their awards, rejoined the pool in 2010, two in the second half of the year.

5. The Number Named on a List of Possible Arbitrators in 2010

All but two 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 2010. The average number of Northern California arbitrators appearing on an LPA is 26, the median number is 27, and the mode is 25. The range of appearances is from 1 to 44 times.[17] In Southern California, the average number of appearances is 27, the median is 27, and the mode is 28. The range is from 1 to 42. In San Diego, the average is 9, the median is 9, and the mode is 8. The range of appearances is from 0 to 18. Two members of the pool joined December 27, 2010, and were not named on an LPA.

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 681 demands for arbitration in 2010. Geographically, 318 demands for arbitration came from Northern California, 315 came from Southern California, and 48 came from San Diego.[18]

A. Types of Claims

In 2010, the OIA administered 674 cases.[19] The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage. Medical malpractice cases make up 94% (632 cases) in the OIA system. Benefits and coverage cases represent less than one percent of the system (4 cases).

The following chart shows the types of claims the OIA administered during 2010.

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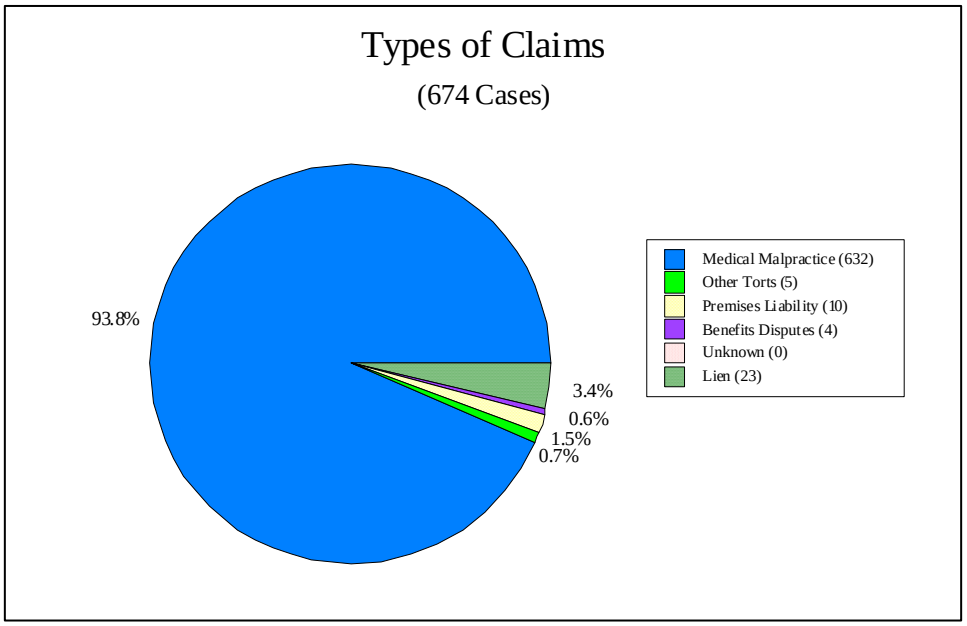
[17] In addition to chance, the range is affected by how long a given arbitrator has been in the pool, the number of members in each panel, and the number of demands for arbitration submitted in the geographical area for that panel. Some have been in the OIA pool since it started; two joined December 27, 2010, four days 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). Nineteen percent of the pool will not.

[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 or San Diego. Rule 8 specifies different places of service of demands for Northern and Southern California, including San Diego.

[19] A few of these demands do not proceed further in the system because they are "opt in" – based on a contract that required arbitration but not the use of the OIA. There were 14 "opt ins" in 2010. Seven of the claimants chose to have the OIA administer their claims. One affirmatively opted out of the OIA. Five cases never responded, and were therefore returned to Kaiser. One case was withdrawn before the deadline to respond. These 7 explain the difference between the 681 claims submitted and the 674 claims administered.



As discussed in Section I.B., the rest of this report, with the exception of Sections IX and X, excludes lien cases from its analysis and concentrates on the 651 mainly malpractice demands the OIA administered in 2010. Lien cases are discussed in Section IX.

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

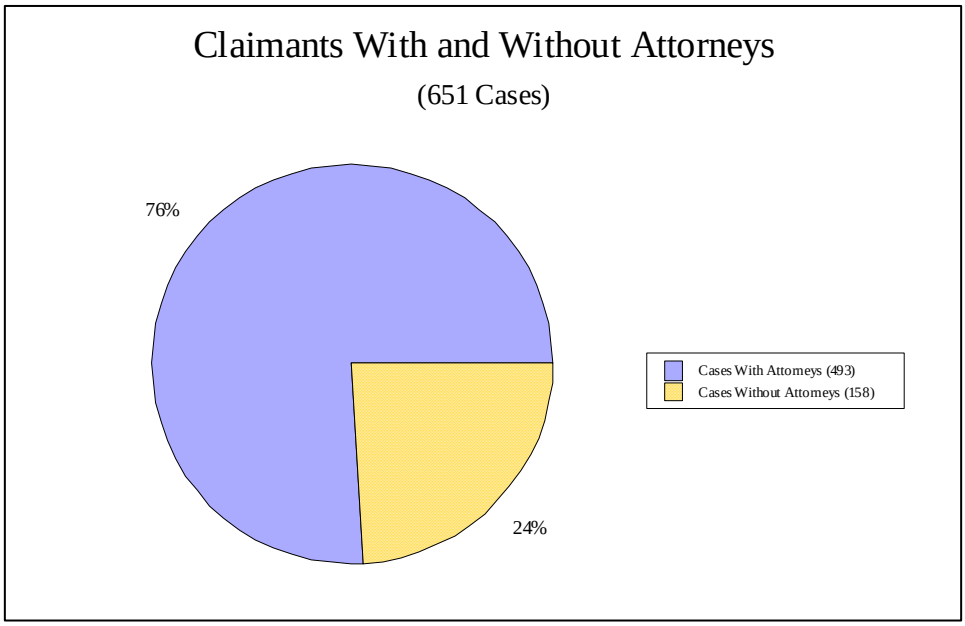
Under the *Rules*, Kaiser must submit a demand for arbitration to the OIA within ten days of receiving it.[20] In 2010, the average length of time that Kaiser took to submit demands to the OIA is 3 days. The mode is one. This means that usually Kaiser sent the OIA a demand on the day after Kaiser received it. The median is 2 days. The range is 0 – 26 days.

There were three cases in 2010 in which Kaiser took more than ten days to submit the demand to the OIA. They were submitted in 14, 17 and 26 days.

C. Claimants With and Without Attorneys

Claimants were represented by counsel in 76% of the cases the OIA administered in 2010 (493 of 651). In 24% of cases, the claimants represented themselves (or acted in *pro per*).

[20] Exhibit B, Rule 11.



V. SELECTION OF THE 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[21] and a claimant has either paid the $150 arbitration fee or received a waiver of that fee.

[21] "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.

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 may 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.[22] 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.[23] 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 stricken by either side and then totals the scores of the names that remain. The person with the best score[24] is asked to serve. This is called the "strike and rank" procedure.

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

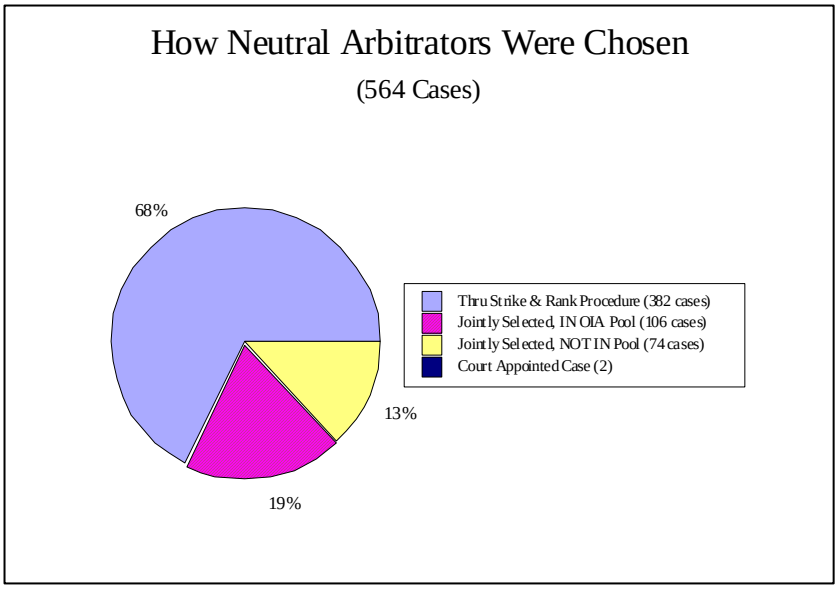
[23]Some neutral arbitrators who do not meet our qualifications – for example, they might have served as a party arbitrator in the past three years for either side in a Kaiser arbitration – do serve as jointly selected neutral arbitrators. There is, however, one exception: If pursuant to California's ethical standards for neutral arbitrators, a neutral arbitrator has promised not to take another case with the parties while the first remains open 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.

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

A significant number of OIA administered cases close before a neutral arbitrator is selected, and even before that process is begun. In 2010, 62 cases either settled (27) or were withdrawn (35) without a neutral arbitrator in place.[25] 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 564 neutral arbitrators selected in 2010, 180 were jointly selected by the parties (32%) and 382 (68%) were selected by the strike and rank procedure. Two neutral arbitrators were selected by court order. Of the neutral arbitrators jointly selected by the parties, 106 (59%), were members of the OIA pool, though not necessarily on the LPA sent to the parties. In 74 cases (41%), the parties selected a neutral arbitrator who was not a member of the pool. Six of these neutral arbitrators account for 63 of the joint selections.[26]



[25] These cases included both cases with attorneys and cases where the claimant was in *pro per*. The disposition varied however. In the 21 *pro per* cases that closed without a neutral arbitrator selected, 3 settled and 18 were withdrawn. In the 40 cases with an attorney, 23 settled and 17 were withdrawn. One case, where some but not all of the parties were represented, was also settled.

[26] While they have been invited, they prefer not to join the OIA pool. All but one belong to alternative dispute resolution organizations in Southern California.

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[27] – 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 62 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 313 cases in 2010 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. The claimants made all requests for Rule 21 postponements. Requests for a Rule 28 extension were made in 15 cases. In some, the Rule 21 request was made in prior years. There was one case where Rule 28 extensions were given without a prior Rule 21 postponement.[28]

The following chart shows what has happened in those 313 cases. One-hundred-ninety-six (196) of them (63%) now have a neutral arbitrator in place. Twenty-five of them closed before a neutral arbitrator was ever selected. For the remaining 92 cases, the deadline to select a neutral arbitrator is after December 31, 2010.

