

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, 2024 - December 31, 2024

Table of Contents

	Page
Report Summary	i
I. INTRODUCTION & OVERVIEW	1
A. Goals of the Arbitration System	3
B. Format of This Report.	3
II. DEVELOPMENT AND CHANGES IN THE SYSTEM.	3
A. Change in Membership of the AOB	3
B. New AOB Officers	4
C. OIA Contract Renewed for Three More Years.	4
D. Reconvened <i>Rules</i> Sub-Committee.	4
E. AOB Approved Rule Changes	4
F. AOB Approved Interim Rules and Supplemental Rules Governing Mass Arbitrations	5
G. AOB and OIA Continued Commitment to Improve Diversity of the OIA Panel of Neutral Arbitrators	5
H. AOB Convened a Bylaws Committee	5
I. AOB Convened a Nominating Committee	5
J. OIA Audit	6
K. Senate Bill Regarding Consumer Arbitration	6
III. PANEL OF NEUTRAL ARBITRATORS	6
A. Turnover and Panel Size	6
B. Practice Background of Neutral Arbitrators	7
C. Participation of All Neutral Arbitrators	8
1. Number of Arbitrators Named on a List of Possible Arbitrators	8

2.	Number of Arbitrators Who Served	9
3.	Number of Arbitrators Who Wrote Awards	9
4.	Number of Arbitrators Who Have Served After Making a Large Award	9
5.	Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times with Cases Closed by All Other Neutral Arbitrators	9
IV.	DEMANDS FOR ARBITRATION	10
A.	Types of Claims	10
B.	Length of Time Kaiser Takes to Submit Demands to the OIA.	11
C.	Claimants With and Without Attorneys	11
V.	SELECTION OF THE NEUTRAL ARBITRATORS	12
A.	How Neutral Arbitrators are Selected.	12
B.	Joint Selections vs. Strike and Rank Selections	14
C.	Status of Cases with Postponements.	15
D.	Status of Cases with Disqualifications	16
E.	Length of Time to Select a Neutral Arbitrator	18
1.	Cases without Delays	19
2.	Cases with Postponements	19
3.	Cases with Disqualifications.	19
4.	Cases with Postponements and Disqualifications.	20
F.	Average Time for All Cases	20
G.	Cases with Party Arbitrators.	20
VI.	MAINTAINING THE CASE TIMETABLE	21
A.	Neutral Arbitrator's Disclosure Statement	21
B.	Arbitration Management Conference	21

C.	Mandatory Settlement Meeting	22
D.	Hearing and Award	22
E.	Neutral Arbitrator Fees and Questionnaire	22
F.	Status of Open Cases	22
VII.	CASES THAT CLOSED	23
A.	How Cases Closed	24
1.	Settlements – 50% of Closures	24
2.	Withdrawn Cases – 26% of Closures	24
3.	Dismissed Cases – 5% of Closures	24
4.	Summary Judgment – 13% of Closures	25
5.	Cases Decided After Hearing – 5% of Closures	25
a.	Who Won	25
b.	Amounts Awarded to Claimants	25
c.	How Long it Took	26
6.	How Hearings were Held	27
7.	Average Days to Close	27
B.	Procedures to Expedite or Extend Cases	27
1.	Expedited Procedures	27
2.	Complex Procedures	28
3.	Extraordinary Procedures	28
4.	Rule 28 Extensions	28
VIII.	COST OF ARBITRATION	29
A.	OIA Arbitration Fees	29
B.	Options Claimants Have to Waive Fees	30

