

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, 2018 - December 31, 2018

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REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2018. 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, and its Independent Administrator is Marcella A. Bell. From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties.

Status of Arbitration Demands

The total number of demands for arbitration decreased from the previous year. Most of the claims were for medical malpractice. The percentage of claimants without attorneys, proceeding in *pro per*, increased.

- 1. Number of Demands for Arbitration.** The OIA received 606 demands, 81 less than last year. The number of demands decreased in all three regions: Northern California, Southern California, and San Diego. Only one lien case was received. See pages 10, 33, and 42.
- 2. Types of Claims.** Ninety-five percent (95%) of the cases involved allegations of medical malpractice. Less than two percent (<2%) presented benefit and coverage allegations. Lien cases made up less than one-half percent (<.5%). The remaining cases were based on allegations of premises liability and other torts. See pages 10 – 11. Because lien cases differ significantly from cases brought by members, they are reported separately on page 33.
- 3. Thirty-Two Percent (32%) of Claimants Did Not Have Attorneys.** Claimants in 194 cases, or 32%, were not represented by counsel, an increase from last year. See pages 12 and 44.

How Cases Closed

In the majority of cases, the parties themselves resolved their claims. Neutral arbitrators decided the remaining cases. All cases that went to hearing were decided by a single neutral arbitrator.

- 4. More Than Three-Quarters (76%) of Cases Closed by the Parties' Action.** The parties settled 46% of cases, 1% less than last year. Fifty-two cases settled at the Mandatory Settlement Meeting. Of the cases that settled at the MSM, in three

¹Kaiser 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.

claimants were in *pro per*. Claimants withdrew 23% and abandoned another 7% by failing to pay the filing fee or get the fee waived. See pages 25 – 26, and 46 – 47.

5. **Nearly One-Quarter (24%) Closed by Decision of Neutral Arbitrator.** Six percent (6%) of cases closed after an arbitration hearing, 13% were closed through summary judgment, and 5% were dismissed by neutral arbitrators. In the cases that went to an arbitration hearing, claimants prevailed in 37%. See pages 26 – 27, and 47.
6. **Almost Half (48%) of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (46%) or when they are successful after a hearing (2%). See pages 25, 27 and 46 – 47.
7. **Six Percent (6%) of Cases Went to Hearing.** Claimants prevailed in 37% of these cases. The average award was \$684,989, and the range was from \$4,500 to \$3,469,778. See pages 27, 47, and Exhibit G.
8. **All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** All of the hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. See page 20.

Meeting Deadlines

The OIA *Rules* allow the parties to delay the selection process and extend the completion date. Even with such delays, the process is expeditious.

9. **More Than Half (51%) of Neutral Arbitrator Selections Proceeded Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but more than half (51%) of the neutrals were selected without the parties exercising this option. This year, the claimants made all but three of the requests for 90 day postponement. California law gives parties the opportunity to timely disqualify neutral arbitrators. In three percent (3%) of the cases, parties disqualified the neutral arbitrator. In four percent (4%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 37 neutral arbitrators and Kaiser disqualified 29. See pages 18 – 19.
10. **Average Length of Time to Select Neutral Arbitrator is 63 Days.** The time to select a neutral arbitrator in cases with no delay remained the same (24 days). The time to select a neutral with a 90 day postponement remained the same (104 days). It decreased by seven days in cases with only a disqualification (54 days), and decreased by 21 days in cases with both a postponement and disqualification (144 days). The overall average length of time to select a neutral arbitrator for all cases decreased by 1 day (63 days). See pages 14 – 19, and 45 – 46.

11. **On Average, Cases Closed in Less Than Twelve Months.** Cases closed, on average, in 343 days, 25 days less than last year. No case closed beyond the deadline required by the *Rules*. Eighty-eight percent (88%) of the cases closed within 18 months (the deadline for “regular” cases) and 61% closed in a year or less. See pages 22 – 24 and 47 – 48.
12. **On Average, Hearings Completed in Less than Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 653 days (less than 22 months). This average includes cases that were designated complex, extraordinary, or that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 429 days (about 14 months). See page 27.

Panel of Neutral Arbitrators

More than half (58%) of the OIA panel spend all of their time acting as neutral arbitrators. More than half of the neutral arbitrators served on a case. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties to select anyone they collectively want. The majority of neutral arbitrators the parties jointly selected were from the OIA panel.

13. **The Neutral Arbitrator Panel.** The OIA has 225 neutral arbitrators in its panel, 3 fewer than last year. Forty-one percent (41%) of them, or 93, are retired judges. See page 6.
14. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 131 arbitrators, or 58%, spend all of their time acting as neutral arbitrators. The remaining members divide their time by representing plaintiffs and defendants, though not necessarily in medical malpractice litigation. Ninety-three percent (93%) of the neutral arbitrators report having medical malpractice experience. See pages 7 – 8.
15. **More Than Half (52%) of Arbitrators Served on a Case.** Fifty-two percent (52%) of the neutral arbitrators in the OIA panel served on a case. Arbitrators averaged two assignments each. Thirty-four neutrals, including arbitrators not in the OIA panel, decided the 41 awards made. Eighty-two (82%) of the neutral arbitrators wrote only a single award. See pages 8 – 9 and 43.
16. **Majority of Neutral Arbitrators (68%) Selected by Strike and Rank.** Sixty-eight percent (68%) of neutral arbitrators were selected through the strike and rank process, and 32% were jointly selected by the parties. Seventy-eight percent (78%) of the arbitrators jointly selected were members of the OIA panel. In the other cases, the parties chose a neutral arbitrator who was not a member of the OIA panel. See page 14.

Neutral Arbitrator Fees

While the OIA arbitration filing 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. These fees, however, can be shifted to Kaiser.

17. **Kaiser Paid the Neutral Arbitrators' Fees in 93% of Cases Closed.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed, Kaiser paid the entire fee for the neutral arbitrators in 93% of those cases that had fees. See page 32.
18. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$1,200/hour, with an average of \$524/hour. For the 528 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$7,166. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$7,737. The average fee in cases decided after a hearing was \$35,997. See page 32.

Evaluations

When cases are concluded, the OIA sends questionnaires to the parties or their attorneys asking them about the OIA system, and if the cases closed by neutral arbitrator actions, an evaluation of the neutral arbitrators. Of those responding, the parties gave their neutral arbitrators and the OIA system positive evaluations. When cases close by neutral arbitrator actions, the OIA also sends the neutral arbitrators a questionnaire about the OIA system. Neutral arbitrators gave positive evaluations of the OIA system.

19. **Positive Evaluations of Neutral Arbitrators by Parties.** Most parties who responded to the OIA evaluation expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.5 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably. See page 35.
20. **Positive Evaluations of the OIA by Neutral Arbitrators.** Sixty-two percent (62%) of the neutral arbitrators reported that the OIA experience was better than a court system, 36% said it was about the same, and less than 2% said it was worse. See pages 36 – 37.
21. **Positive Evaluations of the OIA by Parties.** Ninety-six percent (96%) of the responding parties and attorneys reported that the OIA system was better than or the same as the court system and 4% said it was worse. See page 38.

Development and Changes in the System

The OIA and the Arbitration Oversight Board (AOB) continuously strive to improve the arbitration system.

22. **Change in Membership of the AOB.** Three members resigned: Dr. Cornelius Hopper, Honorable Cruz Reynoso, and Steve Zatkin. Five new members joined: Carlos Camacho, Kennedy Richardson, Dr. John Swartzberg, Margaret B. Martinez, and the Honorable Carlos R. Moreno. See pages 4 and 39, and Exhibit C.
23. **OIA Contract.** The AOB extended its contract with the OIA for three years, to March 28, 2021.
24. **Independent Administrator Speaks to The Permanente Medical Group Physicians.** Ms. Bell spoke to The Permanente Medical Group physicians about the OIA administered arbitration system. See page 4.
25. **AOB Approves Arbitration Rule Changes.** The AOB approved ten Rule changes. See page 5 for a detailed explanation and Exhibit B for a redlined version.
26. **AOB Chair Approves Temporary Rule Change.** In order to comply with a request from the Department of Managed Health Care, mandated language was added to OIA Rule 14(a). See page 6 for a detailed description.

Conclusion

The goal of the OIA is to provide an arbitration system that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. To summarize:

- Neutral arbitrators are selected expeditiously, and the cases close faster than in court.
- Parties can, and do, disqualify neutral arbitrators they do not like.
- The filing fee is lower than in court, and parties can and do shift the costs of the neutral arbitrators to Kaiser.
- OIA arbitrations are confidential, and the OIA does not publish the names of individual claimants or respondents involved in them.
- Neutral arbitrators on the OIA panel have plaintiff, defendant, and judicial backgrounds. The cases are distributed among them.
- Neutral arbitrators and the OIA system receive positive evaluations.

- The OIA publishes annual reports, information about its cases in compliance with California law, and neutral arbitrator redacted decisions. This information is available on the website for the parties and the public.

I. INTRODUCTION & OVERVIEW

The Office of the Independent Administrator (OIA) issues this report for 2018.¹ It describes the arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (Kaiser) or its affiliates.² Marcella A. Bell, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board, the OIA maintains a panel of neutral arbitrators to hear Kaiser cases and independently administers arbitration cases between Kaiser and its members. The contract requires that Ms. Bell 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 2018, the final section compares 2018 with earlier years.

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 XI.

The arbitrations are controlled by the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of January 1, 2019 (Rules)*. The *Rules* consist of 54 rules in a 21 page booklet and are available in English, Spanish, and Chinese.³ Some important features include:

Procedures for selecting a neutral arbitrator expeditiously;⁴

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

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

²Kaiser is a California nonprofit health benefit corporation. 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. Almost all of the demands are based on allegations against these affiliates.

³The *Rules* were amended and the changes took effect January 1, 2019. A redlined version of the *Rules* are attached as Exhibit B. See Section II for a discussion of the changes.

⁴Exhibit B, Rules 16 and 18.

⁵Exhibit 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.⁸ 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 the parties. These goals are set out in Rule 1. 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.⁹

B. Format of This Report

Section II discusses developments and changes in the system in 2018. Sections III and IV look at the OIA's panel of neutral arbitrators, and the number and types of cases the OIA received. The parties' selection of neutral arbitrators is discussed in Section V. Section VI summarizes the methods for monitoring compliance of open cases, and Section VII analyzes how cases are closed and the length of time to close. Section VIII discusses the cost of arbitration in the system. Sections IV.B. through VIII exclude lien cases.¹⁰ Section IX presents the analyses for lien cases. The parties' evaluations of their neutral arbitrators and the parties' and neutral arbitrators' evaluations of the OIA system are summarized in Section X.¹¹ Section XI describes the AOB's membership and activities during 2018. Finally, Section XII compares the operation of the system over time.

⁶Exhibit B, Rules 24, 28 and 33.

⁷Exhibit B, Rules 14 and 15.

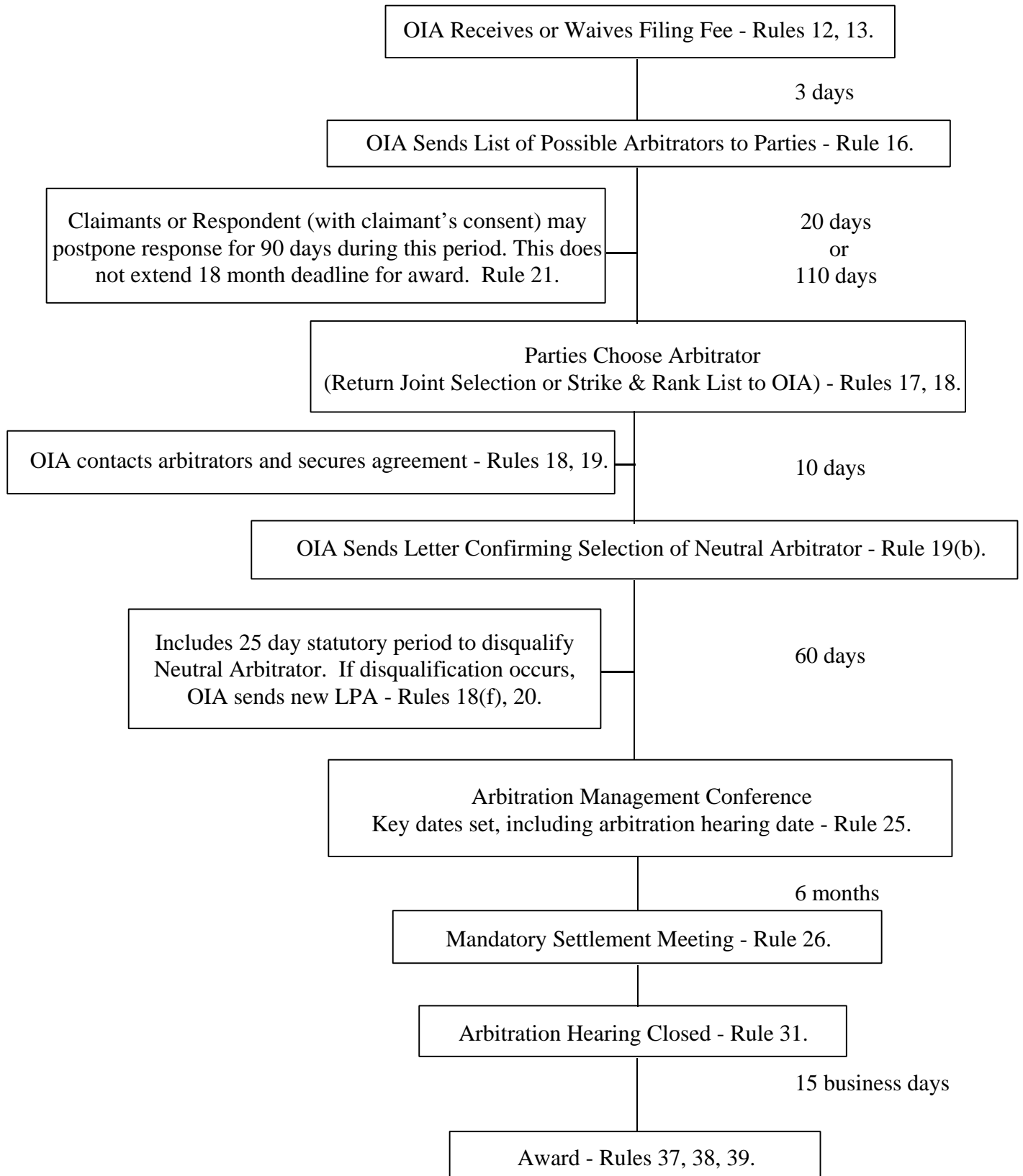
⁸At the request of the AOB, the 18 month timeline was amended to include the OIA Rule associated with each procedure.