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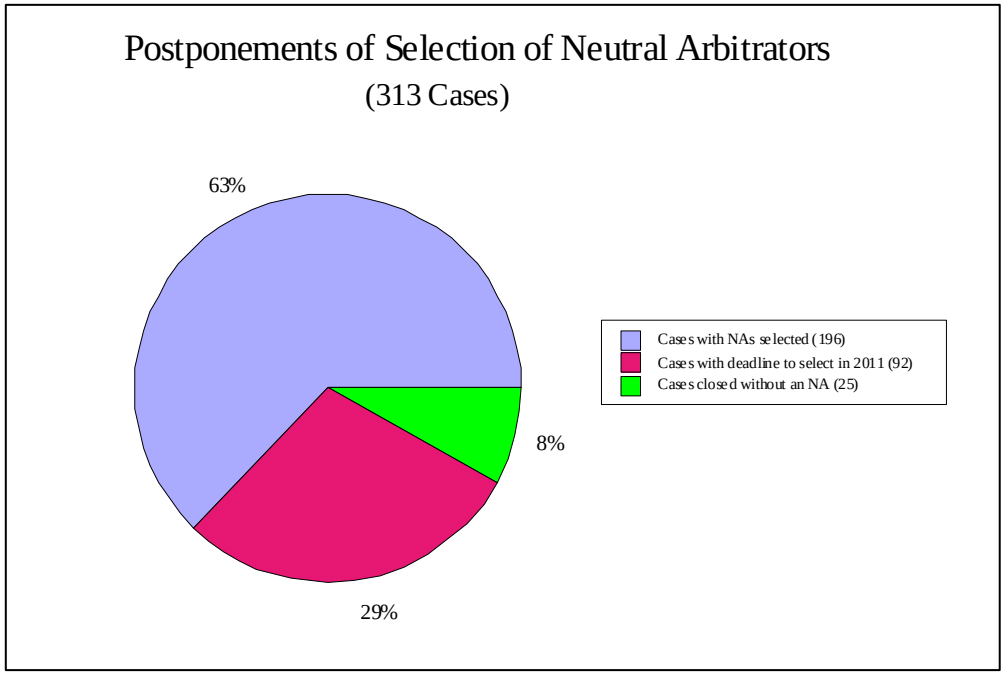
[27]The extension allows the claimant to send in a written notice of settlement or withdrawal without a neutral arbitrator being selected and sending out disclosure forms, reducing expenses generally.

[28]In the one case where this occurred, the claimant had filed several demands in the past and Kaiser sought an extension to have the state court enforce an order made by the neutral arbitrator in a prior arbitration.



D. Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators at the start of a case.[29] Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.[30] 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.[31]

Multiple disqualifications occur infrequently. In 2010, neutral arbitrators were disqualified in 39 cases. Twenty-six cases had a single disqualification. Eight cases had two disqualifications,

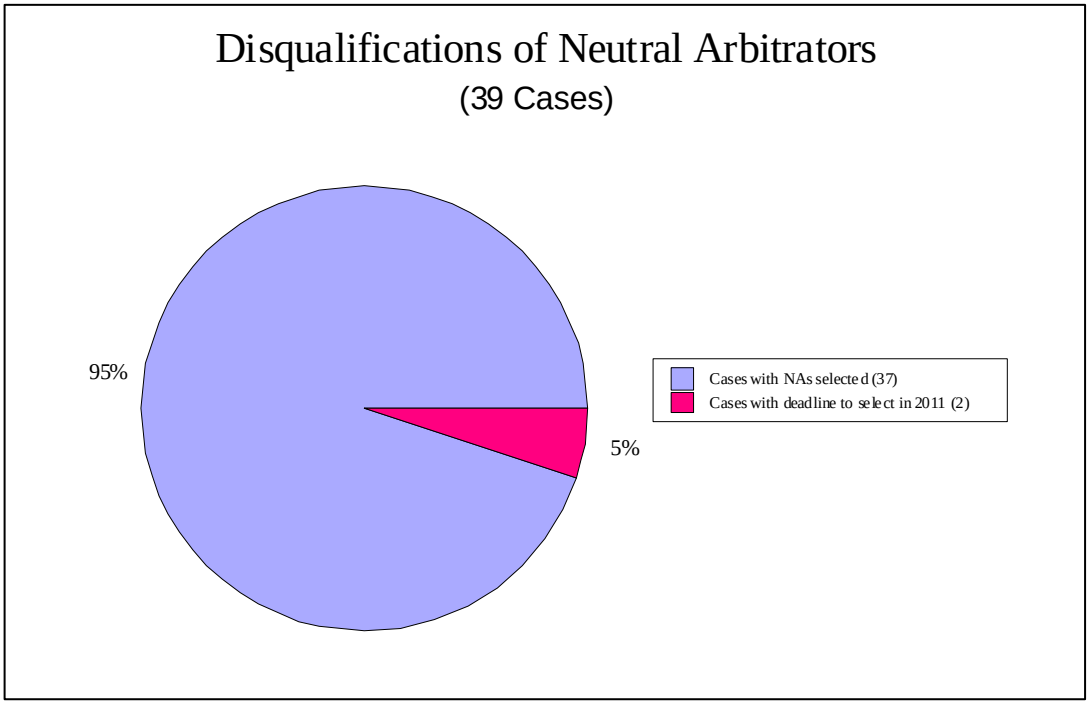
[29]California Code of Civil Procedure § 1281.91; see also Exhibit B, Rule 20.

[30]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.

[31]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.

two cases had four, two cases had six, and one case had eight.[32] In 37 cases with a disqualification, a neutral arbitrator had been selected at the end of 2010. In two cases with a disqualification, the time for the neutral arbitrator selection had not expired by the end of the year.

Because of these multiple disqualifications, these 39 cases represent 70 neutral arbitrators who were disqualified in 2010. The neutrals were disqualified by the claimants' side 60 times, and by Kaiser 10 times.



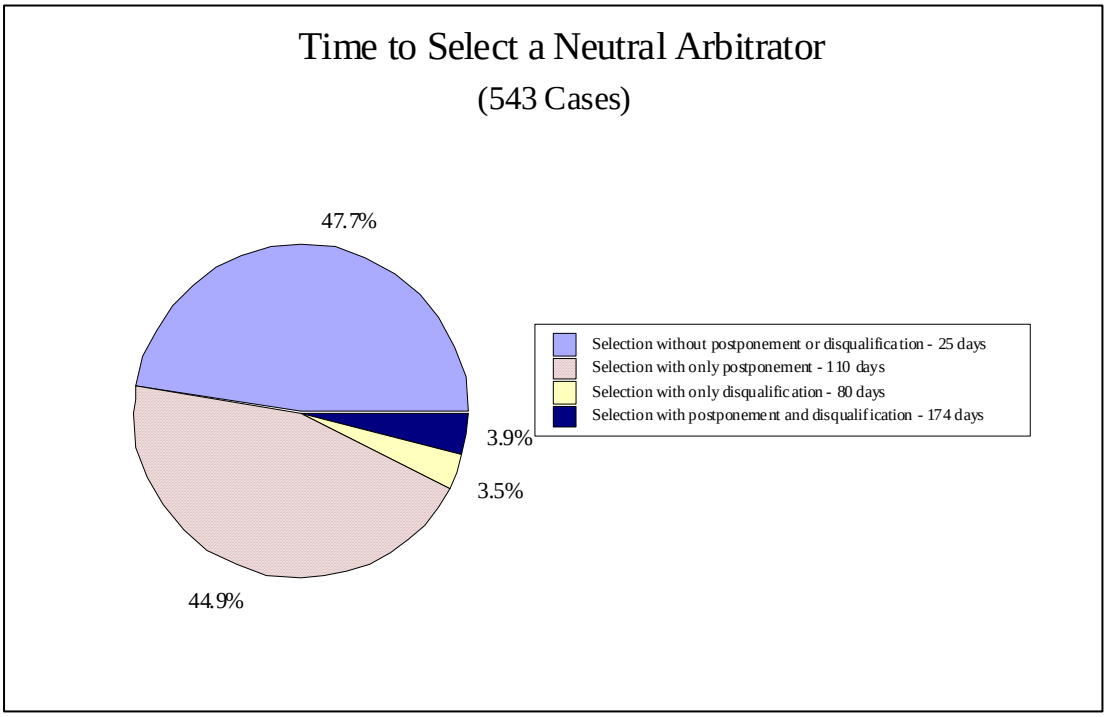
E. Length of Time to Select a Neutral Arbitrator

This section considers 543 cases in which a neutral arbitrator was selected in 2010.[33] 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.

[32] 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.

[33] Twenty-one cases in which a neutral arbitrator was selected in 2010 are not included in this section. In these 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, became seriously ill, was made a judge, or made disclosures in the middle of a case – because of some event occurring after the initial disclosure – and was disqualified. 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.

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 543 cases. The four categories are displayed in the following chart.



1. Cases with No Delays

There were 259 cases where a neutral arbitrator was selected in 2010 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 25 days, the mode is 23 days, the median is 25 days, and the range is 2 – 67 days.[34] This category represents 47.7% of all neutral arbitrators selected in 2010.

[34]In the case that took 67 days to select a neutral arbitrator with no delays, the claimant was not represented. When the OIA called to remind her of the deadline to return the LPA, the claimant informed the OIA that she had talked with prospective counsel who informed her that her case was barred by the statue of limitations and that she would therefore be withdrawing her demand. The OIA therefore sent a withdrawal form for her to sign and return, without putting a neutral arbitrator in place. After giving the claimant more than three weeks to return the form, the OIA used the LPA returned by Kaiser to select a neutral arbitrator.

2. Cases with Postponements

There were 244 cases where a neutral arbitrator was selected in 2010 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 prior years, but the neutral arbitrator was actually selected in 2010. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is only one 90 day postponement is 110 days. The average number of days to select a neutral arbitrator in those cases is 110 days, the mode is 118 days, the median is 115 days, and the range is 21 – 188 days.[35] This category represents 44.9% of all cases which selected a neutral arbitrator in 2010.

3. Cases with Disqualifications

There were 19 cases where a neutral arbitrator was selected in 2010 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 prior years. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96, if there is only one disqualification.[36] The average number of days to select a neutral arbitrator in the 19 cases is 80 days, the median is 63 days, the mode is 63, and the range is 41 – 139 days.[37] Disqualification only cases represent 3.5% of all cases which selected a neutral arbitrator in 2010.

4. Cases with Postponements and Disqualifications

There were 21 cases where a neutral arbitrator was selected in 2010 after a postponement and the disqualification of a neutral arbitrator. Again, this includes cases where a postponement or disqualification was made in prior years. 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 174 days, the

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[35]In the case which took 188 days to select a neutral arbitrator with a postponement, the claimant was in *pro per*. After requesting a 90 day postponement, he requested additional time under Rule 28 because he was having difficulties obtaining medical records from Kaiser. He was a member in one geographic area but he was complaining about services provided and seeking specific medical records from another. There was no dispute that he did not have them. The OIA initially granted his request for 60 days. He subsequently requested more time because he still had not received the records. The OIA granted an extension until 20 days after the records were sent.