1.	Waiving the \$150 Arbitration Filing Fee	30
2.	Waiving the Arbitration Filing Fee and the Neutral Arbitrator's Fees and Expenses	30
3.	Waiving the Neutral Arbitrator's Fees and Expenses.	30
C.	Number of Cases in Which Claimants Have Waived Their Fees	31
1.	Arbitration Filing Fee	31
2.	Arbitration Filing Fee and the Neutral Arbitrator's Fees and Expenses	31
3.	Neutral Arbitrators' Fee Allocation	31
D.	Fees Charged by Neutral Arbitrators	32
IX.	EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM.	32
A.	Parties Evaluate the Neutral Arbitrators.	33
B.	Neutral Arbitrators Evaluate the OIA System	34
C.	Parties Evaluate the OIA System	37
X.	ROLE OF THE ARBITRATION OVERSIGHT BOARD.	39
A.	Membership	39
B.	Activities.	41
XI.	TRENDS AND DATA OVER THE YEARS OF OPERATION.	42
A.	Number of Demands for Arbitration.	42
B.	Number of Neutral Arbitrators	42
C.	Number of Arbitrators Who Served	43
D.	Number of Arbitrators Who Wrote Awards	43
E.	Number of Arbitrators Who Have Served After Making a Large Award	43
F.	Types of Claims	44
G.	Claimants Without Attorneys	44

H.	Joint Selections vs. Strike and Rank Selections	45
I.	Parties' Use of Options During Selection of Neutral Arbitrator	45
J.	How Cases Closed	46
K.	Awards for Claimants	47
L.	Average Days to Close Cases	47
M.	Cases Older than 18 Months	48
N.	Payment of Neutral Arbitrator's Fees	49
O.	Evaluations of Neutral Arbitrators and the OIA System	50
P.	Conclusion	50

Exhibits

Exhibit A:	Description of OIA Staff.	E-1
Exhibit B:	<i>Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator, Amended as of January 1, 2024, redlined</i>	E-4
Exhibit C:	Status of Blue Ribbon Panel Recommendations	E-31
Exhibit D:	Resume of Mark Lane Welton, MD, MHCM	E-41
Exhibit E:	Interim Rules: Tracking Technologies Cases	E-47
Exhibit F:	Supplemental Rules Governing Mass Arbitrations Administered by the Office of the Independent Administrator	E-50
Exhibit G:	Ethics Standards for Neutral Arbitrators in Contractual Arbitration	E-61
Exhibit H:	Qualifications for Neutral Arbitrators.	E-95
Exhibit I:	OIA Panel of Neutral Arbitrators	E-97
Exhibit J:	OIA Demographic Form and Report	E-106
Exhibit K:	List of Awards to Claimants	E-110
Exhibit L:	Fee Waiver Explanation and Waiver Forms	E-112

Exhibit M:	Party or Attorney Evaluation of Neutral Arbitrator	E-122
Exhibit N:	Questionnaire for Neutral Arbitrators.	E-127
Exhibit O:	Party or Attorney Evaluation of Arbitration System	E-130
Exhibit P:	Kaiser Arbitration Oversight Board Comments on the Annual Report .	E-132

Charts And Tables

Table 1	Number of Neutral Arbitrators by Region	7
Table 2	Percentage of Practice Spent as a Neutral Arbitrator	8
Table 3	Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times vs. Cases Closed with Remaining Neutral Arbitrators	10
Chart 1	Types of Claims	11
Chart 2	Claimants With and Without Attorneys	12
Chart 3	How Neutral Arbitrators were Chosen	14
Chart 4	Status of Cases with Postponements.	16
Chart 5	Status of Cases with Disqualifications	17
Chart 6	Parties' Use of Options During Selection.	18
Chart 7	Status of Open Cases	23
Chart 8	How Cases Closed	26
Chart 9	Average Days for Cases to Close, by Manner of Disposition	27
Chart 10	Length of Time in Days to Close Cases by Type of Procedure	29
Chart 11	Neutral Arbitrators' Fee Allocation	32
Table 4	Parties' Evaluations of Neutral Arbitrators	33
Chart 12	Parties Would Recommend Their Arbitrator to Another Person	34
Table 5	Neutral Arbitrators' Opinions Regarding the OIA System	35
Chart 13	Neutrals Compare Cases in OIA & in Superior Court	36