⁹The OIA was created in response to the recommendation of a Blue Ribbon Panel (BRP) and began operating March 28, 1999. Ms. Bell has served as the Independent Administrator since March 29, 2015. The OIA met all of the recommendations that pertain to it since its first operating year. A full copy of the BRP report and the current status of each recommendation is available on the OIA website.

¹⁰Lien cases are brought by Kaiser against its members to recover costs of medical care provided to a member who received a third party recovery.

¹¹Because these are anonymous, all of the evaluations are considered together.

Timeline for Arbitrations Using Regular Procedures



MAXIMUM OF 18 MONTHS*

*Unless Rule 24(b), 24(c), 28, 34, or 35 applies.

II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2018

A. Change in Membership of the AOB¹²

Dr. Cornelius Hopper, Vice President for Health Affairs, *Emeritus*, of the University of California System, Oakland, retired in March. Dr. Hopper served as both chair and vice-chair since the inception of the AOB in 2001.

Donna L. Yee, retired Chief Executive Officer of the Asian Community Center of Sacramento Valley, who has been a member of the AOB since 2011, became the vice-chair.

Steve Zatkin, retired Senior Vice President and General Counsel for Kaiser and Kaiser Foundation Hospitals, resigned in March. He had been a member of the board since 2012.

The Honorable Cruz Reynoso, Professor of Law Emeritus, King Hall School of Law, University of California, Davis, and former California Supreme Court Justice, resigned in June, after serving on the AOB since its inception in 2001.

Three new members joined the AOB in June: Carlos Camacho, Grant Director for Orange County Labor Federation, AFL-CIO; Kennedy Richardson, retired Litigation Practice Manager, Kaiser Foundation Health Plan; and Dr. John Swartzberg, Clinical Professor, *Emeritus*, University of California Berkeley School of Public Health. Margaret B. Martinez, Chief Executive Officer of Community Health Alliance of Pasadena, joined in September. The Honorable Carlos R. Moreno, former California Supreme Court Justice, joined in December.

B. OIA Contract Renewed for Three More Years

The AOB renewed its contract with Ms. Bell to act as the Independent Administrator for three more years, through March 28, 2021.

C. Independent Administrator Speaks to The Permanente Medical Group Physicians

Ms. Bell was asked to speak at a monthly meeting of The Permanente Medical Group (TPMG) physicians from 19 medical centers about the OIA's arbitration system. Ms. Bell provided a historical look at the creation of the OIA, discussed the Blue Ribbon Panel recommendations which provided a template for the OIA Rules, described the arbitration system in detail,¹³ and provided information about the AOB's membership and its role of OIA oversight.

¹²See Exhibit C for the resumes of the new AOB members in alphabetical order.

¹³A system description is attached as Exhibit D. This handout is provided to all claimants in the first communication received from the OIA.

D. AOB Approves Rule Changes

The OIA presented the AOB with 16 proposals for Rule changes. For the most part, the changes were not substantive, and in some instances, only involve the rewording of Rules to be stated more clearly. In response to the OIA's proposals, the AOB convened a sub-committee to address the modifications. The sub-committee met on several occasions and after some refinement, moved ten Rule changes forward to the AOB for approval. All ten changes were approved and will be discussed briefly below.¹⁴

Rules 19 and 21 were amended to correctly reference a neutral arbitrator's selection rather than appointment.¹⁵

Rule 24 recognizes a neutral arbitrator's authority to designate a matter complex or extraordinary. It also defines a closed case.

Rule 25 removes a specific reference to a video conference and allows the parties to decide alternate methods for holding the Arbitration Management Conference.

Rule 27 recognizes that discovery issues may arise that may affect the arbitration hearing date.

Rule 28 eliminates a party's requirement to file a motion when requesting a postponement of the arbitration hearing. It also adds the ability for a party to make such a request orally.

Rule 31 recognizes that there are other proceedings, like motions for summary judgments, not just arbitration hearings. It also recognizes a neutral arbitrator's authority to extend the deadline to submit post-hearing briefs or documents.

Rule 40.b was amended to make the notice of withdrawal wording consistent with the notice of settlement wording in Rule 40.a.

Rules 38 (Form of Award) and 49 (Evaluation) were reworded to be stated more clearly.

¹⁴Three of the 16 proposals are pending discussion, and three remaining proposals were withdrawn by the OIA.

¹⁵A neutral arbitrator is deemed appointed after the statutory period for disclosure and disqualification has passed. See Section V.A. regarding how neutral arbitrators are selected.

E. AOB Chair Approves Temporary Rule Change

Kaiser informed the OIA that the Department of Managed Health Care (DMHC) had requested that Kaiser modify its 2019 Evidence of Coverage to include regulatory language pursuant to Health & Safety Code Section 1373.19. In order to be compliant with the DMHC’s request, the mandated language was also added to OIA Rule 14.a. If a demand for arbitration seeks damages of \$200,000 or less, it may be heard by two party arbitrators and one neutral arbitrator, if the parties agree in writing, after a case or dispute has arisen and a request for arbitration has been submitted [emphasis added].¹⁶ The amendment took effect January 1, 2019 and will be presented to the entire board for permanent approval at the next AOB meeting.

III. PANEL OF NEUTRAL ARBITRATORS

A. Turnover in 2018 and the Size of the Panel at Year-End

On December 31, 2018, there were 225 people on the OIA’s panel of neutral arbitrators. Of those, 93 were former judges, or 41%.

Members of the OIA panel are distributed into three geographic panels: Northern California, Southern California, and San Diego. See Table 1. 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.

Table 1 - Number of Neutral Arbitrators by Region

Total Number of Arbitrators on the OIA Panel:	225
Northern California Total:	112
Southern California Total:	115
San Diego Total:	70
The three regions total 297 because 53 arbitrators are on more than one panel; 19 on all three panels, 2 on No. Cal & So. Cal, 1 on No. Cal & San Diego, and 31 on So. Cal & San Diego.	

At the beginning of the year, the OIA panel of neutral arbitrators contained 228 names. During the year, 11 arbitrators voluntarily left the panel and 8 additional arbitrators were removed. Six were removed because they no longer met the qualifications required for neutral

¹⁶The new required language is underlined.

arbitrators,¹⁷ and two for failing to comply with the mandated Ethics Standards for Neutral Arbitrators in Contractual Arbitrations. Thirteen neutral arbitrators joined the panel,¹⁸ and one applicant was rejected.¹⁹

B. Practice Background of Neutral Arbitrators

The neutral arbitrator application requires applicants to estimate the percentage of their practice spent in various professional endeavors. On average, neutral arbitrators on the OIA panel spend their time as follows: 70% of his or her time acting as a neutral arbitrator, 9% as a claimant (or plaintiff) attorney, 8% as a respondent (or defense) attorney, 12% in other forms of employment (including non-litigation legal work, teaching, mediating, etc.) and less than 1% acting as a respondent’s party arbitrator, a claimant’s party arbitrator, or an expert.

More than half (58%) of the panel, 131 members, report that they spend 100% of their practice acting as neutral arbitrators. The full distribution is shown in Table 2.

Table 2 - Percentage of Practice Spent as a Neutral Arbitrator

Percent of Time	0%	1 – 25%	26 – 50%	51 – 75%	76 – 99%	100%
Number of NAs	7	58	11	7	11	131

The members of the OIA panel who are not full time arbitrators primarily work as litigators. See Table 3.

Table 3 - Percentage of Practice Spent as an Advocate

Percent of Practice	Number of NAs Reporting Claimant Counsel Practice	Number of NAs Reporting Respondent Counsel Practice
0%	181	186
1 – 25%	15	13
26 – 50%	15	16
51 – 75%	6	3
76 – 100%	8	7

¹⁷The qualifications for neutral arbitrators are attached as Exhibit F.

¹⁸Neutral arbitrator applications are available on the OIA website.

¹⁹If the OIA rejects an application, we inform the applicant of the qualification(s) he or she failed to meet.

Finally, while the qualifications do not require that members of the OIA panel have medical malpractice experience, 93% of them do. At the time they filled out or updated their applications, 209 reported that they had medical malpractice experience, while 16 did not. Of the 16 who reported no medical malpractice experience in their applications, 13 of them have since served as a neutral arbitrator in an OIA case and may now have acquired medical malpractice experience.

C. Participation of Neutral Arbitrators on the Panel²⁰

The first four parts of this section consider the number of neutral arbitrators named on the List of Possible Arbitrators; the number who served; the number who wrote awards; and the number who have served after making a large award. The final section compares cases closed by neutral arbitrators selected ten or more times with cases closed by other neutral arbitrators.

1. The Number Named on a List of Possible Arbitrators

All but one of the neutral arbitrators on the OIA panel were named on at least one List of Possible Arbitrators (LPA) sent to the parties by the OIA.²¹ The average number of times Northern California arbitrators appeared on a LPA was 32. The range of appearances was 0 – 50 times. In Southern California, the average number of appearances was 23. The range was 2 – 40. In San Diego, the average number of appearances was 10. The range was 0 – 23.²²

2. The Number Who Served

This year, 133 different neutral arbitrators were selected to serve in 537 cases. The majority (118) were members of the OIA panel. Thus, 52% of the OIA panel were selected to serve in a case. The number of times a neutral was selected ranges from 0 – 32. The neutral arbitrator at the highest end was jointly selected 24 times. The average number of appointments for members of the panel was 2.

²⁰The procedure for selecting neutral arbitrators for individual cases is described below in Section V.A.

²¹In addition to chance, the number of times a neutral arbitrator is listed is affected by how long a given arbitrator has been on the panel, the number of members on each panel, and the number of demands for arbitration submitted in the geographical area for that panel. Some neutral arbitrators have been on the OIA panel since it started. The arbitrator who was not listed on a LPA joined in December. The number of times an arbitrator is selected also depends on whether the individual will hear cases when the claimant has no attorney (*pro per* cases). Twenty-eight percent (28%) of the panel will not hear *pro per* cases.

²²There was one neutral arbitrator who was not listed on a San Diego LPA but is also on the Southern California and Northern California panels and was listed on an LPA for both panels.

3. The Number Who Wrote Awards

Thirty-four neutral arbitrators wrote 41 awards. Twenty-eight arbitrators wrote a single award, while five decided two. One neutral arbitrator wrote three awards. The neutral arbitrator who decided three cases wrote two in favor of the claimants and one in favor of Kaiser.

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

Concerns have been raised whether Kaiser will allow neutral arbitrators who have made large awards to serve in subsequent arbitrations, since its attorneys could strike them from LPAs or disqualify them if selected. Therefore, annual reports describe what has happened to neutral arbitrators after making an award of \$500,000 or more.

This year, seven neutral arbitrators made awards for more than \$500,000. The awards ranged from \$506,717 to \$3,469,778. Two had previously made large awards. Four have been selected to serve again after making their award.²³ One neutral arbitrator has been selected 16 times, 11 of them by joint selection.

5. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times with Cases Closed by Other Neutral Arbitrators

Each year, the OIA compares how cases closed by neutral arbitrators selected ten or more times with cases closed by other neutral arbitrators. There were nine neutral arbitrators who were selected ten or more times this year. Table 4 shows the results comparing cases closed in 2017 and 2018 with the other cases that closed in those years with neutral arbitrators in place.

²³Of the three neutrals who were not selected again, one retired, one made the award in December and the other has been selected in 2019.

Table 4 - Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times vs. Cases Closed with Other Neutral Arbitrators

Cases Closed 2017 – 2018	Cases with Neutral Arbitrators Selected 10 or More Times in 2018		Cases with Other Neutral Arbitrators²⁴	
Settled	115	54%	424	49%
Withdrawn	58	27%	180	21%
Summary Judgment	24	11%	126	15%
Awarded to Respondent	6	3%	55	6%
Awarded to Claimant	3	1%	36	4%
Dismissed	8	4%	43	5%
Total	214		864	

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 606 demands for arbitration. Geographically, 318 demands for arbitration came from Northern California, 242 came from Southern California, and 46 came from San Diego.²⁵

A. Types of Claims

The OIA administered 605 new cases.²⁶ 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 95%, or 572 cases. Benefits and coverage cases represent about two percent of the system, or 11 cases.