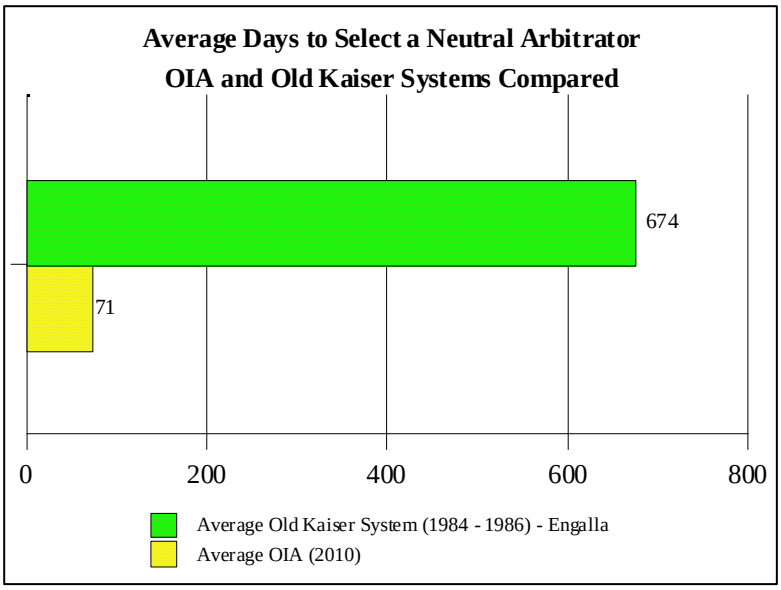
[36]The 96 days is comprised of the 33 days to select the first neutral arbitrator; the 30 days for the statutory periods for disclosure, disqualification, and service under the California Code of Civil Procedure; and then 33 days to select the second neutral arbitrator. The amount of time increases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

[37]There were two cases where it took 139 days to select a neutral arbitrator. The complainants were represented by the same counsel. In one, he disqualified 9 neutral arbitrators, 6 of them in 2010, before the parties jointly selected a neutral arbitrator. In the other, he disqualified 6 neutral arbitrators, all of them in 2010, before accepting a randomly selected neutral arbitrator.

mode is 158, the median is 160 days, and the range is 106 – 301 days.[38] These cases represent 3.9% of all cases which selected a neutral arbitrator in 2010.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 71 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*[39] 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 following chart, in 2010, the OIA system was more than 9 times faster.



F. Cases With Party Arbitrators

In medical malpractice cases in which the claimed damages exceed $200,000, a California statute gives parties a right to proceed with three arbitrators: one neutral arbitrator and two party arbitrators.[40] 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

[38] In the case where it took 301 days to select a neutral arbitrator, the complainant was in *pro per*. She obtained a 90 day postponement and disqualified a total of 9 neutral arbitrators, 8 of them in 2010, before being satisfied with a randomly selected neutral arbitrator.

[39] 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.

[40] California Health & Safety Code §1373.19.

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.

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.

Few party arbitrators are being used in our system. In 2010, party arbitrators signed the award in only 1 of the 76 cases in which the neutral arbitrator made an award. The remaining 75 cases were decided by a single arbitrator. The one case with party arbitrators closed in 448 days after a hearing that was decided in favor of Kaiser.[41]

Of the 645 cases that remained open at the end of 2010, party arbitrators had been designated in 5 of them. In three of those, the OIA had designations from both parties; in the other two, 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

[41]Cases with party arbitrators often take longer to have the arbitration hearing. The average for all cases to close is 336 days. (See generally Section VII.)

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 contacts neutral arbitrators a second time, asking for confirmation. The second notice 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, 14 different neutral arbitrators were suspended 19 times in 17 cases in 2010. Two neutral arbitrators were still 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) or to provide fee information as required by State law. See Section VIII.C.3.

A. Neutral Arbitrator's Disclosure Statement

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 2010, two neutral arbitrators were suspended until they made their disclosures. One was still suspended at the end of the year.

B. Arbitration Management Conference

The *Rules* require the neutral arbitrator to hold an AMC within 60 days of his or her selection.[42] It was the feature of the OIA system that neutral arbitrators rated second highest in their questionnaire responses. (See Section X.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. Five neutrals were suspended in six cases for failing to return an AMC form. All had complied by the end of the year.

[42]Exhibit B, Rule 25.

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.[43] The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. In 2010, the OIA received notice from the parties in 320 cases that they have held an MSM. Forty-one of them reported that the case had settled at the MSM. One of these cases involved a *pro per* claimant. In 38 cases, neither party returned the MSM form to the OIA by the end of 2010.

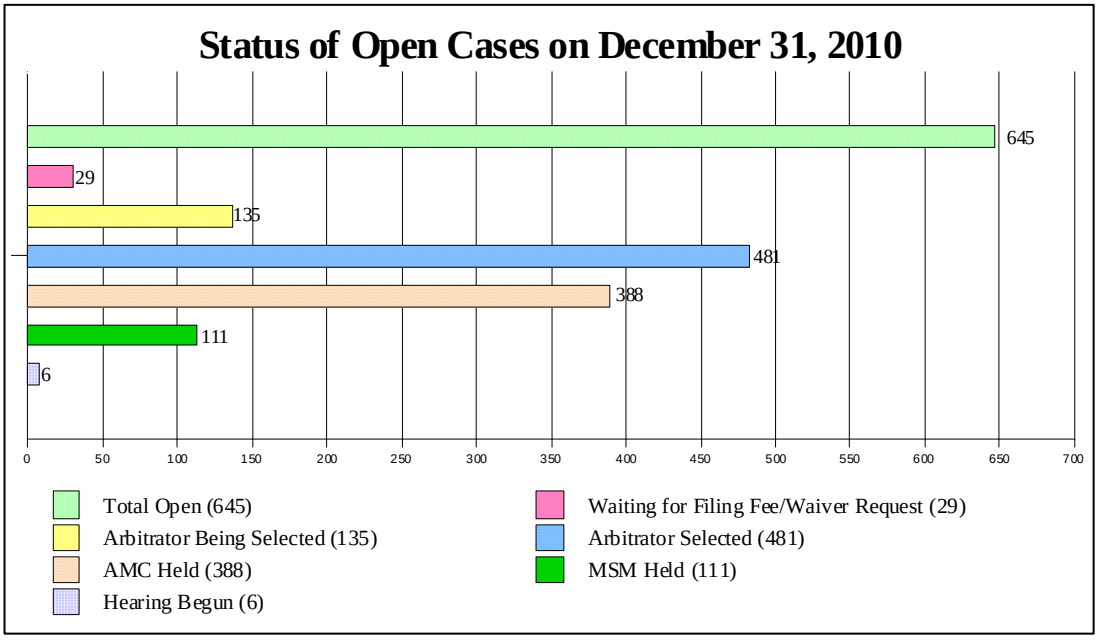
D. Hearing, Award, and the Aftermath

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*. Three neutrals were suspended until they served their late awards. Four neutral arbitrators were suspended in six cases for failing to provide the amount of their fee and the fee allocation required by California Code of Civil Procedure § 1281.96. All but one had complied by the end of 2010.

E. Status of Open Cases Administered by the OIA on December 31, 2010

On December 31, 2010, there were 645 open cases in the OIA system. In 29 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 135 cases, the parties were in the process of selecting a neutral arbitrator. In 481 cases, a neutral arbitrator had been selected. Of these, an arbitration management conference had been held in 388. This is 60% of all open cases. In 111 cases, the parties had held the mandatory settlement meeting. In six cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the award. The following chart illustrates the status of open cases.

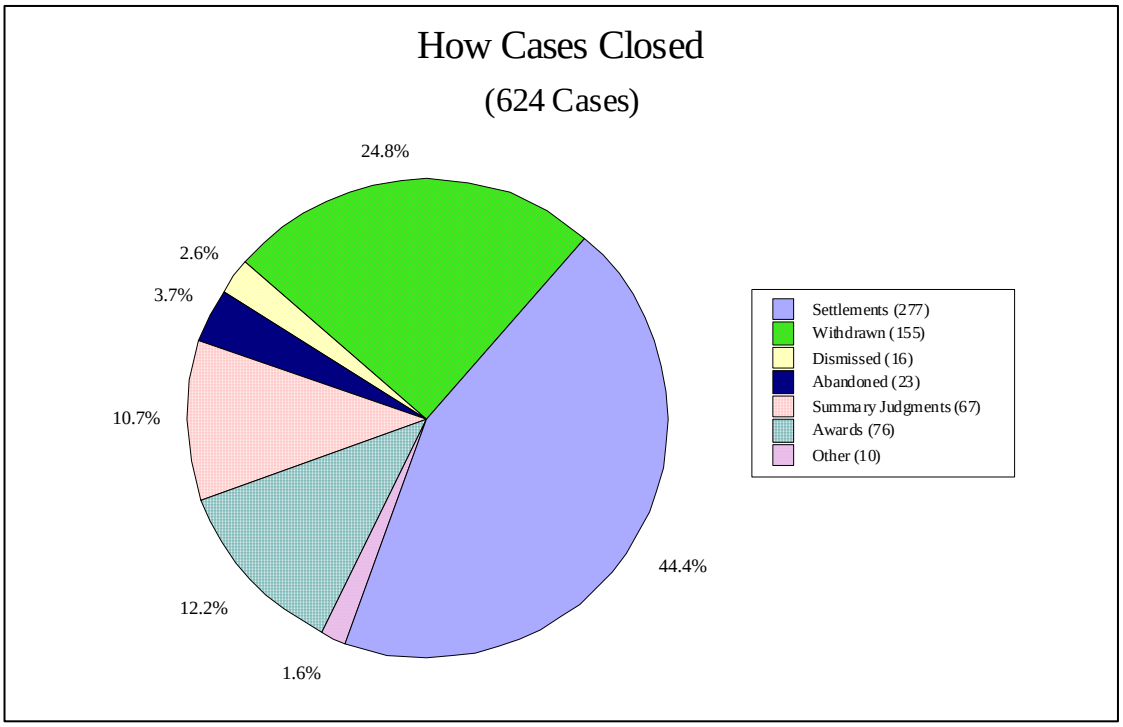
[43] As the settlement meeting is supposed to be conducted without the appointed neutral arbitrator and in a form agreed upon by the parties, the OIA has no real way to track whether the event has occurred except for receiving the forms from the parties. The OIA has no power to compel them to report 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.