Table 6	Parties' Evaluations of the OIA System	37
Chart 14	Parties Compare Cases in OIA & in Superior Court	38
Table 7	Parties Compare the OIA System & Superior Court	38
Chart 15	Year to Year Comparison of Number of Demands Received by the OIA.	42
Chart 16	Subsequent Service of NAs Who Made Large Awards	44
Table 8	Year to Year Comparison of No Delay vs. Delays: Percentage and Average Number of Days to Select Neutral Arbitrators	46
Table 9	Year to Year Comparison of How Cases Closed	47
Table 10	Year to Year Comparison of Average Number of Days to Close, by Disposition	48
Chart 17	Open Cases Over 18 Months	49

REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2024. The OIA administers the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.¹ From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing a fair, timely, and low cost arbitration process that protects the privacy of the parties.

Status of Arbitration Demands

1. **Number of Demands for Arbitration.** The OIA received 576 demands, 43 less than last year. See pages 10 and 42.
2. **Types of Claims.** Ninety-three percent (93%) of the cases involved allegations of medical malpractice. One percent (1%) presented benefit and coverage allegations. The remaining cases (6%) were based on allegations of premises liability and other torts. See page 10.
3. **Thirty-One Percent (31%) of Claimants Did Not Have Attorneys.** Claimants in 179 cases, or 31%, were not represented by counsel, 2% more than last year. On average, 26% of claimants are in *pro per*. See pages 11 – 12 and 44 – 45.

How Cases Closed

4. **Fifty-One Percent (51%) of Cases Settled.** The parties settled 51% of cases. Thirty-five cases (12%) settled at the Mandatory Settlement Meeting (MSM). See pages 24 and 45 – 46.
5. **Five Percent (5%) of Cases Went to Hearing.** Claimants prevailed in 44% of these cases. The average award was \$338,460, and the range was from \$10,000 to \$925,000. See pages 25, 46 – 47.
6. **Nearly All Cases were Heard by a Single Neutral Arbitrator.** One case went forward with party arbitrators. The remaining hearings went forward with a single neutral arbitrator. See page 20.
7. **More than Half (53%) of Claimants Received Some Compensation.** Claimants received compensation either when their cases settled (51%) or when they were successful after a hearing (2%). See pages 24, 25 – 26, and 46 – 47.

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. The OIA has administered the system since 1999.

8. **Almost One-Quarter (23%) Closed by Decision of the Neutral Arbitrator.** Five percent (5%) of cases closed after an arbitration hearing, 13% were closed through summary judgment, and 5% were dismissed by neutral arbitrators. See pages 24 – 25 and 46 – 47.
9. **More Than One-Quarter (26%) of Cases were Withdrawn.** Claimants withdrew 26% of cases. Forty-four percent (44%) of these cases included claimants who were in *pro per*. See pages 24 and 46 – 47.

Meeting Deadlines

10. **More than Half (59%) of the Neutral Arbitrators were Selected Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but over half (59%) of the arbitrators were selected without the parties exercising this option. See pages 18 – 19.
11. **Forty-One Percent (41%) of the Neutral Arbitrators were Selected by Parties Exercising Options for Postponement and/or Disqualification.** In 34% of the cases, parties exercised the option to postpone the deadline to select a neutral arbitrator. Claimants made all but three of the requests for a 90-day postponement. In four percent (4%) of the cases, parties disqualified the neutral arbitrator. In the remaining three percent (3%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 56 neutral arbitrators and Kaiser disqualified 24. See pages 15, 16 – 17 and 19 – 20.
12. **Average Length of Time to Select a Neutral Arbitrator was 58 Days.** The time to select a neutral arbitrator in cases with no delay was 23 days. The time to select a neutral with a 90 day postponement was 111 days. In cases with only a disqualification, it was 63 days. In cases with both a postponement and disqualification it was 152 days. The overall average length of time to select a neutral arbitrator for all cases was 58 days, 2 days less than last year. See pages 20 and 45 – 46.
13. **On Average, Cases Closed in Thirteen Months.** Cases closed, on average, in 396 days, 3 days less than last year. No case closed beyond the deadline required by the *Rules*. Eighty-three percent (83%) of the cases closed within 18 months (the deadline for “regular” cases) and 54% closed in a year or less. See pages 21, 23 – 24, 26 – 27, 46 – 47 and Rule 24.a.
14. **On Average, Cases with Hearings were Completed in just over Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 739 days (25 months). This average includes cases that were designated complex, extraordinary, or cases that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 469 days (about 15 ½ months). See pages 23, 25 – 27, and 47 – 48.