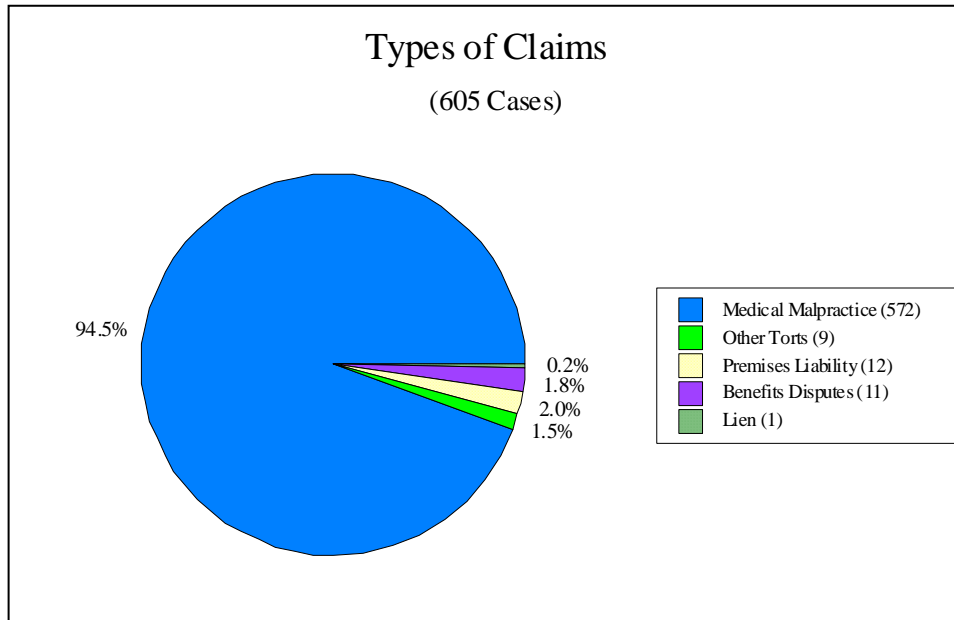
Chart 1 shows the types of new claims the OIA administered during the year.

²⁴One case was consolidated with another case and is not included in these numbers.

²⁵The 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 where to serve demands for Northern and Southern California, including San Diego.

²⁶A few of these demands submitted by Kaiser do not proceed further in the system because they are “opt ins” – based on a contract that required arbitration but not the use of the OIA. There was one “opt in” case which was returned to Kaiser for administration.

Chart 1



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. Lien cases are discussed in Section IX.

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

The *Rules* require Kaiser to submit a demand for arbitration to the OIA within ten days of receiving it.²⁷ The average length of time that Kaiser took to submit demands to the OIA was four days. The mode was one.²⁸ This means that Kaiser usually sends the demand to the OIA on the day after it is received. The range was 0 – 76 days.²⁹

There were five cases in which Kaiser took more than 10 days to submit the demand to the OIA. The average was 31 days, and the range was 13 – 76 days.

²⁷Exhibit B, Rule 11.

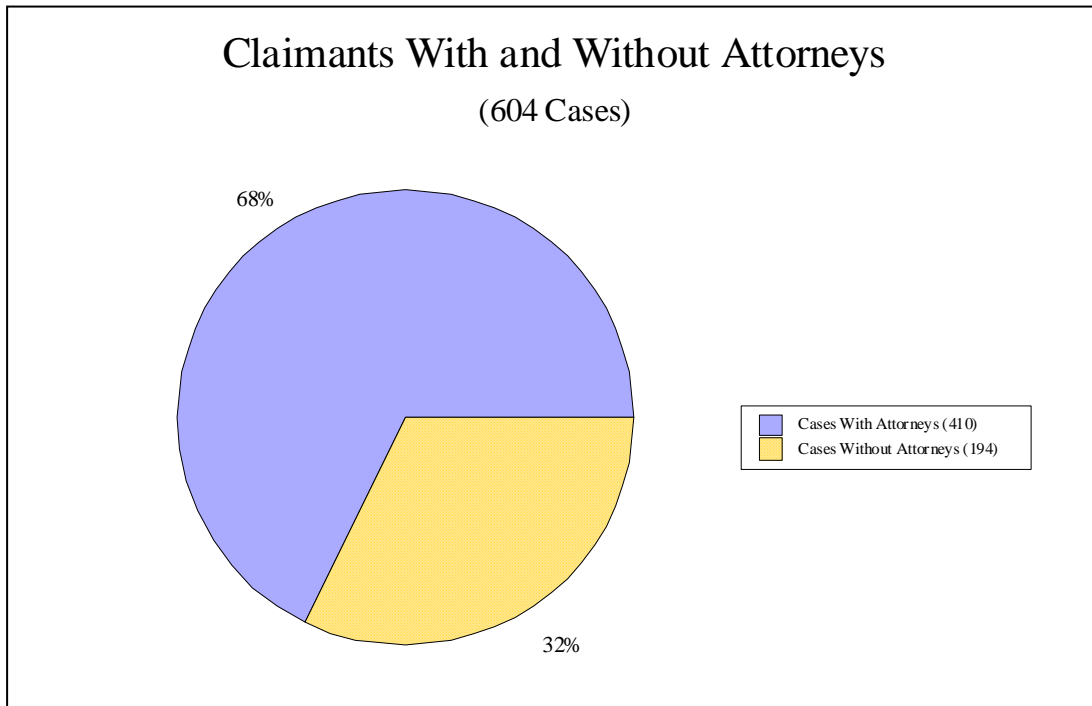
²⁸Mode is the single most commonly occurring number in a given group.

²⁹In the case that took 76 days, the claimants originally filed their complaint in court and were compelled to arbitration, but the order to compel was inadvertently not sent to the OIA for 2 months.

C. Claimants With and Without Attorneys

Claimants were represented by counsel in 68% of new cases (410 of 604). In 32% of cases, the claimants represented themselves (or acted in *pro per*).

Chart 2



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. Subsection A describes the selection process in general. The next four sub-sections discuss different aspects of the selection process in detail: whether the parties selected the neutral arbitrator by joint selection or by striking and ranking the names on their List of Possible Arbitrators (LPA); the cases in which the parties decided to postpone the selection of the neutral; the cases in which the parties disqualified a neutral arbitrator; and 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 when the OIA starts to administer a case³⁰ and a claimant has either paid the \$150 arbitration filing fee or received a waiver of that fee. The OIA sends both parties in the case a LPA. The LPA contains 12 randomly computer generated names of neutral arbitrators from the appropriate geographical panel.

Along with the LPA, the OIA sends the parties information about the people named on the LPA. The parties receive a copy of each neutral arbitrator's application and fee schedule, and subsequent updates to the application, if any.³¹

If a neutral arbitrator has served in any earlier, closed OIA case, the parties may also receive copies of any evaluations previous parties have submitted about the arbitrator. Any redacted awards or decisions the neutral arbitrator has written within the last five years are available on the OIA website.

The parties have 20 days to respond to the LPA.³² Parties can respond in one of two ways. First, both sides can jointly decide on the person they wish to be the neutral arbitrator. This person does not have to be named on the LPA, be on the OIA panel, or meet the OIA qualifications.³³ Provided the person agrees to follow the OIA *Rules*, the parties may 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 returns the LPA, striking up to four names and ranking the remaining names in order of preference, with "1" as the top choice. When the OIA receives the LPAs, the OIA eliminates any names that have been stricken by either side and then totals the scores of the names that remain. The person with the best score³⁴ is asked to serve. This is called the "strike and rank" process.

³⁰For the OIA to administer a case, it must be required by contract (mandatory) or the claimant must have 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 for administration. See footnote 26.

³¹Neutral arbitrators are required to update their applications every two years. If an arbitrator has not served on the panel for at least two years, he/she may not have any update.

³²A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

³³Neutral arbitrators who do not meet the OIA qualifications – for example, they might have served as a party arbitrator in the past three years for either side in a Kaiser arbitration – may serve as jointly selected neutral arbitrators. There is, however, one exception: If, pursuant to California's Ethics Standards, a neutral arbitrator has promised not to take another case with the parties while the first remains open and the OIA knows the case is still open, the OIA would not allow the person to serve as a neutral arbitrator in a subsequent case.

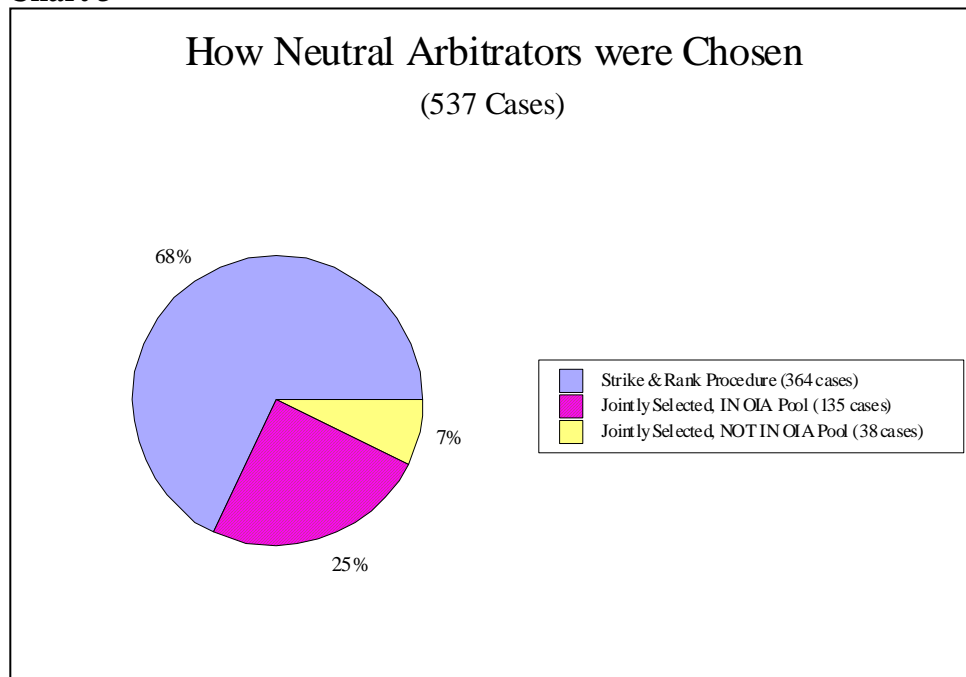
³⁴For example, a person who was ranked "1" by both sides – for a combined score of "2" – would have the best score.

Before a neutral has been selected, claimant can request a postponement of up to 90 days of the LPA deadline under Rule 21. In addition, after the neutral arbitrator is selected, but before he or she begins to serve, California law allows either party to disqualify the neutral arbitrator. A number of cases close before a neutral arbitrator is selected. Fifty-one cases either settled (20) or were withdrawn (31) without a neutral arbitrator in place.³⁵

B. Joint Selections vs. Strike and Rank Selections

Of the 537 neutral arbitrators selected, 173, or 32%, were jointly selected by the parties and 364, or 68%, were selected by the strike and rank procedure. Of the neutral arbitrators jointly selected by the parties, 135, or 78%, were members of the OIA panel, though not necessarily on the LPA sent to the parties. In 38 cases, or 22%, the parties selected a neutral arbitrator who was not a member of the panel. See Chart 3. Four neutral arbitrators who are not part of the OIA panel account for 29 of the joint selections.

Chart 3



C. Status of 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 do so, but only if the claimant agrees in writing. The parties can request only one postponement of up to 90 days

³⁵These cases included both cases with attorneys and cases where the claimant was *pro per*. For *pro per* cases, 5 settled and 18 were withdrawn. For represented cases, 15 settled and 13 were withdrawn.

in a case – they cannot, for example, get a 40 day postponement at one point and a 50 day postponement later. There are times when parties request a postponement of less than 90 days. 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 authority 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 case is settled or withdrawn³⁶ – though it may be longer if, for example, it is based on the claimant’s medical condition, or a party has gone to court for some reason.

Under Rule 21, claimants do not have to give a reason to obtain a 90 day postponement. For a Rule 28 extension, however, they must provide a reason. The reasons for a Rule 28 extension are often the same as claimants identify as the reasons they use Rule 21. In some cases, the parties are seeking to settle the case or to jointly select a neutral arbitrator. Some want a little more time to evaluate the case before incurring the expense of a neutral arbitrator. There are also some parties who request more time for health reasons.

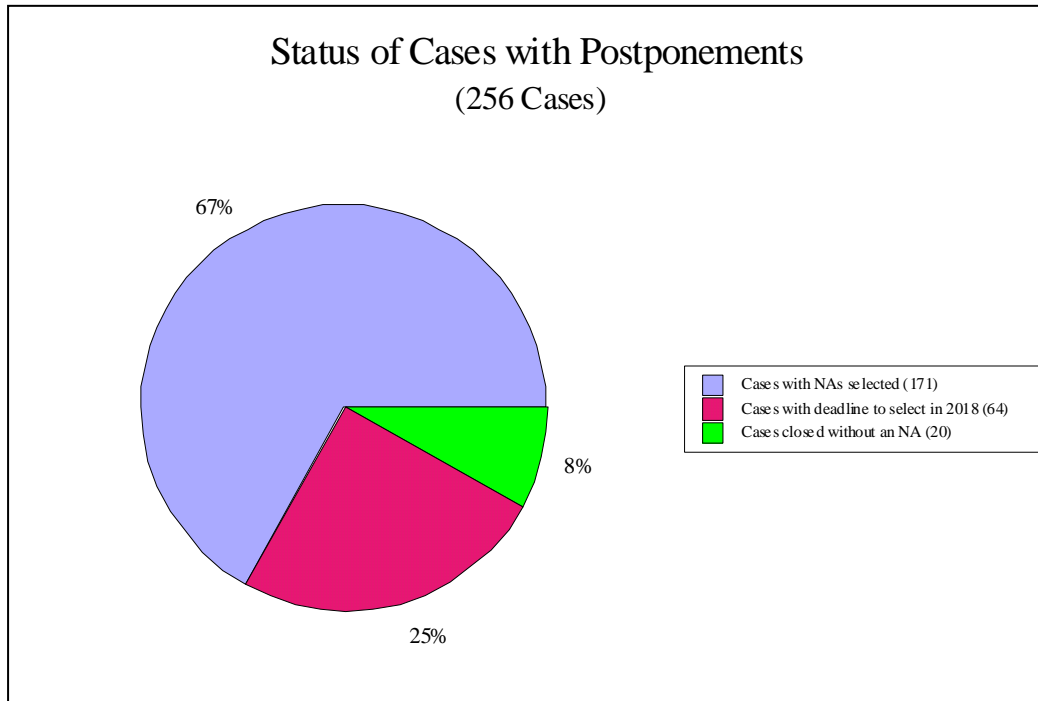
There were 256 cases where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their responses to the LPA, or both. The claimants made all but three of the requests for Rule 21 postponements. Requests for a Rule 28 extension were made in 16 cases. In some, the Rule 21 request was made in prior years but the selection of a neutral arbitrator occurred this year. There was one case where the Rule 28 extension was given without a prior Rule 21 postponement.³⁷

Chart 4 shows what happened in those 256 cases. Sixty-seven percent (67%), 171 cases, now have a neutral arbitrator in place. Twenty closed before a neutral arbitrator was selected. For the remaining 64 cases, the deadline to select a neutral arbitrator was after December 31, 2018.