VII. THE CASES THAT CLOSED

In 2010, 624 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 26 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 chart on page 25 shows the length of time to close, again by manner of closure.[44]

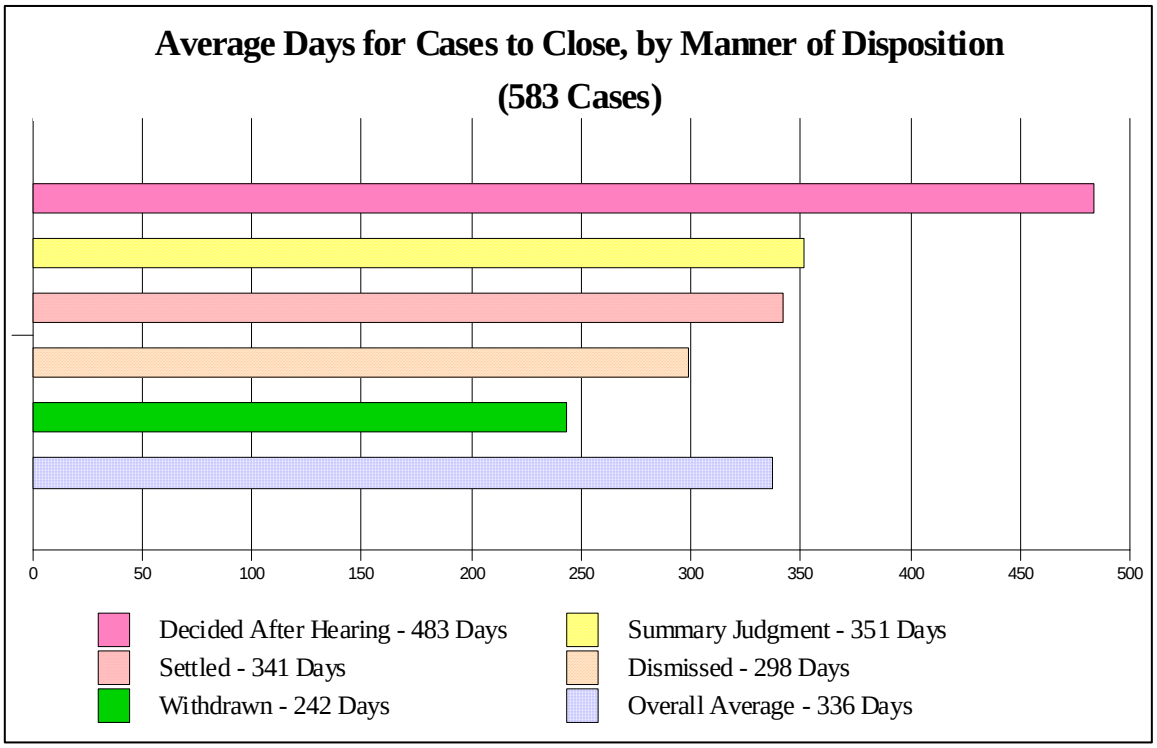
[44]There were ten cases that closed because the case was consolidated with another, had a split outcome, or judgment on the pleadings. (A split outcome means that there was more than one claimant and they had different outcomes.) As they represent less than two percent of the total of all closed cases,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



As shown on the following chart, cases closed on average in 336 days, or 11 months.[45] This includes all cases regardless of procedure: regular, expedited, complex, extraordinary, and cases whose deadlines were extended under Rule 28. The median is 316 days. The mode is 282 days. The range is 2 – 1,282 days. One case closed late.[46]

[45] 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 583 closed cases, not 624. It excludes 23 abandoned cases, 14 cases that were withdrawn or settled before the fee was paid, and 4 cases that were consolidated or closed other ways.

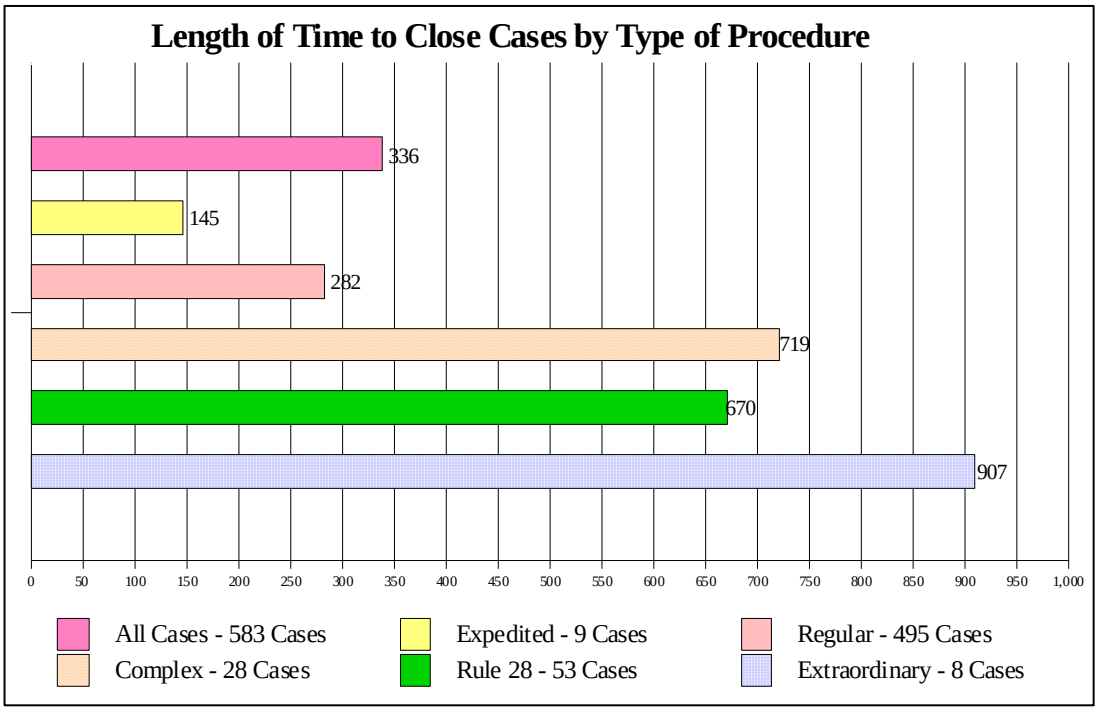
[46] The one case that closed late closed in 996 days. The claimant was represented by counsel and it closed after a hearing with an award in favor of the claimant. After a 90 day postponement, the hearing was originally set for October 2008, and then continued to May 2009 at the request of the parties. Because that would exceed the 18 month deadline, the neutral arbitrator used Rule 28 to extend that deadline. In May 2009, the hearing was started and then suspended because of new information. The hearing resumed in December 2009, with a post hearing briefing schedule that continued through May 3, 2010. Because of all the evidence in the case, the neutral arbitrator's award was served 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. Nearly 90% of the cases are closed within this period, and nearly sixty-five percent 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.[47]

The following chart shows the average time to close based by type of procedure.

[47] 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. Eleven cases that closed in 2010 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 the following page.



A. How Cases Closed

1. Settlements – 44% of Closures

During 2010, 277 of the 624 cases settled. This represents 44% of the cases closed during the year. The average time to settlement was 341 days, or about 11 months. The median is 332, the mode is 259, and the range is 5 – 1,282 days.[48] In 18 settled cases (6.5%), the claimant was in *pro per*. Forty-one of these cases closed at the mandatory settlement meeting.

2. Withdrawn Cases – 25% of Closures

In 2010, the OIA received notice that 155 claimants had withdrawn their claims. In 48 (31%) of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons. 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

[48] The case that took 1,282 days to settle was designated extraordinary. The claimant began without an attorney, but obtained one. It was designated extraordinary because of medical issues. The case was set for hearing in August 2009, but settled before the hearing. Because a minor's compromise was required, the case did not close for almost another year due to issues about where the petition should be filed, who was a proper petitioner, and delay in filing by claimant's attorney.

dismissed, or "settled" and enter the closure accordingly. Twenty-five percent of closed cases were withdrawn.

The average time for a party to withdraw a claim in 2010 is 242 days. The median is 198 days. The mode is 356 days, and the range is 2 – 989 days.[49]

3. Abandoned Cases – 4% of Closures

Claimants failed to either pay the filing fee or obtain a waiver in 23 cases.[50] These were therefore deemed abandoned for non-payment. In 15 of the 23 cases, 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.

4. Dismissed Cases – 3% of Closures

In 2010, neutral arbitrators dismissed 16 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Fifteen of these closed cases involved *pro pers.*

5. Summary Judgment – 11% of Closures

In 2010, 67 cases were decided by summary judgments granted to the respondent. In 46 of these cases (69%), the claimant was in *pro per*. Failing to have an expert witness (29 cases), failing to file an opposition (12 cases), exceeding the statute of limitations (14 cases), and no triable issue of fact (11 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.

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[49]The case that was withdrawn after 989 days, the claimant was originally represented by counsel. The case was designated complex as it involved two different theories of negligence. The first neutral arbitrator resigned after 11 months. On the eve of a hearing, the claimant attorney sought a continuance based on ill health, which was granted. The claimant attorney did not participate in a conference call to reschedule and it was discovered that the claimant attorney had been arrested for embezzlement. Ultimately the claimant attorney pled no contest to the charge, was released from jail, ordered to stay away from clients, and disbarred. The neutral arbitrator removed the claimant attorney from the case and set a conference call with the claimant and respondent attorney. The claimant withdrew the case.

[50]The arbitration filing fee is $150 regardless of the number of claimants or claims. This is significantly lower than court filing fees except for small claims court. If a Kaiser member's claim is within the 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.

The average number of days to closure of a case by summary judgment in 2010 is 351 days. The median is 337 days. The mode is 234. The range is 161 – 866 days.[51]

6. Cases Decided After Hearing – 12% of Closures

a. Who Won

Twelve percent of all cases closed in 2010 (76 of 624) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 51 of these cases, or 67%. In six of these cases, the claimant was in *pro per*. The claimant prevailed in 25 of them, or 33%. None was a *pro per* claimant.

b. How Much Claimants Won

Twenty-five cases resulted in awards to claimants. One claimant was awarded $2,110,000. The range of relief is $20,000 – $2,110,000. The average amount of an award is $392,461. The median and mode are $250,000. A list of the awards made in 2010 is attached as Exhibit G.

c. How Long It Took

The 76 cases that proceeded to a hearing in 2010, on average, closed in 483 days. The median is 443 days. The mode is 282 days. The range is 128 – 1,243 days.[52]

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.[53]

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[51]The claimants in the case that took 866 days to close by summary judgment were in *pro per*. They disqualified the first neutral arbitrator and requested a 90 day extension. Once a neutral arbitrator was in place, the claimant's representative (a daughter), first obtained a delay by requesting the neutral arbitrator designate the case complex over the respondent attorney's objection, a contested issue that occupied several months, and then moved to continue the summary judgment motion for 5 months.

[52]The case that took 1,243 days to close after a hearing was designated extraordinary. The neutral arbitrator had been jointly selected. It was originally designated complex because a new party was added. After 28 months and because of a state court lawsuit, the parties reached an understanding the claimant would dismiss the demand without prejudice, but could file it again. Two months later, when the state court action was dismissed, the case was reopened with the same neutral arbitrator. The case was then designated extraordinary.

[53]Exhibit B, Rules 33 – 36.

In 2010, claimants in 11 cases requested that their cases be resolved in less than the standard eighteen months. Nine of the requests were made to the OIA, which granted all but two of them. The other two requests were made to the neutral arbitrators, who granted them. Kaiser objected to one of the requests, which the OIA granted.

The OIA had four open expedited cases on January 1, 2010. Nine expedited cases closed in 2010, including three of the four cases that were open at the beginning of the year.[54] Four cases settled, three were withdrawn, and two were decided after a hearing, one in favor of the claimant and one in favor of Kaiser. The average for the nine cases to close is 145 days (less than five months), the median is 94 days, and the range is from 17 to 414 days.[55] Three expedited cases remained open at the end of 2010.