³⁶The extension allows the claimant to send written notice of settlement or withdrawal without a neutral arbitrator being selected, which generally reduces expenses.

³⁷Claimant requested a Rule 28 postponement of the selection of the neutral arbitrator in order to petition the Superior Court regarding the arbitrability of the matter after four disqualifications of a neutral arbitrator by Kaiser. The Superior Court denied the request, and a neutral arbitrator was selected pursuant to the OIA *Rules*.

Chart 4



D. Status of Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators.³⁸ Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.³⁹ After they make these disclosures, the parties have 15 days to disqualify 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 timely disqualify neutral arbitrators in a given case. However, under Rule 18.f, after two disqualifications, the OIA randomly selects subsequent neutral arbitrators who have not been named on prior LPAs.

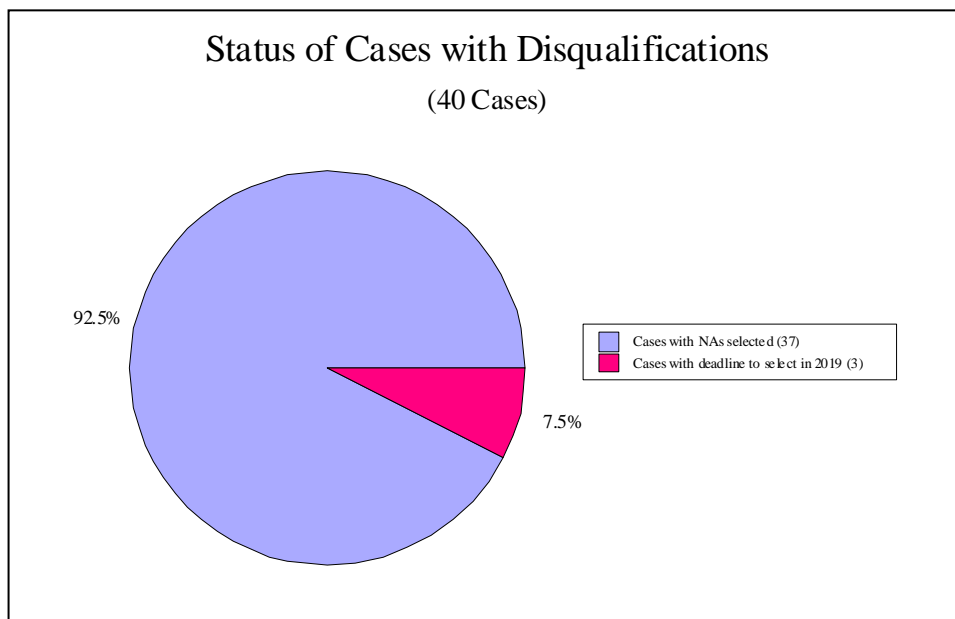
Neutral arbitrators were disqualified in 40 cases. Claimants disqualified 37 neutral arbitrators and Kaiser disqualified 29. Thirty-two cases had a single disqualification. Two cases

³⁸California Code of Civil Procedure §1281.91; see also Exhibit B, Rule 20.

³⁹See 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 the OIA sends to the neutral arbitrator, with copies to the parties, after the neutral arbitrator agrees to serve.

had two disqualifications, three cases had four, and three cases had six disqualifications.⁴⁰ Chart 5 shows what happened in those 40 cases. In 37 of the cases with a disqualification, a neutral arbitrator had been selected. In three of the cases with a disqualification, the deadline to select another neutral arbitrator was after December 31, 2018.

Chart 5



E. Length of Time to Select a Neutral Arbitrator

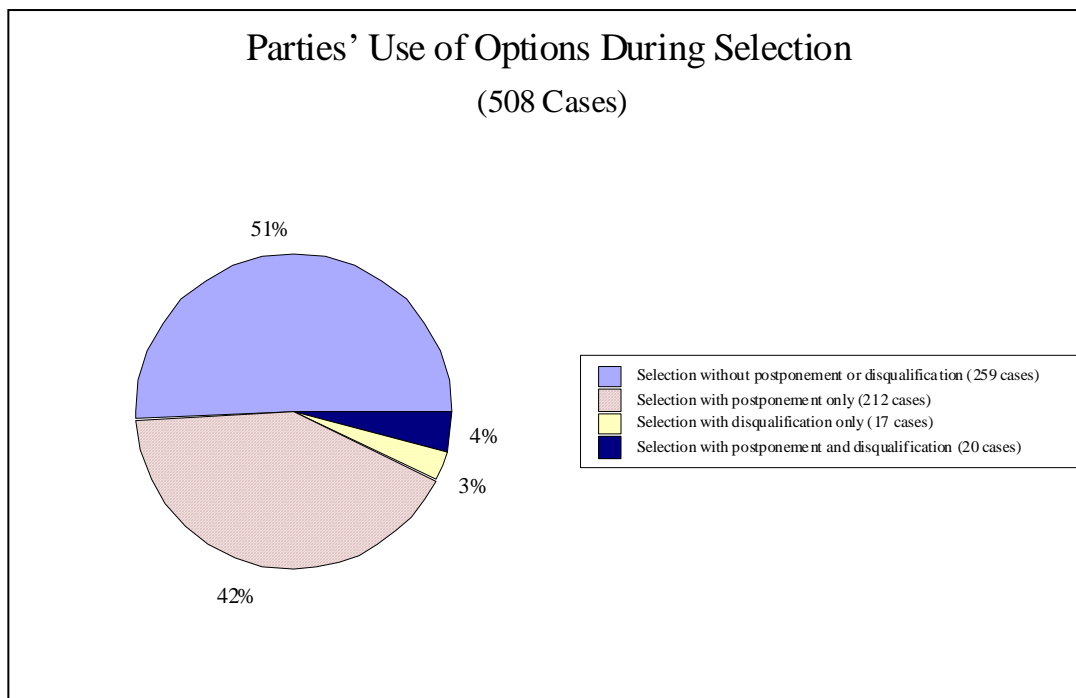
This section considers 508 cases in which a neutral arbitrator was selected⁴¹ and divides the selections into four categories when discussing the length of time to select a neutral arbitrator. The first category is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was extended. 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

⁴⁰In cases with multiple disqualifications, one of the parties may petition the 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 §1281.91(2).

⁴¹Twenty-nine cases in which a neutral arbitrator was selected 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, became 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 was administered, these cases are not included in these computations of length of time to select a neutral arbitrator.

there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. The last three categories include cases where the request for postponement and/or the disqualification was made in prior years, but the neutral arbitrator was selected this year. Finally, we give the overall average for the 508 cases. Chart 6 displays the four categories.

Chart 6



1. Cases with No Delays

There were 259 cases where a neutral arbitrator was selected 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 was 24 days, and the range was 8 – 52 days.⁴² This category represents 51% of all neutral arbitrators selected.

2. Cases with Postponements

There were 212 cases where a neutral arbitrator was selected and the only delay was a 90 day postponement and/or an OIA extension of the deadline under Rule 28. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in those cases was 104 days,

⁴²In the case that took 52 days to select a neutral arbitrator, the OIA inadvertently failed to send the LPA to the parties after receiving the filing fee. Upon discovery, the OIA sent the parties the LPA the same day.

and the range was 21 – 234 days.⁴³ This category represents 42% of all cases which selected a neutral arbitrator.

3. Cases with Disqualifications

There were 17 cases where a neutral arbitrator was selected and the only delay was one or more disqualification(s) of a neutral arbitrator. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96, if there is only one disqualification.⁴⁴ The average number of days to select a neutral arbitrator in the 17 cases was 54 days, and the range was 28 – 71 days. Disqualification only cases represent 3% of all cases which selected a neutral arbitrator.

4. Cases with Postponements and Disqualifications

There were 20 cases where a neutral arbitrator was selected after a postponement and a disqualification of a neutral arbitrator. 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 was 144, and the range was 66 – 191 days.⁴⁵ These cases represent 4% of all cases which selected a neutral arbitrator.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases was 63 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*⁴⁶ that the old Kaiser system averaged 674 days to select a neutral arbitrator.

⁴³In the case that took 234 days to select a neutral arbitrator with just a postponement, the claimant's attorney first obtained a 90 day postponement and the parties then stipulated to additional postponements under Rule 28, awaiting a finding of death to determine whether or not the case would be litigated. A neutral arbitrator was eventually selected, and the matter was withdrawn six days later.

⁴⁴The 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.

⁴⁵In the case that took 191 days to select a neutral arbitrator, the claimant's attorney first obtained a 90 day postponement and then disqualified two neutral arbitrators. Kaiser disqualified one before jointly agreeing to a neutral arbitrator.

⁴⁶15 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 led to the creation of the Blue Ribbon Panel.

F. Cases with Party Arbitrators

In medical malpractice cases, if the amount of damages exceeds \$200,000, a California statute gives parties a right to proceed with three arbitrators: one neutral arbitrator and two party arbitrators.⁴⁷ The parties may waive this right. The Blue Ribbon Panel (BRP) that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with two more participants in the arbitration process. The BRP, therefore, suggested that the system create incentives for cases to proceed with one neutral arbitrator.

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 used in the OIA system. All the cases that went to hearing were decided by a single neutral arbitrator.

Of the cases that remained open at the end of the year, party arbitrators had been designated in four cases by both parties.

VI. MAINTAINING THE CASE TIMETABLE

This section summarizes the methods for monitoring compliance with deadlines and then looks at the actual compliance at various points during the arbitration process. The OIA monitors its cases in two different ways.

First, 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 the OIA that a key event has taken place by its deadline, the OIA contacts them and asks for confirmation that it has occurred. In most cases, the events have occurred and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In instances where the event has not occurred and/or confirmation is not received, the OIA suspends the neutral arbitrator from receiving new cases until confirmation is received.⁴⁸

Second, the OIA looks at cases overall and their progress toward closing on time. When a case enters the system, the OIA computer system calendars a reminder for 12 months. As

⁴⁷California Health & Safety Code §1373.19.

⁴⁸When neutral arbitrators are suspended, the OIA removes the neutral arbitrators’ names from the OIA panel – until they take the necessary action. Thus, suspended neutrals are not listed on any LPA and cannot be jointly selected by the parties.

discussed in Section VII, most cases close within 12 months. For those that remain, the OIA contacts 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.

A. Neutral Arbitrator's Disclosure Statement

Once neutral arbitrators have been selected, California law requires that they 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 disclosures are timely served, and they include reports provided by the OIA that are required by California law. No neutral was suspended for failing to timely serve disclosures.

B. Arbitration Management Conference

The *Rules* require the neutral arbitrator to hold an Arbitration Management Conference (AMC) within 60 days of his or her selection.⁴⁹ Neutrals are also required to return an AMC form to the OIA within five days of 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. Two neutral arbitrators were suspended for failing to return an AMC form. Both complied by the end of the year.

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 should not be present at this meeting. The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. The OIA received notice from the parties in 345 cases that they held a MSM. Fifty-two of them reported that the case had settled at the MSM. Three of these cases involved a *pro per* claimant. In 40 cases, neither party returned the MSM form to the OIA by the end of the year.⁵⁰

D. Hearing and Award

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*. One neutral arbitrator was suspended for failing to schedule an arbitration hearing, but promptly complied.

⁴⁹Exhibit B, Rule 25.

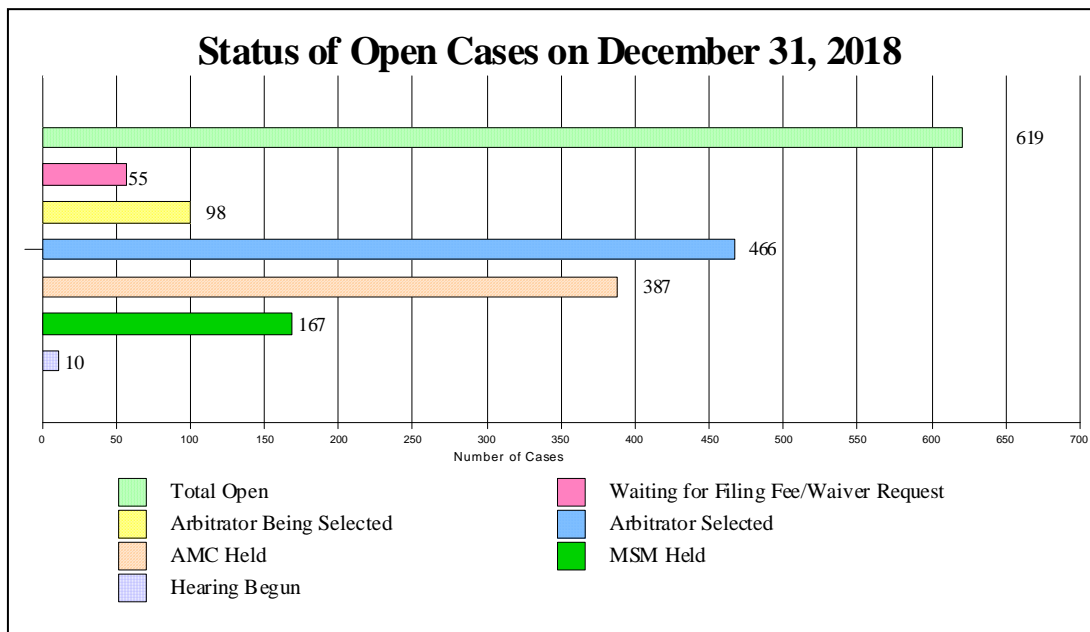
⁵⁰While the OIA sends letters to the parties requesting the MSM form, it has no power to compel them to report or to meet. A neutral arbitrator, on the other hand, can order the parties to meet if a party complains that the other side refuses to do so.