Although originally designed in part to decide benefit claims quickly, none of the expedited cases in 2010 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 – 30 months.[56] In 2010, 36 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. There were additional complex cases open that had been previously designated. Twenty-eight complex cases closed in 2010. The average length of time for complex matters to close in 2010 is 719 days, about 24 months. The median is 690 days. The mode is 540. The range is from 259 to 989 days (about 33 months).[57]

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.[58] Six cases were designated extraordinary in 2010 and there were additional cases open that had been previously designated. Eight cases closed this year, five settled, one was withdrawn, and two were decided after a hearing

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[54]The fourth case had its designation changed to a Rule 28 complex case in 2010.

[55]In the expedited case that took 414 days to close, the claimant obtained a 90 day extension to select the neutral arbitrator and the parties jointly selected the neutral arbitrator. The expedited request was made to the neutral arbitrator, who granted it. The parties chose to mediate the case before the hearing date. It took about two months for the parties to agree upon all of the settlement details.

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

[57]The complex case that took 989 days to close is discussed in footnote 48.

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

with an award for respondent. The average number of days for an extraordinary case to close is 907 days, or 30 months. The range is 485 – 1,282 days (42 months).[59]

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 2010, the neutral arbitrators made Rule 28 determinations of "extraordinary circumstances" in 77 cases and extended these cases beyond their limit. In addition, 37 such cases remained open at the beginning of 2010. At the end of 2010, 50 cases remained open, with 57 cases having closed during the year. The average time in 2010 to close cases with a Rule 28 order is 637 days, about 21 months. The median is 593 days. The mode is 498 days. The range is 63 – 1,096 days.[60]

According to the neutral arbitrator orders granting the extension, the claimant's side requested 14, respondent's side requested 1, and the parties stipulated 10 times. Extensions were ordered six times over the respondents' objections and twice over the claimants' objections. Twelve orders noted that there was no objection. Fifty-four orders merely recited there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reason, the most common reason (eight orders) was procedural difficulties.

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.[61] 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.

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[59]The extraordinary case that took 1,282 days to close is discussed in footnote 47.

[60]In the case with a Rule 28 extension that took 1,096 days to close, the hearing was extended twice, once because of scheduling problems with doctors and the claimant attorney. Two neutral arbitrators recused themselves from the case and the third was jointly selected. The parties settled the case.

[61]California Code of Civil Procedure § 1284.2.

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. It was created by statute after the OIA began. 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.[62] 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 Arbitrators' 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 filing fee and the neutral arbitrators' fees. Claimants must disclose certain information about their income and expenses. If this waiver is granted, a claimant does not have to pay either the neutral arbitrator's fees or the OIA $150 arbitration filing fee, even if the claimant has a party arbitrator. This waiver form is based on the form used by the state court to allow a plaintiff to proceed *in forma pauperis*, but changed to make it simpler to understand. 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.[63] A claimant who obtains this waiver is still entitled to have a party arbitrator, but must pay for the party arbitrator.

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

[63]See Exhibit B, Rule 13.

3. How to Waive Only the Neutral Arbitrators' 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.[64] 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.[65] 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 2010, the OIA received 57 completed forms requesting waiver of the $150 filing fee. The OIA granted 54 and denied 3.[66] Nineteen of these claimants received both a waiver of the $150 arbitration filing fee and the waiver of the filing fee and neutral arbitrators' fees and expenses. By obtaining the waiver of the filing 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 Arbitrators' Fees and Expenses

In 2010, the OIA received 66 completed fee waiver applications and one remained from the prior year. The OIA granted 64 waivers of the arbitration filing fee and neutral arbitrators' fees, denied 2,[67] and 1 remains to be decided. Kaiser objected to three requests. The OIA granted one of these requests and denied the other two.

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.[68] We received fee information from neutral arbitrators in 479 cases that closed in 2010.

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

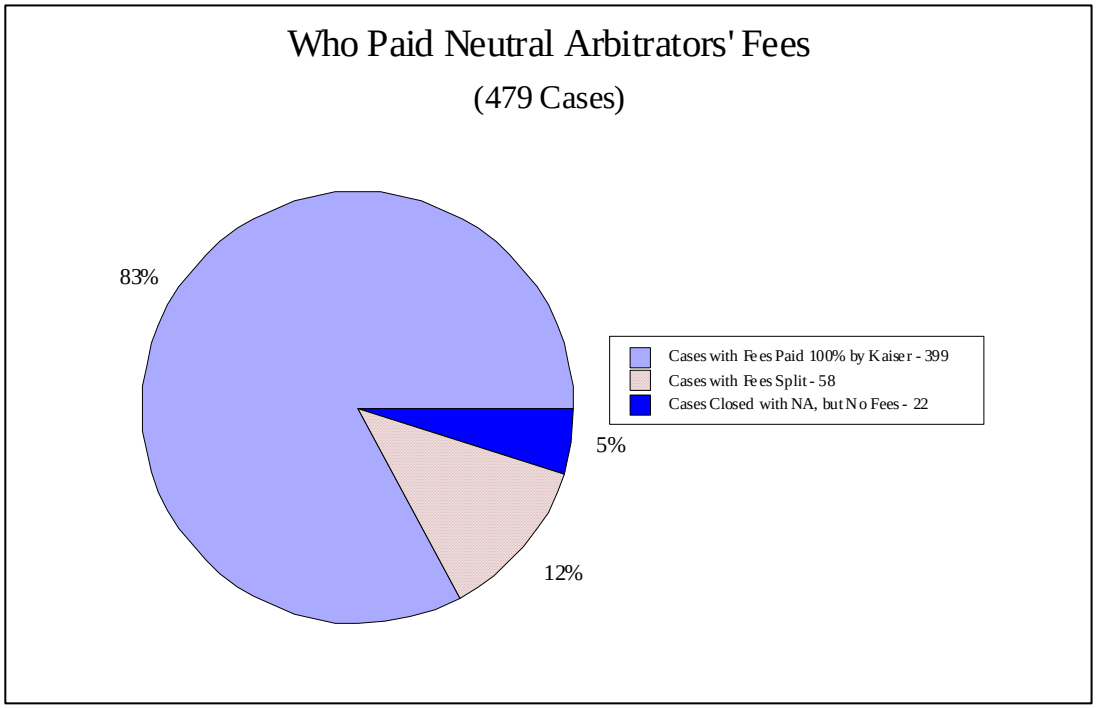
[65]While it has never happened, if a claimant waived and Kaiser elected not to waive, the claimant would be able to have a party arbitrator, whom he or she would have to pay, but Kaiser would still pay the full cost of the neutral arbitrator.

[66]One had the other fee waiver granted, one re-filed the application with more complete information and that application was granted, and the third withdrew the demand.

[67]The claimant paid the filing fee in both cases.

[68]California Code of Civil Procedure §1281.9.

Of these 479 cases, 399 (83%) reported that fees were allocated 100% to Kaiser. Twenty-two (5%) reported that no fees were charged. The claimant paid nothing in these cases. Fifty-five (12%) reported that the fees were split 50/50. There were also three cases in which fees were allocated in some other arrangement. Of the 457 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 88% of the cases. As shown in the following chart, claimants paid neutral fees in only 12% of cases that closed in 2010 with a neutral arbitrator in place.



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 $150/hour to $900/hour. The average hourly fee is $400, the median is $400, and the mode is $400.[69] Neutral arbitrators also often offer a daily fee. This ranges from $400/day to $9,000/day. The average daily fee is $3,304, the median is $3,000, and the mode is $2,000.

Looking at the 457 cases in which neutral arbitrators charged fees, the average neutral arbitrator fee is $6,557.42. The median is $2,002.63 and the mode is $700. This excludes the 22 cases in which there are no fees. The average for all cases, including those with no fees, is $6,256.25.

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

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 $22,897.15, the median is $18,240.16, and the mode is $12,150. The range is $2,575 – $89,025.

IX. ANALYSIS OF STATISTICS FOR LIEN CASES

As mentioned above, this section applies only to the lien cases that are in the OIA system. In lien cases, unlike the other demands for arbitration, Kaiser makes the demand against a member to recoup the costs of its medical care where Kaiser asserts the member has recovered a portion of these costs from a third party, as in a car accident. Kaiser submitted 23 demands for arbitration based on liens in 2010. Geographically, all of them came from Northern California

A. Demands for Arbitration Submitted by Kaiser to the OIA

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

In 2010, the average length of time that Kaiser took to submit demands to the OIA is 12 days. The mode is six. The median is eight days. The range is 1 – 41 days. It takes Kaiser longer to submit these demands than the demands it receives from members.

There were 11 cases in 2010 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 20 days, and the range is 11 – 41 days.

2. Claimants With and Without Attorneys

Claimants were represented by counsel in 56.5% of the cases the OIA administered in 2010 (13 of 23). In 43.5% of cases, the claimants represented themselves.

B. Selection of the Neutral Arbitrators

In 2010, neutral arbitrators were selected in 15 cases. For an explanation of the selection process, please see Section V. In 2010, Kaiser withdrew four cases without a neutral arbitrator in place. In all of these cases, the member was represented by counsel.

1. Joint Selections vs. Strike and Rank Selections

None of the neutral arbitrators selected in 2010 in lien cases were jointly selected.

2. Cases with Postponements of Time to Select Neutral Arbitrators

There were 11 cases in 2010 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. The members requested all of Rule 21 postponements. Kaiser requested one of the Rule 28 extensions and one was made by stipulation. Requests for a Rule 28 extension were made in 3 cases. There were two cases where Rule 28 extensions were given without a prior Rule 21 postponement.[70]

Five of the cases (45%) now have a neutral arbitrator in place. Two cases closed before a neutral arbitrator was ever selected. For the remaining four cases, the deadline to select a neutral arbitrator is after December 31, 2010.

3. Cases with Disqualifications

In 2010, only one neutral arbitrator was disqualified. In that case, the member disqualified the neutral arbitrator. The case closed before another neutral arbitrator was selected.

4. Length of Time to Select a Neutral Arbitrator

This section sets out the length of time to select a neutral arbitrator in 15 cases based upon how the neutral arbitrators were selected: no delay in selecting the neutral arbitrator or deadline for responding to the LPA was extended.[71] Finally, we give the overall average for the 15 cases.

a. Cases with No Delays

There were nine cases where a neutral arbitrator was selected in 2010 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 27 days, the mode is 26 days, the median is 26 days, and the range is 22 – 44 days.

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[70] In both, Kaiser had re-filed a demand after withdrawing its first demand. In one of the cases, the member's attorney contacted the OIA and protested the re-filing and complained that Kaiser's attorney had still not produced a copy of the contract that contained the arbitration demand. He requested a delay until he received it. The OIA granted the request. When the contract was not delivered, the case was withdrawn. In the second case, the member's attorney protested that it was improper to file a second demand after the first demand was withdrawn. He asked for a stay to file a complaint with the State Court. His request was granted, a complaint was filed; Kaiser settled the state action and withdrew the demand.

[71] As noted above, the only lien case where a neutral arbitrator was disqualified closed without a neutral arbitrator being selected.

b. Cases with Postponements

There were six cases where a neutral arbitrator was selected in 2010 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 prior years, but the neutral arbitrator was actually selected in 2010. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is only one 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in those cases is 129 days, the median is 118 days, the range is 115 – 187 days[72] and there is no mode. This category represents 40% of all cases which selected a neutral arbitrator in 2010.

c. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 68 days.