Two neutral arbitrators were suspended for failing to provide the amount of the fee and the fee allocation required by California Code of Civil Procedure §1281.96. One has not yet complied and remains suspended. One neutral arbitrator was also suspended for failing to return the questionnaire required by Rule 48, but promptly complied.

E. Status of Open Cases on December 31, 2018

There were 619 open cases. In 55 of these cases, the LPA had not been sent because the filing fee had not yet been paid or waived. In 98 cases, the parties were in the process of selecting a neutral arbitrator. In 466 cases, a neutral arbitrator had been selected. Of these, the AMC had been held in 387. In 167 cases, the parties had held the MSM. In ten cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the award. Chart 7 illustrates the status of open cases.

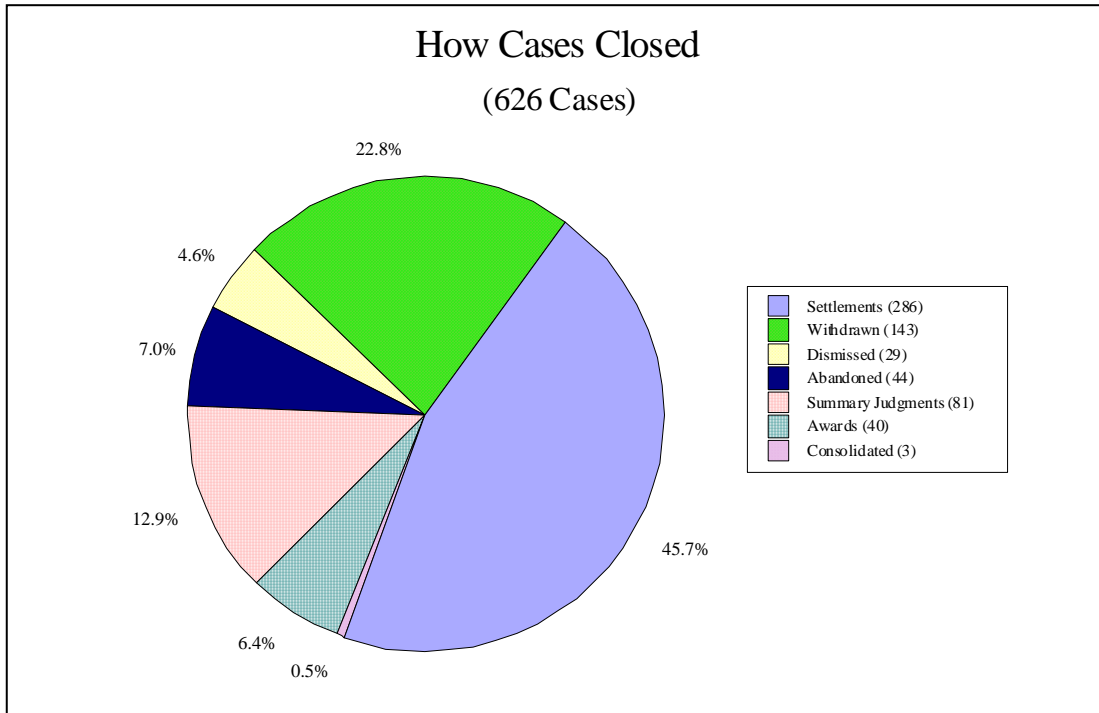
Chart 7



VII. THE CASES THAT CLOSED

Cases close either because of action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of the filing fee), or action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). 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. Chart 8 displays how the 626 cases closed.

Chart 8



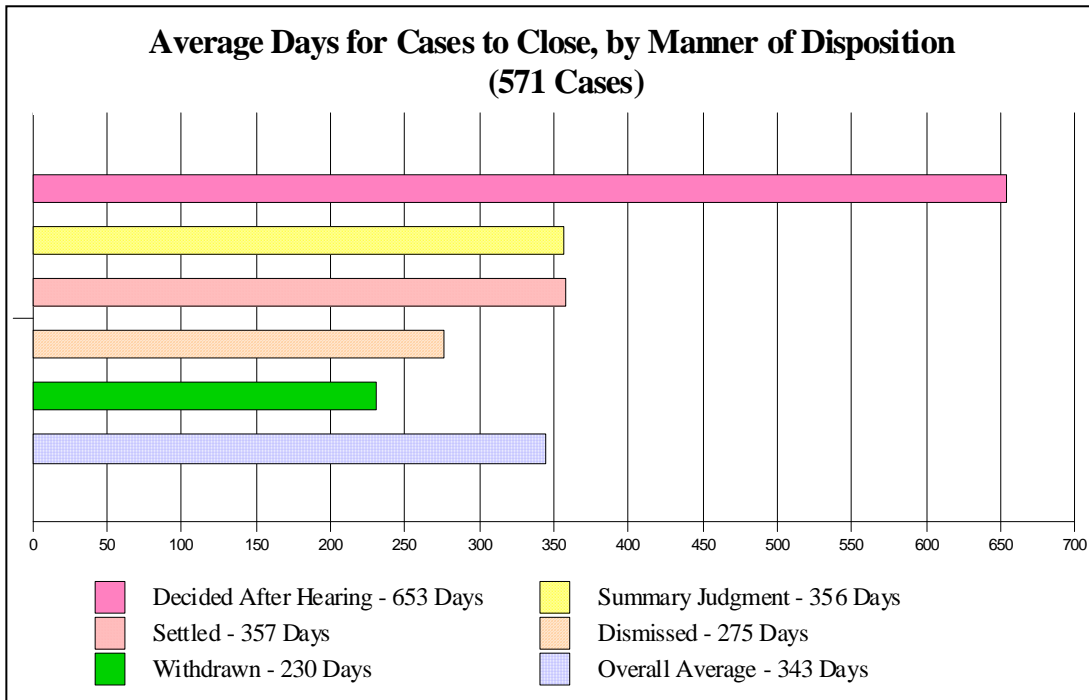
As shown on Chart 9, cases closed on average in 343 days, in less than 12 months.⁵¹ The range was 0⁵² – 1,912 days.⁵³ No case closed after its deadline, i.e., none was “late.”

⁵¹Chart 10 refers to 571 closed cases, not 626, because the OIA does not begin measuring the time until the fee is either paid or waived. It excludes 44 abandoned cases, 3 consolidated cases, and 8 cases that were withdrawn or settled before the fee was paid.

⁵²In the case that took 0 days, the OIA granted the fee waiver, sent the LPA to the parties, and received notice that the case had settled the same day.

⁵³The case that took 1,912 days to close was designated extraordinary because the minor’s injuries could not be ascertained within 18 months. The claimant’s attorney then requested a stay of the arbitration proceeding to file a complaint in court believing the claimant was not bound to arbitrate. The Superior Court compelled arbitration, and the arbitration hearing was set. The matter settled one month before the scheduled hearing, but required a minor’s compromise which took nearly 90 days to obtain.

Chart 9

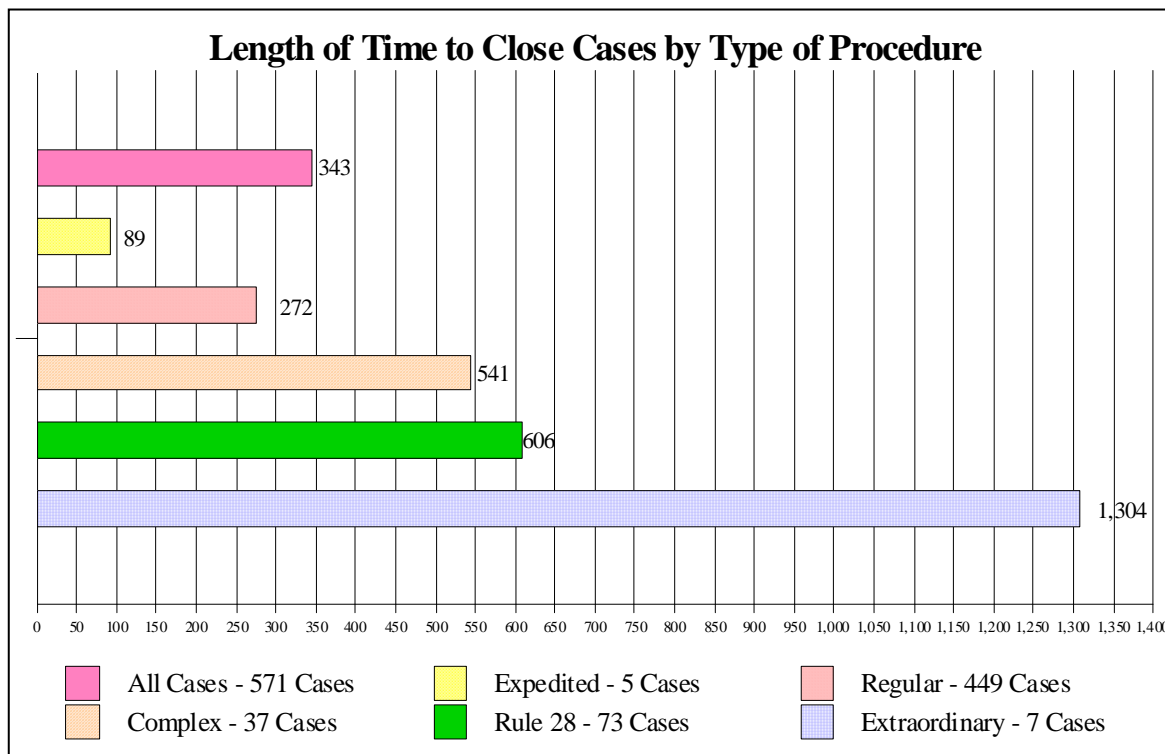


The second half of this section discusses cases that employed special Rules to either have the cases decided faster or slower than most. Under the *Rules*, cases must ordinarily be completed within 18 months. Eighty-eight percent (88%) of the cases are closed within this period, and 61% close in a year 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 for good cause under Rule 28.⁵⁴

Chart 10 shows the average time to close by type of procedure.

⁵⁴A complex case can also be the subject of a Rule 28 extension if it turns out the case requires more than 30 months to close. Eight cases that closed were both complex and had a Rule 28 extension.

Chart 10



A. How Cases Closed

1. Settlements – 46% of Closures

Settlements occurred in 286 cases. This represents 46% of the cases closed. The average time to settle was 357 days, just under 12 months. The range was 0⁵⁵ – 1,912 days.⁵⁶ In 21 settled cases, or 7%, the claimant was in *pro per*. Fifty-two cases closed at the mandatory settlement meeting.

2. Withdrawn Cases – 23% of Closures

Withdrawal notices were received in 143 cases. In 57 of these cases, or 40%, 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 contact the parties to ask whether the case was “withdrawn,” meaning voluntarily dismissed, or

⁵⁵The case that settled the same day as the arbitration process was initiated is discussed in footnote 52.

⁵⁶The case that took 1,912 days to settle is discussed in footnote 53.

“settled” and enter the closure accordingly. Twenty-three percent (23%) of closed cases were withdrawn.

The average time it took for a party to withdraw a claim was 230 days. The range was 8 – 875 days.⁵⁷

3. Abandoned Cases – 7% of Closures

Claimants failed to either pay the filing fee or obtain a fee waiver in 44 cases.⁵⁸ These cases were deemed abandoned for non-payment. In 33 of the 44 cases, the claimants were in *pro per*. Before claimants are excluded from this system for not paying the filing fee, they receive three notices from the OIA and are offered the opportunity to apply for fee waivers.

4. Dismissed Cases – 5% of Closures

Neutral arbitrators dismissed 29 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise conform to the *Rules* or applicable statutes. Twenty-five of these closed cases involved *pro pers*.

5. Summary Judgment – 13% of Closures

Summary judgment was granted to the respondent in 81 cases. In 56 of these cases, or 69%, the claimant was in *pro per*. The most common reasons given by neutral arbitrators were: failing to have an expert witness (26 cases), failing to file an opposition (30 cases), exceeding the statute of limitations (6 cases), and no triable issue of fact (17 cases).

The average number of days to close a case by summary judgment was 356 days. The range was 163 – 904 days.⁵⁹

⁵⁷In the case that was withdrawn after 875 days, the claimant’s attorney obtained a 90 day postponement to jointly select a neutral arbitrator. The matter was designated complex due to the number of treating doctors’ depositions. The complex deadline was then extended under Rule 28 due to problems with discovery. Claimant requested three continuances of the motion for summary judgment, and two weeks before it was scheduled to be heard, the claimant’s attorney withdrew the case.

⁵⁸The 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, the claim is not subject to arbitration. Both the OIA and Kaiser inform these claimants of their right to go to small claims court.

⁵⁹In the case that closed in 904 days after a motion for summary judgment, the claimant’s attorney first obtained a 90 day postponement to select a neutral arbitrator. The neutral arbitrator then extended the deadline to close the matter under Rule 28. The motion for summary judgment was eventually scheduled, heard and granted nearly two years later.

6. Cases Decided After Hearing – 6% of Closures

a. Who Won

Six percent (6%), or 40, of closed cases proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 25 of these cases, or 63%. In one case, the claimant was in *pro per*. The claimant prevailed in 15 cases, or 37%. None was a *pro per* claimant.

b. How Much Claimants Won

Fifteen cases resulted in awards to claimants. The range was \$4,500 - \$3,469,778. The average amount of an award was \$684,989. A list of the awards made is attached as Exhibit G.

c. How Long it Took

The 40 cases that proceeded to a hearing, on average, closed in 653 days. The range was 336 – 1,799 days.⁶⁰ Cases that go to a hearing are the most likely to employ the special procedures discussed in Section VII.B to give the parties more time. If only regular cases are considered, the average to close was 429 days.