5. Cases With Party Arbitrators

No lien case has ever had party arbitrators.

C. Maintaining the Case Timetable

Two neutral arbitrators were suspended a total of five times in three different lien cases. Both were reinstated.

1. Neutral Arbitrator's Disclosure Statement

In 2010, one neutral arbitrator was suspended until he made his disclosures.

2. Arbitration Management Conference

One neutral was suspended for failing to return an AMC form.

3. Mandatory Settlement Meeting

In 2010, the OIA received notice from the parties in 16 cases that they have held an MSM. None reported that the case had settled at the MSM.

[72]In the case that took 187 days to select a neutral arbitrator after a postponement, the claimant attorney first requested an extension because he wanted a copy of the contract that required arbitration. After receiving it, he asked for the 90 day postponement. The parties then stipulated to a 60 day extension to try to settle. Neither party responded as to whether it was settled. The OIA received notice it had settled after putting a neutral arbitrator in place.

4. Hearing, Award, and the Aftermath

The OIA suspended one neutral arbitrator for failing to set a hearing date. One neutral arbitrator was suspended for failing to provide the fee information required by California Code of Civil Procedure § 1281.96 and for failing to return a questionnaire after a case closed.

5. Status of Open Lien Cases Administered by the OIA on December 31, 2010

On December 31, 2010, there were 13 open lien cases in the OIA system. In two of these cases, Kaiser had not yet sent in the filing fee so the LPA could be sent. In four cases, the parties were in the process of selecting a neutral arbitrator. In seven cases, a neutral arbitrator had been selected. Of these, an arbitration management conference had been held in six. In two cases, the parties had held the mandatory settlement meeting. In one case, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the award.

D. The Cases That Closed

In 2010, 26 lien cases closed. Cases close either because of (1) action by the parties (cases that are settled or withdrawn), or (2) action of the neutral arbitrator (cases are decided after a hearing). No case was abandoned, dismissed or decided by summary judgment. This discussion 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.

Cases closed on average in 302 days, or 10 months. The median is 255 days. There is no mode. The range is 42 – 852 days. No case closed late.

1. How Cases Closed

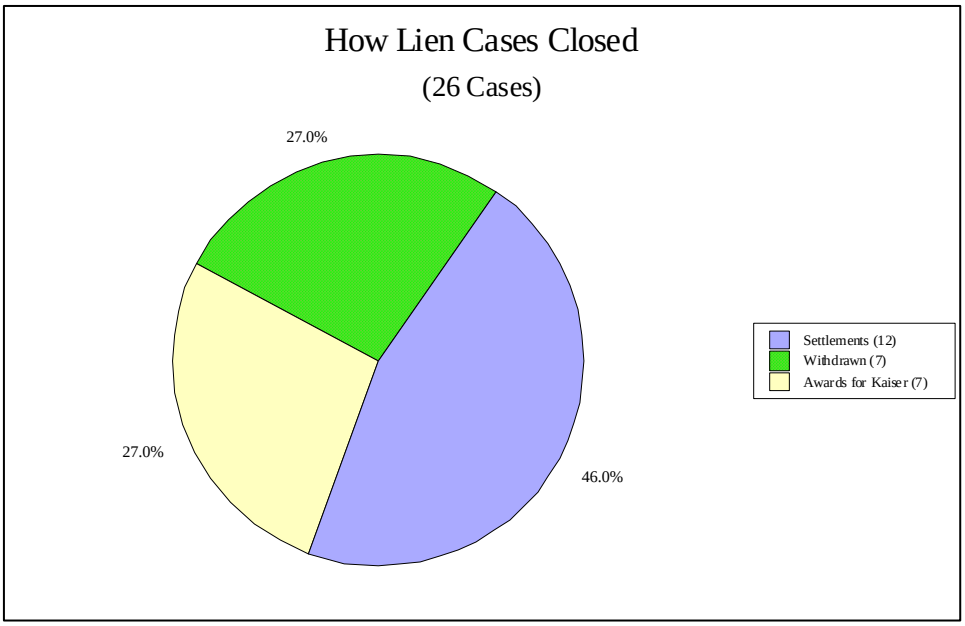
a. Settlements – 46% of Closures

During 2010, 12 of the 26 cases settled. The average time to settlement was 296 days, or less than 10 months. The median is 255, and the range is 154 – 526 days. In 7 settled cases (58%), the member was in *pro per.*

b. Withdrawn Cases – 27% of Closures

In 2010, the OIA received notice that Kaiser withdrew seven claims. The member was represented in all of these cases. The average time for Kaiser to withdraw a claim in 2010 is 249 days. The median is 134 days. The range is 42 – 852 days.[73]

[73]The case that was withdrawn after 852 days is discussed in footnote 69.



c. Cases Decided After Hearing – 27% of Closures

i. Who Won

Kaiser won all of the seven cases that proceeded through a full arbitration hearing to an award. In five of these cases, the member was in *pro per.*

ii. How Much Kaiser Won

The range of relief is $5,637.50 – $75,201.20. The average amount of an award is $24,166.64. The median is $13,063.59. There is no mode. A list of the awards made in 2010 is included in Exhibit G.

iii. How Long It Took

The seven cases that proceeded to a hearing in 2010, on average, closed in 364 days. The median is 366 days. The range is 168 – 595 days.[74]

[74]The case that took 595 days to close after a hearing was supposed to have settled on the eve of the hearing. However, the member did not go forward with the settlement. The neutral arbitrator, after more than 7 months, rescheduled a hearing, but the Kaiser attorney substituted out at the last minute. The hearing was rescheduled, but needed a Rule 28 extension because of the deadline.

2. Cases Using Special Procedures

For a discussion of expedited, complex and extraordinary procedures or Rule 28 extensions, see Section VII.B. No lien case has ever been designated expedited or extraordinary.

a. Complex Procedures

No lien case used complex procedures in 2010.

b. Rule 28 Extensions of Time to Close Cases

In 2010, neutral arbitrators made Rule 28 determinations of "extraordinary circumstances" in three cases and extended these cases beyond their limit. Two are still open. There was one such case open at the beginning of 2010. Two cases closed, in 595 days and 852 days.[75]

E. The Cost of Arbitrations in the OIA System

1. Number of Lien Cases in Which Members Have Shifted Their Neutral Fees

We have fee information in 21 cases. Of these 21 cases, 16 (76%) reported that fees were allocated 100% to Kaiser. Three (14%) reported that no fees were charged. The member paid nothing in these cases. Two (10%) reported that the fees were split 50/50. Of the 18 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 89% of the cases. Claimants paid neutral fees in only 11% of cases that closed in 2010.

2. The Fees Charged by Neutral Arbitrators

The average neutral arbitrator's fee is $1,665.48. The median is $1,550 and the mode is nothing. If only the cases in which a fee charged are considered, the average is $1,943.06, the median is $1,603.13, and the mode is $1,700. Fees range from $150 to $7,605. If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee is $2,956.25, the median is $1,740, and there is no mode. The range is $1,425 – $7,605.

[75]The case that closed in 852 days is discussed in footnote 69.

X. 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 the parties 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. Beginning in 2009, the OIA began sending the parties an abbreviated form similar to the form sent to the neutral arbitrators. This section discusses the highlights of the responses we received in 2010 from the parties and the arbitrators. The complete statistics and copies of the forms are set out in Exhibits H, I, and J, respectively. This section considers all evaluations returned in all cases, including lien claims.

A. The Parties 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 arbitrator 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 2010, the OIA sent out 742 evaluations and received 363 responses in return, or 49%.[76] One-hundred-twenty-two identified themselves as claimants (17) or claimants' counsel (105), and 229 identified themselves as respondent's counsel. Twelve did not specify a side.[77]

The responses have been quite positive overall, and they are encouragingly similar for both sides. In 2010, the mode and median for all attorneys for all questions was 5. The mode for all *pro per* claimants was also 5, though the median varied. The mode is important because it means that the most common answer to all the questions was the most favorable response possible.

Here are the responses to some of the inquiries.

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 4.7. *Pro pers* average 3.5. Respondents counsel average 4.9.

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

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

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

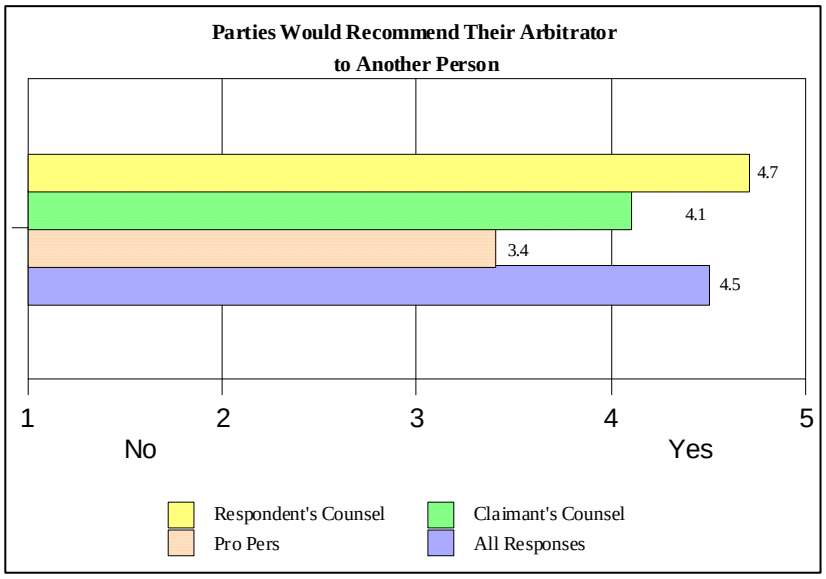
The average of all responses is 4.6. Claimants counsel average 4.4. *Pro pers* average 3.4. Respondents counsel average 4.8. The median for *pro pers* is 4.5.

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 4.0. *Pro pers* average 3.4. Respondents counsel average 4.8. The median for *pro pers* is 4.5.

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. Claimants counsel average 4.1. *Pro pers* average 3.4. Respondents counsel average 4.7. The median for *pro pers* is 4.5. The responses are shown on the following chart.



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 2010, the OIA sent questionnaires in 371 closed cases and received

330 responses.[78] The results continue to show a high degree of approval of, and satisfaction with, the *Rules* and the OIA.

The neutrals average 4.8 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.

Neutral Arbitrators' Opinions Regarding OIA System

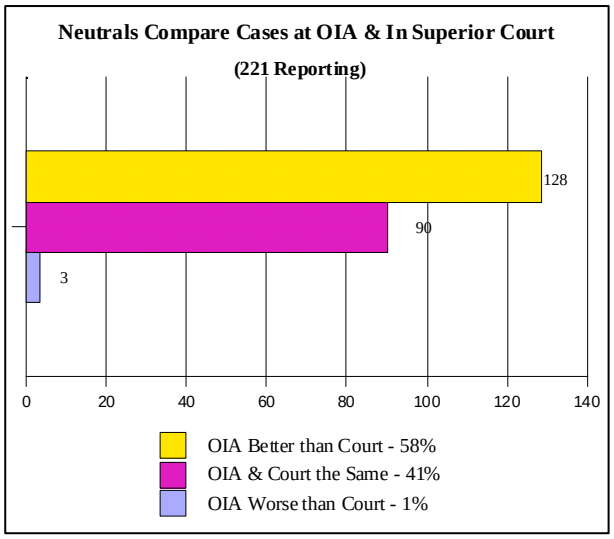
Feature of OIA System	Works Well	Needs Improvements
Manner of NA's appointment	255	2
Early Management Conference	253	0
Availability of expedited proceedings	85	0
Award within 15 business days of hearing closure	86	9
Claimants' ability to have Kaiser pay NA	189	8
System's rules overall	219	5
Hearing within 18 months	98	4
Availability of complex/extraordinary proceedings	35	3

[78]This report has previously reported that 624 cases closed in 2010. The OIA does not send questionnaires if the case closes without a neutral arbitrator in place or if the case closes soon after an arbitration management conference is 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 the parties and had nothing to say about the case.

The actual number returned in 2010 was 371. Forty-one were blank and are not included in the following discussion.

Finally, the questionnaires ask the neutrals whether they would rank the OIA experience as better or worse than or about the same as a similar case tried in court. For the third year in a row, a majority of the neutral arbitrators judged the system to be better than a court trial. Two-hundred-twenty-one of the neutral arbitrators (221) made the comparison. One-hundred-twenty-eight, or 58%, said the OIA experience was better. Ninety, or 41%, said it was about the same. Only three (one 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. Four neutral arbitrators specifically praised the attorneys involved in the arbitrations, calling them more competent and professional, better prepared, familiar with the process, and staying abreast of the case. One of the neutral arbitrators who rated it worse said that the *Rules* were not detailed enough when the claimant was in *pro per* to ensure the process was fair, especially with an aggressive attorney; did not like summary judgment, but wanted a speedier process; and wanted streamlined discovery, but felt it was not fair to punish the client for the attorney. The second disliked the deadline for writing an award. The third gave "5" as the answer to all questions, did not mark anything as needing improvement, and had no suggestions. Other than the above comments, they had no comments about improvements.



The vast majority of the comments of the neutral arbitrators were compliments on how well the *Rules*, system, or the OIA staff works or assurances that no changes need to be made. The next most common comment was that 15 business days is too short for awards in complicated cases or because of a neutral arbitrator's crowded calendar (6). The same number commented that hearings

should be held in less than 18 months, generally in a year.[79] Five neutral arbitrators wanted to "do everything" on line.[80]

There were five comments concerning the billing process; e.g., that the claimant did not have the ability to pay; that the OIA should send out the waivers (we do) or followup to make sure they are signed (we do not), or that the payment should not involve the attorney for Kaiser. Five neutral arbitrators praised holding status conferences as needed by telephone.

C. The Parties Evaluate the OIA System and Obtaining Medical Records

As previously mentioned, in 2009 the OIA began sending the parties who received an evaluation of the neutral arbitrators an additional one page evaluation of the OIA system and the ease of obtaining medical records. The form is similar to the form sent to the neutral arbitrators, differing in that it does not ask about items that work well or need work and does ask how well the procedures for obtaining medical records worked.

Once again, the form asks the recipients, on a scale from 1 to 5, whether they agree or disagree. A "5" is the highest level of agreement.

The OIA sent 742 evaluations and received 296 responses (40%).[81] One-hundred-five identified themselves as either claimants (16) or claimant attorneys (89), and 179 identified themselves as respondent's counsel. Twelve did not specify a side.[82]

The responses for whether the procedures in general worked well and whether the OIA was responsive were quite positive for the attorneys. The mode and median is 5 for the question about the OIA. The mode is 5 and the median either 4 or 5 for the question about procedures. Both *pro pers* and claimant attorneys gave much lower ratings to the statement about obtaining medical records.

Item 1: "The procedures worked well in this particular case." 4.4 average

The overall average is 4.4 out of 5. The average for claimant attorneys is 3.9, for *pro pers* 3.0, and for respondent attorneys 4.9. The mode for both sets of attorneys are 5. The median is 4.0 for claimant attorneys and 5.0 for respondent attorneys. For *pro pers*, the mode is 1 and the median is 3.0.

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[79]Most cases are closed within a year.

[80]Five said that they liked being able to e-mail the OIA.

[81]Thirty-one people returned blank forms. The response rate is up from 31% last year.

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

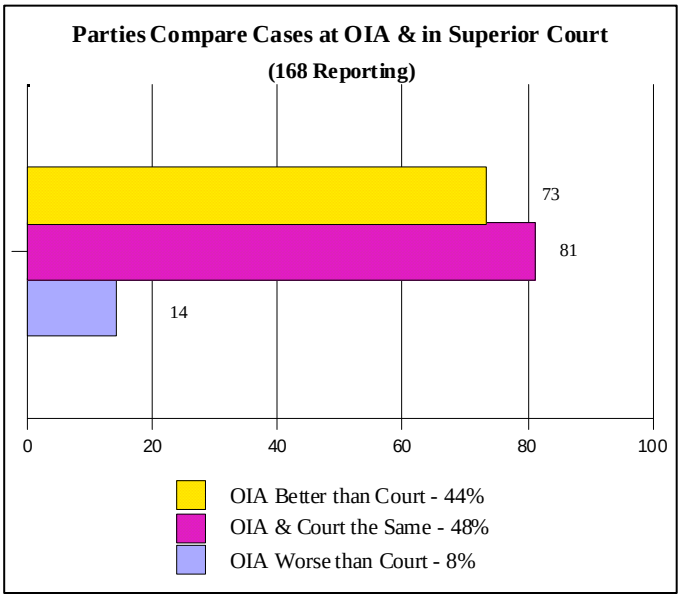
Item 2: "The procedure for obtaining medical records worked well." 4.1 average

The average is 4.1 for all responses. The average for claimant attorneys is 3.0; for *pro pers*, 2.6, and respondent attorneys, 4.8. The mode for claimant attorneys and *pro pers* is 1.0, while it is 5.0 for respondent attorneys. The median is 3.0 for claimant attorneys, 2.0 for *pro pers*, and 5.0 for respondent attorneys.

Item 3: "The OIA was responsive to my questions and concerns." 4.7 average

The overall average is 4.7. The average is 4.5 for claimant attorneys, 3.9 for *pro pers*, and 4.9 for respondent attorneys. The median and mode for all groups is 5.

The form also asked the parties if they have had a similar experience in Superior Court and, if so, to compare the two. Of the 168 people who made the comparison, 73 said it was better. Eighty-one said it was the same. Only 14 said it was worse.



Those who said the OIA system was better for the most part did not give reasons. Those who did gave reasons similar to the neutral arbitrators, saying it was faster, less expensive, and more flexible. For the most part, the 14 who said it was worse did not give reasons, but gave their neutral arbitrators low marks on his/her evaluation or explicitly complained about the neutral arbitrator or rulings. Three objected to JAMS billing policies for continuances. One wanted better neutral arbitrators, one wanted a jury, a third objected to lack of *voir dire*, and a fourth disliked an attempt by the other counsel for informal discovery. One, however, praised the OIA system as easier for scheduling than court.

As with the neutral arbitrator form, the parties are invited to give comments and suggestions. The most common comment concerned obtaining medical records, calling the system of getting them from Kaiser expensive, time consuming, and/or confusing and resulting in incomplete records that differed from those of other counsel.[83] Some criticized neutral arbitrators for failing to sanction counsel for not providing complete or timely records. The most common remedy is for both sides to get identical, bate-stamped records at the beginning.

The next most common comment (7) concerned the neutral arbitrators pool and opinions that it should either include more neutral arbitrators with claimant side or medical experience, or both. There were many fewer comments that the system is inherently unfair or a sham and should be abolished than in 2009.

Other common complaints included the fact that claimants could delay the neutral arbitrator selection for 90 days (3), that Kaiser had to pay for the neutral arbitrator (4), and about the MSM (2). Three people wanted to discontinue neutral arbitrator selection by strike and rank and only have joint or court selection. The comments of *pro per*s revealed their difficulty with the process. One wanted legal assistance and a mediation process, and another complained that there was too much law and not enough truth. There were also comments that the *Rules* did not have to be changed and that the OIA was helpful.

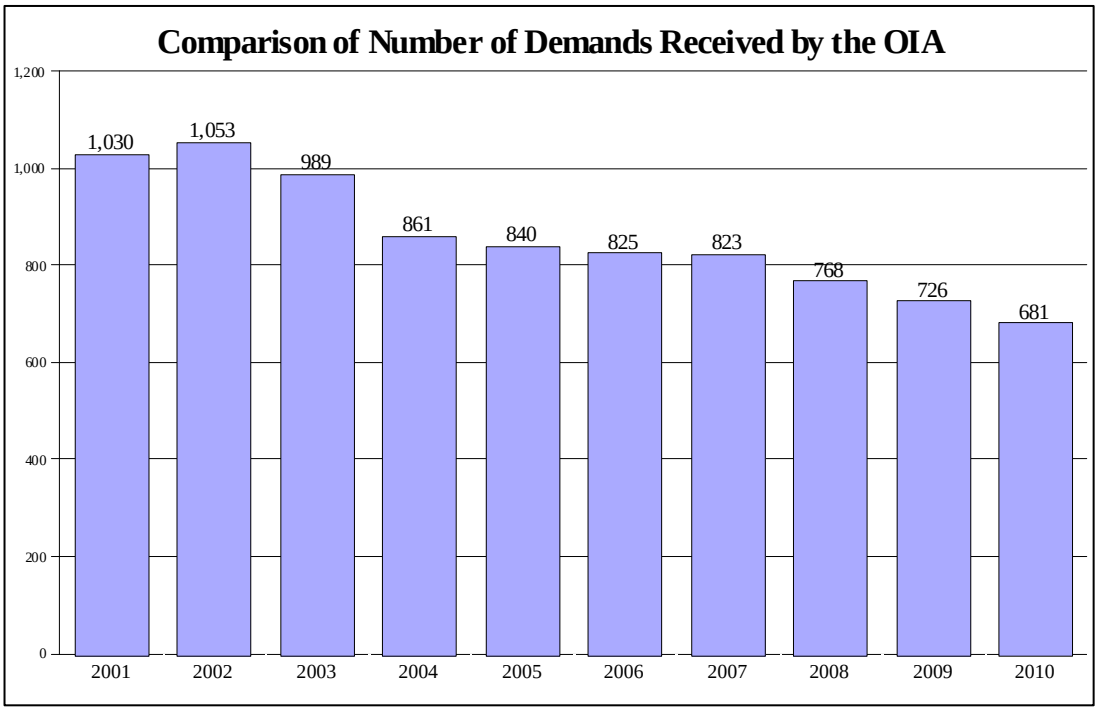
XI. TRENDS AND DATA OVER THE OIA'S YEARS OF OPERATION

This section uses the remarkable amount of data that has been collected and published about this arbitration system to consider 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. Consistent with the segregation of lien cases from most of this report, lien cases are only considered in the first three Sections (A, B, and C) and the last (K).