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 expediting a case 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.⁶¹

Claimants made 12 requests for expedited procedures to the OIA. Four requests were granted and eight were denied⁶² without prejudice to make the request to the neutral arbitrator.⁶³ Kaiser objected to four of these requests; all were denied by the OIA.

⁶⁰In the case that took 1,799 days to close after a hearing, the claimant's attorney obtained a 90 day postponement. Shortly after the appointment of a neutral arbitrator, the case was designated complex (coordination issues with a companion court case), but later designated extraordinary because it also involved a minor with unascertainable injuries. The hearing was continued five times, but it eventually went forward and resulted in a \$853,330 award for claimant.

⁶¹Exhibit B, Rules 33 – 36.

⁶²The most common reason to deny the request is claimant's failure to provide reasons for the request under OIA Rule 33.a and/or a failure to include a length of time in which an award is sought pursuant to Rule 34(a).

⁶³In two cases, claimants made two requests; all four were denied.

Three requests for expedited procedures were made to the neutral arbitrator. Two of the three requests were previously denied by the OIA. One request was granted by the neutral arbitrator and the other was denied. One request was made directly to the neutral arbitrator and was granted.

The OIA had nine open expedited cases pending during the year.⁶⁴ Six expedited cases closed. All were settled. The average for these cases to close was 89 days, and the range was 10 – 156 days. Two expedited cases remained open at the end of the year.

Although originally designed to decide benefit claims quickly, none of the expedited cases 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.⁶⁵ 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 52 cases designated as complex. Thirty-seven complex cases closed. The average length of time for complex matters to close was 541 days, 18 months. The range was 258 – 834 days (about 28 months).⁶⁶

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.⁶⁷ Twelve cases were designated extraordinary, and seven cases closed. The average time to close an extraordinary case was 1,304 days, almost 4 years. The range was 708 – 1,912 days.⁶⁸

4. Rule 28 Extensions

Rule 28 allows neutral arbitrators to extend the deadline to close the case if “extraordinary circumstances” warrant it. Neutral arbitrators made Rule 28 determinations of “extraordinary circumstances” in 97 cases. Seventy-three cases with a Rule 28 designation

⁶⁴Three cases made their requests the prior year.

⁶⁵Exhibit B, Rule 24.b.

⁶⁶In the complex case that took 834 days to close, the arbitration hearing was continued for 8 months to accommodate claimant’s medical condition. The case then settled one week before the hearing was to commence.

⁶⁷Exhibit B, Rule 24.c.

⁶⁸The extraordinary case that took 1,912 days to close is discussed in footnote 53.

closed. The average time to close cases with a Rule 28 extension was 606 days. The range was 105 – 1,447 days.⁶⁹

According to the neutral arbitrator orders granting the extensions, the claimant's side requested four, the respondent's side requested two, and the parties stipulated ten times. Fourteen orders noted that there was no objection. Eighty-seven orders stated there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reasons, the most common reasons were scheduling conflicts.

VIII. THE COST OF ARBITRATIONS

A. What Fees Exist in OIA Arbitrations

Whether in court or in private arbitration, parties face 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 be divided equally between the claimant and the respondent.⁷⁰ In addition, state law provides that if the claim is for more than \$200,000, the matter will be heard by an arbitration panel, which consists of three arbitrators – a single neutral arbitrator and two party arbitrators, one selected by each side. Parties may waive their right to party arbitrators.

The OIA system provides mechanisms for a claimant to obtain 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 waiver(s) 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.

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. The OIA informs claimants 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

⁶⁹In the case with a Rule 28 extension that took 1,447 days to close, the neutral arbitrator designated the matter complex shortly after appointment. The complex deadline was then extended under Rule 28 for good cause. The hearing was continued three times but eventually went forward and resulted in a \$301,840 award for claimant.

⁷⁰California Code of Civil Procedure §1284.2.

their demands for arbitration.⁷¹ 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, granted or denied. If claimants' income meets the guidelines, the \$150 arbitration fee is waived.

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

This type of fee waiver, which 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. The fee waiver application is based on the form used by the state court for waiver of the filing fee to allow a plaintiff to proceed *in forma pauperis*. According to the *Rules*, the form is served on both the OIA and Kaiser. Kaiser has the opportunity to object before the OIA grants or denies this waiver.⁷² If this waiver is granted, a claimant does not have to pay either the neutral arbitrator's fees or the \$150 arbitration filing fee. A claimant who obtains this waiver is allowed to have a party arbitrator, but must pay for the party arbitrator.

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

The *Rules* also contain provisions to shift the claimants' portion of the neutral arbitrators' fees and expenses to Kaiser.⁷³ 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.⁷⁴ No financial information is required. The waiver forms are served on Kaiser, the neutral arbitrator, and the OIA.

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

1. The \$150 Arbitration Filing Fee

The OIA received 50 forms to waive the \$150 filing fee. The OIA granted 42 and denied 8.⁷⁵ Twenty-two of these claimants received both a waiver of the filing fee and a waiver of the

⁷¹California Code of Civil Procedure §1284.3; Exhibit B, Rule 12.

⁷²See Exhibit B, Rule 13.

⁷³See Exhibit B, Rules 14 and 15.

⁷⁴If the claimant waives his/her right to a party arbitrator but Kaiser wants to proceed with party arbitrators, Kaiser will still pay all of the neutral arbitrator's fees and expenses.

⁷⁵Four had the other fee waiver granted, three paid the filing fee, and one case was abandoned for not paying the filing fee.

neutral arbitrators' fees and expenses. By obtaining the waiver of the filing fee, the neutral arbitrator selection process can begin immediately.

2. The \$150 Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses

The OIA received 46 completed fee waiver applications. Three requests were pending from last year. The OIA granted 47 waivers and denied 1.⁷⁶ Kaiser objected to one request, which the OIA granted. One request is pending.

3. Neutral Arbitrators' Fee Allocation

State law requires arbitration providers, such as the OIA, to disclose neutral arbitrators' fees and fee allocations for closed cases.⁷⁷ We received fee information from neutral arbitrators for 528 cases that closed.

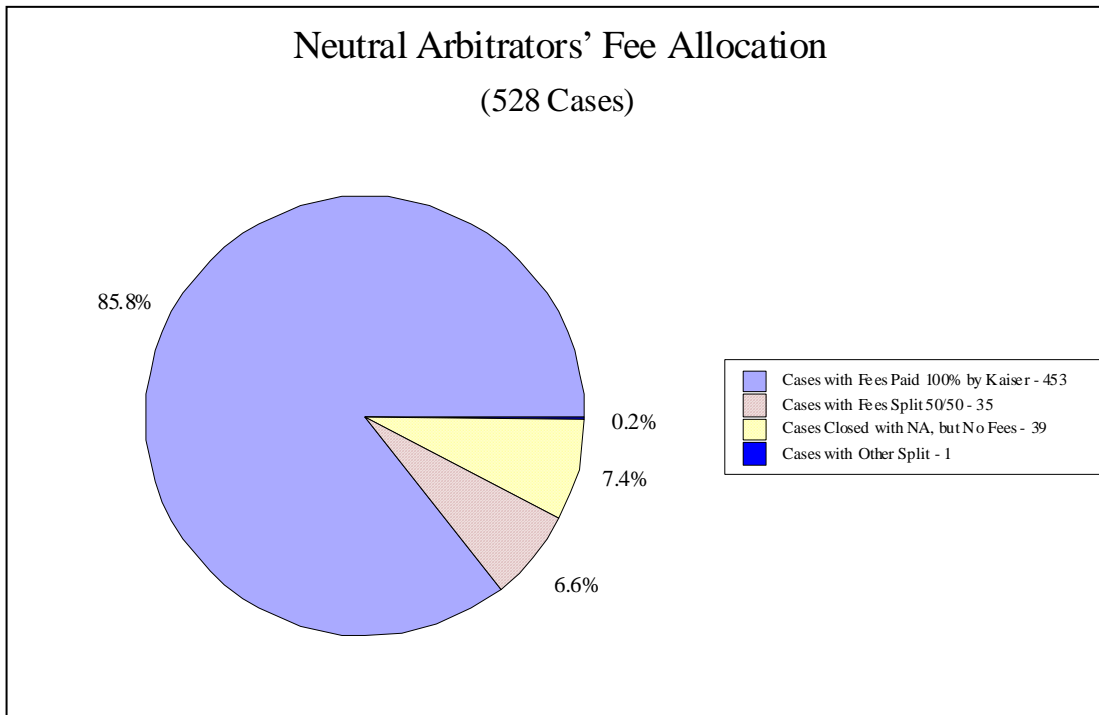
Kaiser paid 100% of the neutral arbitrators' fees and expenses in 453 cases. Fees were split 50/50 in 35 cases.⁷⁸ In 39 cases, no fees were charged. See Chart 11.

⁷⁶Claimant submitted a second request providing additional information and it was granted.

⁷⁷California Code of Civil Procedure §1281.96. This information is available on the OIA website.

⁷⁸One case had a different split, with claimant paying 84%, which includes the fee for an untimely continuance request.

Chart 11



D. The Fees Charged by Neutral Arbitrators

Members of the OIA panel 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 – \$1,200/hour. The average hourly fee was \$524. Some neutral arbitrators also offer a daily fee. This range was \$800/day – \$12,000/day. The average daily fee was \$4,425.

In 489 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 93% of the cases. The average neutral arbitrator fee was \$7,737. The range was \$120 – \$129,910. This excludes the 39 cases in which there were no fees. The average for all cases, including those with no fees, was \$7,166.

The arbitrators' fees described in the prior paragraph include many cases where the neutral arbitrator performed relatively little work. If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee was \$35,997. The range was \$12,000 – \$129,910.

IX. ANALYSIS OF LIEN CASES

This section applies only to lien cases. In lien cases, Kaiser makes the demand against a member to recoup the costs of medical care it provided where Kaiser asserts the member has recovered something from a third party, such as in a car accident.

A. Demands for Arbitration Submitted by Kaiser to the OIA

Kaiser submitted only one demand for arbitration based on a lien from Northern California. Kaiser submitted the demand to the OIA on the same day it served the member. The member was represented by counsel.

B. Selection of the Neutral Arbitrators

No neutral arbitrator was selected in a lien case.

C. Maintaining the Case Timetable

There were only four lien cases open. Two cases were proceeding with neutral arbitrators. One case was pending the selection of a neutral arbitrator. One case closed before a neutral arbitrator was selected.

In one case, the OIA received notice that the parties held the MSM. It did not settle.

D. The Cases that Closed

Three lien cases closed. One case settled and closed in 325 days. The other case went to hearing and resulted in a judgment for Kaiser in the amount of \$40,805.⁷⁹ It took 435 days to close. The third case was withdrawn before a neutral arbitrator was appointed and closed in 69 days.

E. The Cost of Lien Arbitrations

We have fee information for the two cases that closed with neutral arbitrators. The neutral arbitrator fees were \$1,860 and \$1,750 and were allocated 100% to Kaiser.

⁷⁹See Exhibit G.

X. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

When cases close, the OIA sends forms to counsel for the parties, *pro per* claimants and neutral arbitrators asking them questions about the neutral arbitrator, the arbitration process, the OIA, or all of the above. This section discusses the highlights of the responses we received 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 liens.

A. The Parties Evaluate the Neutral Arbitrators

The OIA sends neutral arbitrator evaluations to counsel for the parties or *pro per* claimants only in cases in which the neutral arbitrator made a decision that ended the case.

The form asks parties to evaluate their experience with the neutral arbitrator in 11 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 with 5 being agreement and 1 disagreement. The evaluations are anonymous, though the people filling out the forms are asked to identify themselves by category and how the case closed.

The OIA sent 346 evaluations and received 109 responses, or 32%. Six identified themselves as claimants, 26 as claimants' counsel, and 73 as respondents' counsel. Four did not specify a side.⁸⁰

Table 5 highlights the average responses to some of the inquiries.

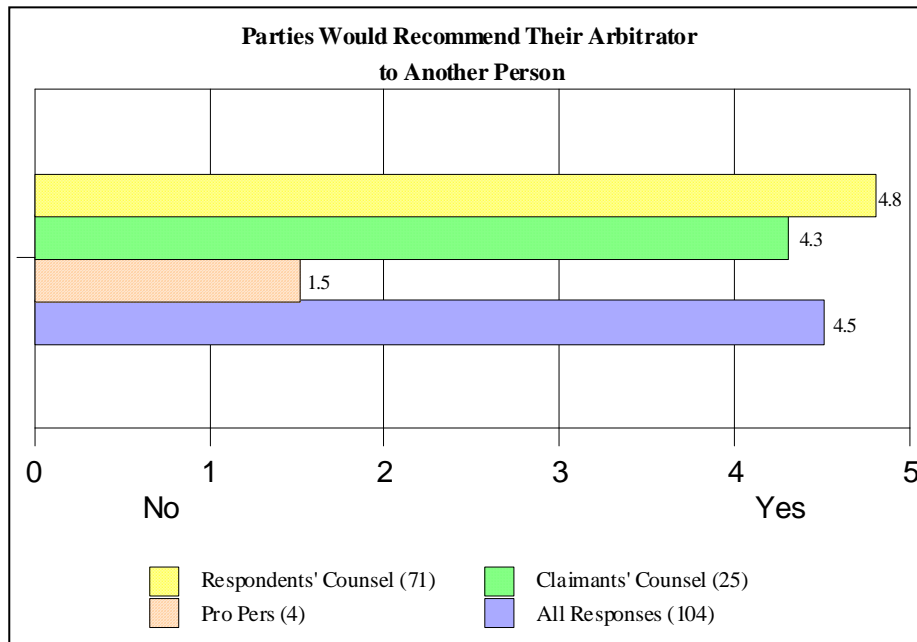
⁸⁰These responses are included only in the overall averages.