A. The Number of Demands for Arbitration Has Dropped

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. In 2010, the OIA received 681. As the following chart shows, the sharpest decline occurred between 2003 and 2004 (a decrease of 128), with significant further decreases from 2008 to 2010.

[83]One person thought that the question indicated that the OIA was somehow involved in the production of documents. It is not.



B. The Number of Neutral Arbitrators has Remained Relatively Stable

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 275 in 2009. It was 299 in 2010.

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.[84] 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, 88% of the pool in 2010 has served at some time and the average number of selections is 17, or approximately 1.5 appointments a year. The number of neutral arbitrators who have written awards also remained high, ranging from 63 (in 2010) to 93 (in 2004). During the OIA's existence, 350 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. This wide spread distribution of work among members of the pool and corresponding lack of concentration protect against "captive" neutrals, a key concern when the OIA was created.

[84] In 2010, by contrast, there were 300 fewer demands for arbitration and 12 additional neutral arbitrators in the pool.

C. Claims Overwhelmingly Allege Medical Malpractice

The overwhelming majority of demands for arbitration are, and have always been, claims that allege medical malpractice. This has ranged from 86 to 94%.[85] Benefit claims are generally less than two percent.

D. 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. Both the AOB and the OIA have revised forms and the "*pro per* hand out"[86] to make them easier for *pro pers* to understand.

E. The Parties Select the Neutral Arbitrators by Strike and Rank in Sixty-Eight 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). From 2001 to 2008, it was 70% or more. In 2009, it fell to 67%. Similarly, the percentage of neutral arbitrators jointly selected who are members of the OIA pool has ranged from 59% (2010) to 82% (2006).[87]

F. Half of the Claimants Use Procedures Contained in OIA Rules and State Law 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. In the first years, use of these tools (postponement and disqualification) that allow more time to select a neutral arbitrator was not that common.[88] Since 2003, 43 – 52% of the cases had one or both. In 2000, only 23% did. Claimants made almost all of the postponements (3,820 out of 3,838) and the vast majority of disqualifications (586 out of 713). These trends are graphed on the following chart:

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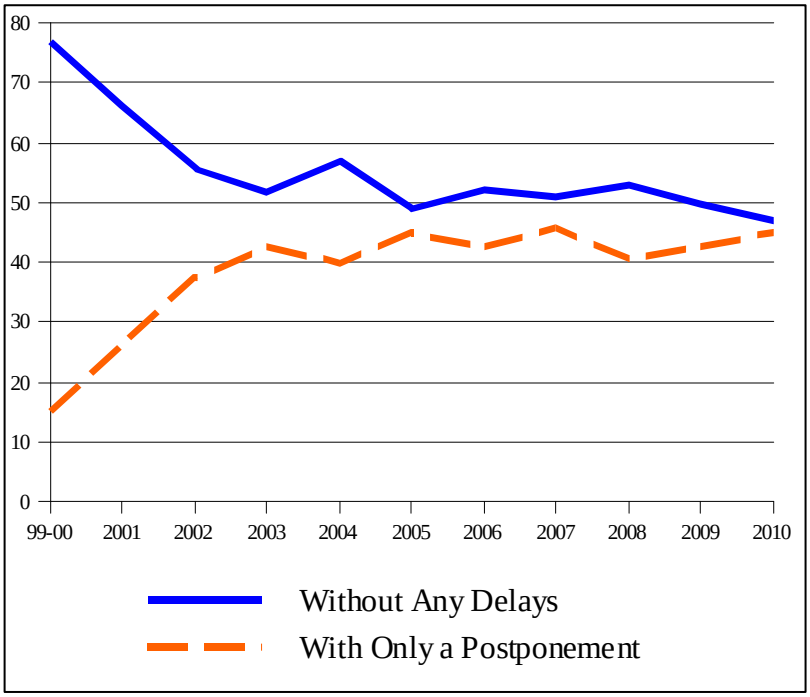
[85]The range may actually be smaller because during the early years the OIA categorized a larger percentage of demands as "unknown" when they gave no specifics. Now, Kaiser provides information as to the type of claim being made.

[86]See Exhibit C.

[87]There have only been 11 cases in which the parties had to go to court to have a neutral arbitrator selected.

[88]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 or their attorneys that they may 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 110 – 114 days for cases where the claimants seek a 90 day postponement. The following table 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	2009	2010
No delay	25 days 52%	24 days 57%	24 days 49%	25 days 53%	25 days 51%	26 days 53%	26 days 50%	25 days 47.7%
Only Postponement	114 days 43%	111 days 40%	111 days 45%	111 days 43%	113 days 46%	114 days 41%	113 days 43%	110 days 44.9%
Only Disqual.	75 days 2%	51 days 1.5%	68 days 2.3%	59 days 2%	72 days 1%	58 days 3%	71 days 3%	80 days 3.5%
Postponement & Disqual	162 days 4%	160 days 1.5%	173 days 3.7%	171 days 2%	155 days 2%	157 days 3%	165 days 4%	174 days 3.9%
Total Selections	69 days	61 days	70 days	66 days	68 days	67 days	70 days	71 days

G. 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 (7 – 14%). The remaining cases were abandoned by the claimant at the beginning or dismissed by the neutral arbitrator. The following table displays the statistics since 2003.

Comparison of How Cases Closed

	2003	2004	2005	2006	2007	2008	2009	2010
Settlements	49%	41%	40%	42%	42%	44%	46.5%	44%
Withdrawn	23%	27%	27%	28%	26%	27%	25.6%	25%
Abandoned	4%	4%	4.5%	5%	5%	5%	4.3%	4%
Dismissed	2%	4%	2%	3%	3%	3%	2.4%	3%
Summary Judgment	9%	8%	9%	8%	10.5%	8%	7%	11%
Awards	12%	16%	16%	13%	13.5%	13%	13%	12%

H. The Results After a Hearing

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 $374,404. 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 average, $811,657, was in 2009, which had five awards of more than a million, including one for $5,000,000.

The percent of cases in which members prevailed after a hearing fell to 29% in 2009. This is the lowest percentage since 1999. In 2009, lien cases were included and all of those cases were decided in Kaiser's favor. If the 15 lien cases were excluded, members prevailed after a hearing 34% of the time in cases they brought. In 2010, 33% of members prevailed in non-lien cases.

I. Cases Close in Less Than A Year

For the most part, the length of time for cases to close has been increasing steadily – though slowly – over the years. This can be seen by looking at the averages 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 days in 2003 and reached 357 days (the longest) in 2009. Fewer cases requiring extra time closed in 2010 than 2009. Therefore, the time to close shortened in almost every category except cases that were withdrawn.

Comparison of Average Number of Days to Close, by Disposition

	2003	2004	2005	2006	2007	2008	2009	2010
Settlements	317 days	320 days	311 days	325 days	337 days	340 days	375 days	341 days
Withdrawn	231 days	247 days	254 days	262 days	242 days	227 days	234 days	242 days
Summary Judgment	333 days	355 days	377 days	355 days	333 days	324 days	366 days	351 days
Awards	461 days	456 days	470 days	533 days	520 days	455 days	503 days	483 days
All Cases	319 days	326 days	330 days	342 days	336 days	325 days	357 days	336 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 36 cases – less than half of one percent – have closed late.

J. 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 81 – 88% of the cases.[89] This is done most easily, and most commonly, by the claimants signing a form and agreeing not to use party arbitrators. Each year, however, in 5 – 10% 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.[90] While some claimants file for both waivers, others request only that the $150 fee be waived, relying on the standard forms to shift the neutral arbitrators' fees to Kaiser. The range is generally between 12 and 19, but rose to 35 in 2010, largely because of a significant increase in the number requesting the statutory waiver of the $150 arbitration fee.

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

Since 2000, the OIA has been sending out evaluations of the neutral arbitrators and the OIA. The evaluations ask, among other things, whether the neutral arbitrator treated the parties with respect, explained the process, and understood the facts and whether the parties would recommend the arbitrator 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 4.2 and 4.9, quite close to 5 (on a 1 – 5 range). The differences between years are quite small,[91] while the modes and medians are 5. This means that the most common response is the most positive. Fewer *pro per* claimants return the evaluations,[92] 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.

The OIA began asking neutral arbitrators to evaluate the OIA system in 2000. The questions ask them to identify whether particular features 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. The percent response rate average in the 80s.

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[89]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 relied on the number of requests to waive these expenses for financial hardship.

[90]The filing fee has not increased during the OIA's operation.

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

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

XII. 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.
>
> **Doris Cheng**, medical malpractice attorney representing plaintiffs, San Francisco.
>
> **Lark Galloway-Gilliam**, MPA, Executive Director, Community Health Councils, Inc., Los Angeles.
>
> **Tessie Guillermo**, President and CEO, ZeroDivide, San Francisco.[93]
>
> **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.

[93]Ms. Guillermo resigned from the AOB at the end of 2010.

Honorable Cruz Reynoso, Professor of Law Emeritus, 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.

Richard J. Spinello, Executive Director of Financial Risk and Insurance, CHOC Children's Hospital.

Al Ybarra, a former 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 completed its work editing the explanation of the process given to claimants who are not represented. A copy of the explanation is attached as Exhibit C. The OIA began sending them out in 2010.

During 2010, the AOB had several discussions concerning lien cases. Although they are a relatively small percentage of the demands for arbitration the OIA receives, they differ in posture from the other cases. A copy of the memo the OIA prepared for the AOB is attached as Exhibit D. It revealed that, because there are so few lien cases, they do not affect the statistics of the annual report. The AOB still thought the report would be clearer if the lien cases had a separate section.

In addition, the AOB reviewed the process and form for applying to become a member of the OIA pool, reviewed and offered suggestions concerning the order of the qualifications to become a member of the OIA pool, reviewed a sample LPA packet that would be sent to the parties during the selection process, and discussed possible uses of the OIA evaluations.

Officers of the AOB are in regular contact with the OIA by e-mail and by telephone. One of the members visited the OIA offices to discuss the process for determining if neutral arbitrator applicants meet the qualifications. This topic was also discussed at a meeting along with a review of a sample LPA packet.

The AOB also reviews the draft annual report and comments upon it. Exhibit K is the AOB Comments on the Annual Report for 2010.

XIII. CONCLUSION

This report describes a mature arbitration system, though one continuously seeking further improvement. As far as the data are 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 has largely disappeared as an issue. The fact that only one 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) and can be waived. In 85% of the cases with neutral arbitrator fees that began after January 1, 2003 and ended in 2010, the fees 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 entities.

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

A large number of individuals serve as 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 and the public has increased dramatically over the 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. Ninety percent report medical malpractice experience.

The system is easier than a court system to access: the filing fee is only $150, no particular forms are required to demand arbitration, most documents can be faxed or e-mailed 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 and the parties at the conclusion of cases. Almost all who answered rated it better than or as good as Superior Court.

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 ask for it. The annual reports provide more information about arbitrations involving Kaiser Permanente than any other arbitration system provides about its arbitrations.