Table 5 - Parties' Evaluations of Neutral Arbitrators

Question	Claimants' Counsel	Pro per	Respondents' Counsel	Not Specified	Total
Impartial and treated parties fairly	4.5	1.8	4.9	3.0	4.6
Treated parties with respect	4.8	3.2	4.9	4.0	4.8
Explained procedures and decisions clearly	4.7	2.4	4.8	4.0	4.7
Understood applicable law	4.6	1.4	4.9	3.3	4.6
Understood facts of the case	4.3	1.5	4.9	4.0	4.6
Fees reasonable for work performed	4.8	1.7	4.8	5.0	4.7
Would recommend this neutral	4.3	1.5	4.8	3.0	4.5

As shown in Chart 12, the average on all responses when asked whether they would recommend this neutral to another person with a similar case was 4.5.

Chart 12



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. As with the evaluations sent to the parties to evaluate the neutral arbitrators, the OIA sends these forms to neutral arbitrators in cases where the neutral arbitrator closed the case. The OIA sent questionnaires in 173 closed cases and received 169 responses. 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 questions and concerns in the specific case.

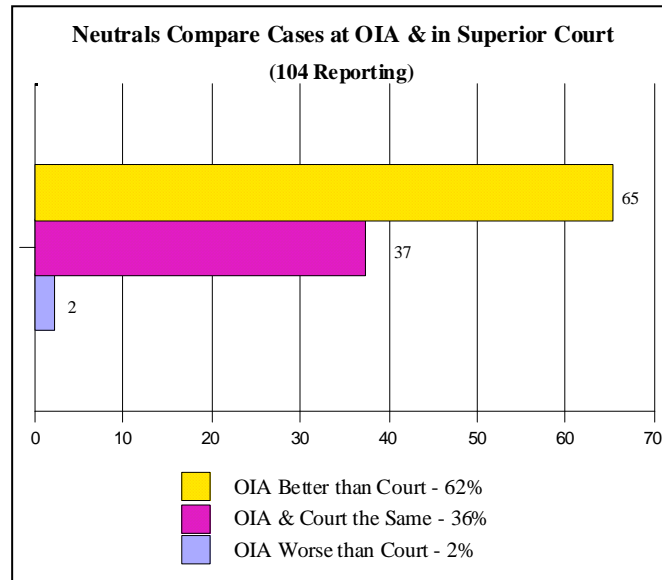
The questionnaires also includes two questions that ask arbitrators to check off features of the system which worked well or poorly in the specific case. The vast majority of those who responded were positive.

Table 6 - Neutral Arbitrators' Opinions Regarding the OIA System

Feature of OIA System	Works Well	Needs Improvement
Manner of neutral arbitrator's appointment	115	2
Early management conference	103	2
Availability of expedited proceedings	55	0
Award within 15 business days of hearing closure	46	10
Claimants' ability to have Kaiser pay neutral arbitrator	105	0
System's rules overall	121	5
Hearing within 18 months	55	3
Availability of complex/extraordinary proceedings	43	0

Finally, the questionnaires ask the neutrals whether they would rank the OIA experience as better, worse, or about the same as a similar case tried in court. One-hundred-four neutral arbitrators made the comparison. Sixty-five neutrals, or 62%, said the OIA experience was better. Thirty-seven neutrals, or 36%, said it was about the same. Two neutrals (2%) said the OIA experience was worse.⁸¹

Chart 13



Most neutral arbitrators generally praised the system, OIA, or *Rules*. Many appreciated the ability to easily communicate with the OIA and requested continued electronic transmission of documents. Many, however, mentioned difficulties with *pro pers*, and their inability to follow procedures. Several neutrals asked for more time for awards, and a few expressed frustration with the statutory disclosure deadlines and the rigidity of the OIA *Rules* regarding them.

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

The OIA sends the parties an additional one page evaluation of the OIA system and the ease of obtaining medical records. The form is similar to, but shorter than, the form sent to the neutral arbitrators.

As with the other forms, this asks the recipients, on a scale from 1 to 5, whether they agree or disagree. A “5” is the highest level of agreement.

⁸¹ One neutral arbitrator complained that the case was pending for a long time and wanted the ability to require prompt hearings over objections of the parties.

The OIA sent 1,072 evaluations and received 234 responses, or 22%. Fifteen identified themselves as claimants, 92 as claimants’ counsel, and 112 as respondents’ counsel. Fifteen did not specify a side.

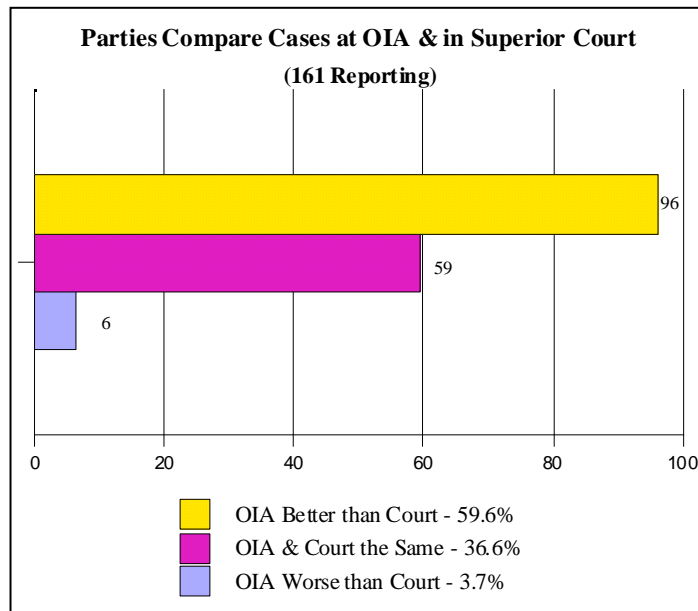
Table 7 highlights the average responses for some of the inquiries.

Table 7 - Parties’ Evaluations of the OIA System

Question	Claimants’ Counsel	Pro per	Respondents’ Counsel	Not Specified	Total
Procedures worked well	4.3	2.2	4.9	4.7	4.5
Obtaining medical records went well	4.2	2.3	4.9	5.0	4.5
OIA responsive to questions/concerns	4.6	3.7	4.9	4.7	4.7

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 161 people who made the comparison, 96 said it was better. Fifty-nine said it was the same. Six said it was worse.

Chart 14



In general, the most common subject concerned obtaining medical records. Those who responded complained of receiving incomplete sets, or called for making records more accessible, less expensive, and preferred receiving electronic versions. Others complained that Kaiser should be the custodian of records, not outside vendors. The next most common subject was the lack of a jury, or that the system favors Kaiser with no right to appeal. One suggested term limits for neutral arbitrators, and another suggested a three party panel for all cases. *Pro per* claimants once again expressed their frustration in navigating a legal system without a lawyer. Finally, some complained that the neutral arbitrator fees are too high.

XI. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

The AOB is chaired by Richard Spinello, retired Executive Director of Financial Risk and Insurance, Children's Hospital of Orange County. The vice-chair is Donna Yee, retired Chief Executive Officer of the Asian Community Center of Sacramento Valley.

Three AOB members retired: Dr. Cornelius Hopper, Vice President for Health Affairs, *Emeritus*, of the University of California System; Steve Zatkan, retired Senior Vice President and General Counsel, Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals; and the Honorable Cruz Reynoso, Professor of Law Emeritus, King Hall School of Law, University of California, Davis, and former California Supreme Court Justice.

Five new members joined: Carlos Camacho, Grant Director for Orange County Labor Federation, AFL-CIO; Kennedy Richardson, retired Litigation Practice Manager, Kaiser Foundation Health Plan; and Dr. John Swartzberg, Clinical Professor, *Emeritus*, University of California Berkeley School of Public Health joined in June. Margaret B. Martinez, Chief Executive Officer of Community Health Alliance of Pasadena joined in September, and the Honorable Carlos R. Moreno, former California Supreme Court Justice joined in December.

The membership of the AOB is a distinguished one, comprised of Kaiser Foundation Health Plan members, employers, labor representatives, plaintiff attorneys, defense attorneys, physicians, and other well respected members of the community. 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 membership of the AOB in alphabetical order, are:

Carlos Camacho, Grant Director for Orange County Labor Federation, AFL-CIO, Orange County.

Doris Cheng, medical malpractice attorney representing claimants, San Francisco.

Patrick Dowling, MD, MPH, Professor and Chair Family Medicine, David Geffen School of Medicine at UCLA, Los Angeles.

Sylvia Drew Ivie, Special Assistant to the President, Charles R. Drew University of Medicine and Science, Los Angeles.

Beong-Soo Kim, Vice President and Assistant General Counsel, Kaiser Foundation Health Plan, Pasadena.

Margaret B. Martinez, MPH, Chief Executive Officer of Community Health Alliance of Pasadena, dba Chap Care, Pasadena.

Bruce R. Merl, MD, Director of Medical-Legal Affairs, The Permanente Medical Group, Oakland.

Honorable Carlos R. Moreno, former California Supreme Court Justice, Los Angeles.

Kenneth Pivo, medical malpractice attorney representing respondents, Santa Ana.

Kennedy Richardson, retired Litigation Practice Manager, Kaiser Foundation Health Plan, Oakland.

Richard Spinello, retired Executive Director of Financial Risk and Insurance, Children's Hospital of Orange County.

John Swartzberg, MD, FACP, Clinical Professor, *Emeritus*, University of California Berkeley School of Public Health, Berkeley.

Donna L. Yee, MSW, PhD, Chief Executive Officer of the Asian Community Center of Sacramento Valley, Sacramento.

B. Activities

The AOB takes an active role. It meets quarterly to review the operation of the OIA and to receive reports from OIA staff. This includes quarterly reports of statistics similar to those included in the annual reports.

The AOB requested changes to the OIA's quarterly reports of statistics. More specifically, it requested that the OIA include a five year comparison of the average number of days to close cases by year in response to the steady increase in the number of days. This allows the AOB to monitor the information more closely. The AOB also requested that the OIA modify its timeline to include the OIA Rule contributing to the procedure. See page 3 for the revised 18 month timeline.

The AOB convened a sub-committee to address the OIA's proposals for Rule changes. The sub-committee moved ten Rule changes forward and the AOB approved them. See Section II for a list of Rules with a description of the amendments made and Exhibit B for a redlined copy of the OIA Rules.

The AOB renewed its contract with Ms. Bell for three more years.

The AOB selected five new board members to replace those who had previously retired.

The AOB had several discussions about the ways in which the OIA could increase the diversity of the OIA panel of neutral arbitrators. At the request of the AOB, the OIA will contact minority bar association leaders and provide information about the OIA and offer to attend any upcoming events in an effort to recruit new members to the panel. Additionally, the AOB had a guest speaker from Kaiser Permanente talk about Kaiser's equity, inclusion and diversity program. The speaker offered suggestions to the AOB to enhance neutral arbitrator recruitment efforts.

Finally, the AOB reviews the draft annual report and comments upon it. Exhibit K is the AOB Comments on the Annual Report for 2018.

XII. TRENDS AND DATA OVER THE YEARS OF OPERATION OF THE OIA

This report describes a mature arbitration system which is continuously improving. The OIA publishes this report on its website and sends copies to those who request it. The annual reports provide more information about arbitrations than any other arbitration provider.⁸² The OIA website provides a searchable database of all its cases since January 1, 2003, in addition to the sortable database about cases received in the past five years as required by state law.⁸³ Redacted decisions issued by the OIA neutral arbitrators within the last five years are also available on the OIA website. The OIA posts this information for the parties and the public.

Using the data that the OIA has published in prior reports, this section considers the operation of the OIA over time. As in the preceding sections, lien cases are only considered in the first three Sections (A, B, and C) and the last (K).

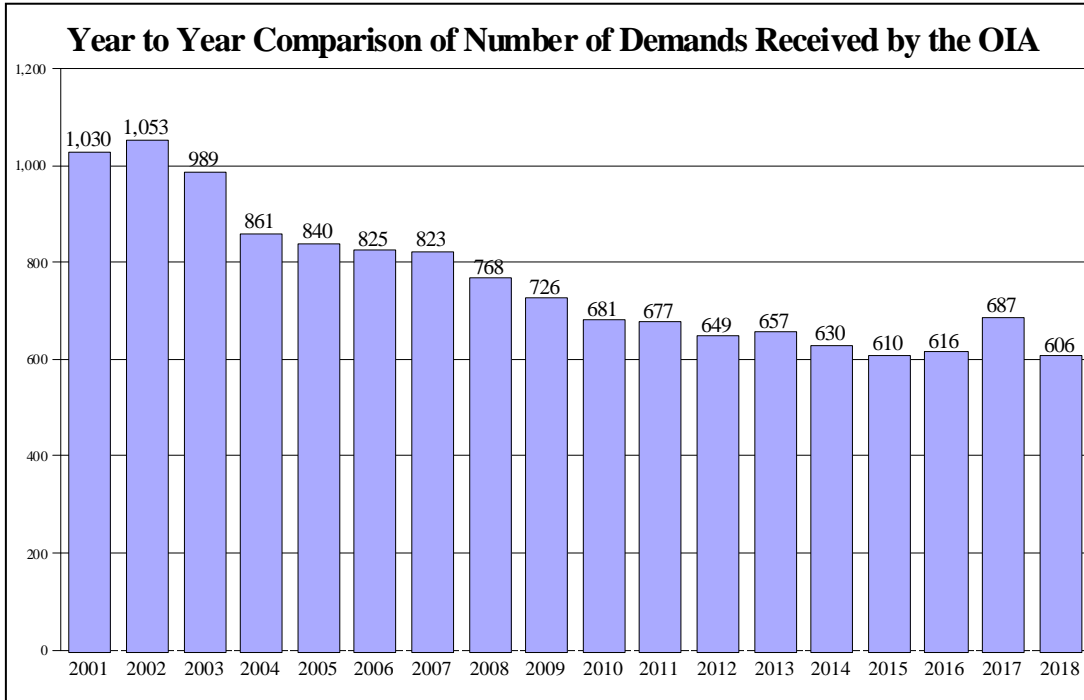
⁸²A member of the National Academy of Science's Committee on Science, Technology, and Law published an article largely based on the OIA's annual reports. "Can Mandatory Arbitration of Medical Malpractice Claims be Fair? The Kaiser Permanente System," published in the November, 2015 *Dispute Resolution Journal*, Vol. 70, No. 3.

⁸³No names of individual claimants or respondents are included, only corporate entities.

A. The Number of Demands for Arbitration

In 2018, the OIA received 606 demands for arbitration. This is the largest decrease in demands (a decrease of 81) since 2004 (a decrease of 128). Chart 16 shows the sharpest decline occurred between 2003 and 2004 with the largest increase from 2016 to 2017 (an increase of 71).

Chart 15



B. The Number of Neutral Arbitrators

The number of neutral arbitrators has remained relatively stable. This year, 19 neutrals left the panel, leaving 225 neutral arbitrators – only 3 fewer than last year when the panel contained 228 neutrals. The panel has ranged from 349 at the end of 2000 to a new low of 225 in 2018. On average, 38% have been retired judges. This year is slightly higher with 41% retired judges. The composition of the panel of neutral arbitrators includes those who have plaintiff’s side experience and those who have defendant’s side experience. Ninety-three percent (93%) report medical malpractice experience.

C. The Number Who Served

The percentage of neutral arbitrators who have served in any given year remains consistent with the number of demands. It reached a high of 70% in 2003, when the OIA

received 989 demands for arbitration and had 287 neutral arbitrators on its panel.⁸⁴ Fifty-two percent (52%) of neutral arbitrators served this year, a decrease from last year, and the lowest percentage since 2014 when it was 53%.

D. The Number Who Wrote Awards

The number of neutral arbitrators who have written awards also remained high, ranging from 34 (this year) to 93 (in 2004). Equally important, the vast majority of those neutral arbitrators, 68 – 87%, only wrote a single award in any year. For all neutral arbitrators who wrote awards in 2018, 82% wrote a single award.

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

During the OIA's existence, 102 different neutral arbitrators have made 138 awards of \$500,000 or more in favor of claimants. Most of the neutral arbitrators who made the awards were members of the OIA panel, but ten were not. The awards have ranged from \$500,000 to \$15,007,152.

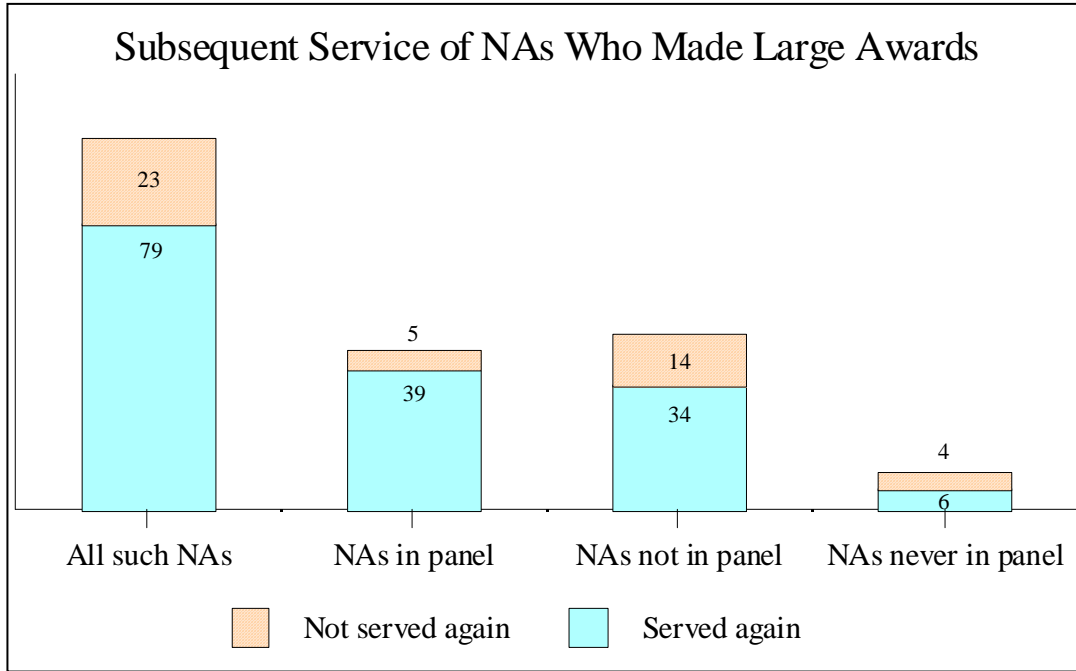
As Chart 16 illustrates, most neutral arbitrators who have made awards of \$500,000 or more served again. Specifically, 79 neutral arbitrators served 1,834 times after making their awards for \$500,000 or more. In almost half of these cases (830), the parties jointly selected the neutral arbitrator.⁸⁵

Of the 23 neutral arbitrators who were not selected after making their awards for \$500,000 or more, four were never in the OIA panel and 14 left the panel. Five of the neutral arbitrators who made such awards and were still on the panel have not served again.

⁸⁴By contrast, compared to 2003, this year there were 383 fewer demands for arbitration and 62 fewer neutral arbitrators on the panel.

⁸⁵In 2018, 28 neutral arbitrators who made such awards were selected in 130 cases. In 45 of the cases, they were jointly selected.

Chart 16



F. Types of Claims

The large majority of demands for arbitration are, and have always been, claims that allege medical malpractice. This has ranged from 86 – 97%.⁸⁶ This year 95% of the cases involved allegations of medical malpractice. Benefit claims are generally less than two percent (2%).

G. Claimants Without Attorneys

The average percentage of cases with claimants who are not represented by an attorney is 24%. This year, 32% of claimants did not have an attorney, a new high since the first year when 29% did not have an attorney.⁸⁷ 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* handout” to make them easier for *pro pers* to understand. See Exhibit B, Rule 54. The OIA is also readily available by phone and email to answer questions from *pro per* claimants about the filing fee, neutral arbitrator selection, the *Rules*, and related items.

⁸⁶The 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.

⁸⁷By contrast, compare this year to 2004, when only 17% of claimants did not have an attorney.

H. Joint Selection vs. Strike and Rank Selection

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 parties can jointly select anyone who agrees to follow the *Rules* and either party can timely disqualify neutral arbitrators after the selection. The OIA gives both parties identical information about the neutral arbitrators. This includes evaluations of the neutral arbitrators by the parties in earlier cases.

The parties select neutral arbitrators by the strike and rank process in a majority of cases. The percentage of neutral arbitrators chosen by strike and rank versus those jointly selected has ranged from 65% (2000 and 2015) to 74% (2003 and 2013). Similarly, the percentage of neutral arbitrators jointly selected who are members of the OIA panel has ranged from 55% (2011) to 84% (2014).⁸⁸ This year, 78% of the neutral arbitrators jointly selected are members of the OIA panel.

I. Parties Use of Options During Selection of Neutral Arbitrator

Since 2001, 34 – 57% of the cases used postponement and disqualification allowing more time to select a neutral arbitrator.⁸⁹ Claimants made almost all of the postponements (99%, 6,286 out of 6,324) and the vast majority of disqualifications (77%, 1,005 out of 1,305).

The length of time to select a neutral arbitrator has remained consistent since 2003: 24 – 26 days for cases with no postponements. The length of time to select a neutral arbitrator in cases with a postponement is 104 days.⁹⁰ Table 8 compares the differing forms of selecting a neutral arbitrator since 2010.

⁸⁸There have only been 16 cases in which the neutral arbitrator was selected by court order.

⁸⁹A member of the OIA staff contacts the parties to remind them of the deadline to return the LPA. When contacting claimants or their attorneys, the OIA reminds them that they may seek a postponement if they are not able to return their responses by the deadline.

⁹⁰This was consistent with last year when 104 days was a new low, 10 days less than the 114 days in 2003 and 2008.

**Table 8 - Year to Year Comparison of No Delay vs. Delays:
Percentage and Average Number of Days to Select Neutral Arbitrators**

	2010	2011	2012	2013	2014	2015	2016	2017	2018
No delay	25 days 47.7%	25 days 43%	24 days 52%	24 days 48%	25 days 47%	25 days 44%	24 days 51.7%	24 days 51.7%	24 days 51%
Only Postponement	110 days 44.9%	111 days 49%	108 days 42%	108 days 45%	108 days 46%	109 days 47%	110 days 40.9%	104 days 40.8%	104 days 42%
Only Disqual.	80 days 3.5%	72 days 2%	63 days 2%	59 days 2%	66 days 3%	62 days 4%	64 days 3.7%	61 days 3.4%	54 days 3%
Postponement & Disqual.	174 days 3.9%	160 days 6%	175 days 4%	162 days 5%	178 days 4%	173 days 5%	158 days 3.7%	165 days 4.1%	144 days 4%
Total Selections	71 days	75 days	66 days	69 days	71 days	73 days	66 days	64 days	63 days

The average number of days to select a neutral arbitrator for all cases dropped by one day to 63 days. While less than half of the claimants use procedures contained in the OIA *Rules* and California law to delay selecting a neutral arbitrator, the time to select a neutral arbitrator remains timely and is many times faster than the pre-OIA system.

J. How Cases Closed

The most common way cases close has always been settlement, 40 – 49%. This is followed by cases withdrawn by the claimant, 20 – 28%. This year 46% of cases settled and 23% were withdrawn. Less cases this year were decided after hearing (6%), while previously the range was 8 – 18%. More cases were abandoned (7%) and dismissed by neutral arbitrator (5%) than in the past, when 2 – 6% were abandoned and 2 – 4% were dismissed. The remaining cases were closed by summary judgment. Table 9 displays the statistics since 2010.

Table 9 - Year to Year Comparison of How Cases Closed

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Settlements	44%	44%	44%	44%	46%	44%	44%	47%	46%
Withdrawn	25%	26%	26%	27%	27%	26%	25%	25%	23%
Abandoned	4%	3%	3%	5%	4%	6%	6%	5%	7%
Dismissed	3%	4%	3%	3%	3%	3%	3%	4%	5%
Summary Judgment	11%	11%	11%	9%	13%	10%	12%	11%	13%
Awards	12%	11%	13%	11%	9%	10%	9%	8%	6%

K. The Results After Hearing

In those cases in which the claimant won after a hearing, the awards have ranged from a single dollar to \$15,007,152. The average was \$492,141. Because the number of cases in any given year is small, the yearly averages can fluctuate greatly from year to year. The lowest average, \$156,001 was in 2001, when the largest award was \$1,100,000. The largest average, \$1,282,547, was in 2015, which had an award of \$11,640,000.

Since 2010, the average percentage of cases in which claimants prevailed after a hearing was 36%.⁹¹ In 2018, 37% of claimants prevailed after a hearing.

L. How Long it Took to Close

The average for all cases to close was 319 days in 2003 and reached a high of 368 in 2017. This year cases close in less than 12 months, in 343 days, 25 days less than last year. See Table 10.

⁹¹Up until 2009, lien cases were included in this percentage. They are now excluded and reported separately in Section IX.

Table 10 - Year to Year Comparison of Average Number of Days to Close, by Disposition

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Settlements	341 days	326 days	330 days	318 days	334 days	344 days	376 days	383 days	357 days
Withdrawn	242 days	268 days	240 days	241 days	226 days	227 days	255 days	249 days	230 days
Summary Judgment	351 days	346 days	343 days	336 days	344 days	371 days	363 days	372 days	356 days
Awards	483 days	555 days	558 days	538 days	510 days	584 days	589 days	598 days	653 days
All Cases	336 days	339 days	340 days	325 days	323 days	342 days	363 days	368 days	343 days

The OIA closely follows each case that is still open after 15 months to make sure that the case remains in compliance with the *Rules*. Because of this type of diligence by the neutral arbitrators and the OIA, only 40 cases over time – less than half of one percent – of all cases have closed beyond the deadline set by the *Rules*. None closed late in 2018.

M. Cost of Arbitration

California law provides that, absent any other arrangement by the parties, the fees of the neutral arbitrator will be divided evenly between the parties. The OIA *Rules*, however, provide several ways to shift those fees to Kaiser. In 93% of the cases that had fees since January 1, 2003, the fees were paid by Kaiser. This is most easily and most commonly done by the claimants signing a form and agreeing not to use party arbitrators. Claimants may also request a waiver based on financial hardship, which exempts them from paying the \$150 filing fee or waiving the right to party arbitrators. California law also allows claimants who meet certain criteria to avoid paying the \$150 filing fee.⁹²

N. Evaluations of Neutral Arbitrators and the OIA System

Since 2000, the OIA has been sending the parties evaluations of the neutral arbitrators. The evaluations ask, among other things, whether the neutral arbitrator treated the parties with respect and whether the parties would recommend the arbitrator to others. The responses to the evaluations have generally been quite positive, especially from the attorneys. This year, the overall average increased from 4.4 to 4.5 (on a 1 – 5 scale) for whether the parties would recommend the arbitrator to others. The average for *pro per* claimants decreased this year in all categories.

⁹²Unlike California Superior Courts, the filing fee has not increased during the OIA's operation and is lower than court filing fees (other than small claims court).

The OIA also asks neutral arbitrators to evaluate the OIA system. 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 arbitrators' evaluations have always been positive. This year, 98% of the neutral arbitrators and 96% of the parties who answered the question rated the OIA system as good as or better than the state court system.