Panel of Neutral Arbitrators

15. **The Neutral Arbitrator Panel.** The OIA had 195 neutral arbitrators on its panel, 19 more than last year. Fifty-six percent (56%) of them, or 109, are retired judges. See pages 6 – 7.
16. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 103 arbitrators, or 53%, 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. Eighty-nine percent (89%) of the neutral arbitrators reported having medical malpractice experience. See pages 7 – 8.
17. **Fifty-Eight Percent (58%) of Arbitrators Served on a Case.** Fifty-eight percent (58%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged two assignments each. Twenty-three neutral arbitrators, including those not on the OIA panel, decided the 27 awards that were made. Twenty-one (91%) wrote a single award. See pages 9 and 43.
18. **Majority of Neutral Arbitrators Selected by the Parties were Members of the OIA Panel (94%).** Eighty percent (80%) of neutral arbitrators were selected through the strike and rank process. Of the joint selections, 14% were members of the OIA panel, and 6% were not members of the OIA panel. See page 14.
19. **Neutral Arbitrators Selected Again After Making Large Award.** Two neutral arbitrators made awards for more than \$750,000. One arbitrator awarded \$925,000 to the claimants and has been selected twice since making the award. The other arbitrator awarded \$754,134 in October 2024 and has not been selected again. See page 9.

Neutral Arbitrator Fees

20. **Kaiser Paid the Neutral Arbitrators' Fees in 96% of Closed Cases that had Fees.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. Kaiser paid the neutral arbitrators' fees in 96% of closed cases that had fees. See page 32.
21. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$200/hour to \$1,600/hour, with an average of \$764/hour. For the 538 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$10,756. In some cases, neutral arbitrators reported they charged no fees. Excluding cases where no fees were charged, the average fee was \$11,200. The average fee in cases decided after a hearing was \$72,110. See page 32.

Evaluations

22. **Evaluations of Neutral Arbitrators by Parties.** When a case closes by neutral arbitrator action, the OIA sends the parties or their attorneys a form to evaluate the neutral arbitrator. Eleven identified themselves as *pro per* claimants, eight as claimants' counsel, and 31 as respondents' counsel. Most attorneys who returned completed evaluations expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.7 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably, with a 1.9 average. This year, the overall average by all parties was 4.1. See pages 32 – 34.
23. **Evaluations of the OIA by Neutral Arbitrators.** When a case closes by neutral arbitrator action, the OIA sends the neutral arbitrator a questionnaire about the OIA system. Ninety-eight percent (98%) of the neutral arbitrators reported that the OIA experience was the same as or better than the court system, and 2% said it was worse. See pages 34 – 37.
24. **Evaluations of the OIA by Parties.** When a case closes, the OIA sends an evaluation to the parties or their attorneys asking them about the OIA system. Ninety-two percent (92%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system, and 8% said it was worse. See pages 37 – 39.

Development and Changes in the System

25. **Change in Membership of the AOB.** Richard Spinello and Sylvia Drew Ivie resigned and Dr. Mark Lane Welton joined. See pages 3 – 4 and 40.
26. **New AOB Officers.** Carlos Camacho was elected to serve as the new chair and Dr. John Swartzberg was elected to serve as the new vice-chair. See pages 4 and 40.
27. **OIA Contract Renewed for Three More Years.** The AOB renewed its contract with the OIA for three more years, through March 28, 2027. See pages 4 and 40.
28. **Reconvened Rules Sub-Committee.** The AOB reconvened the *Rules* sub-committee to explore changes to the OIA *Rules*. See pages 4 and 41.
29. **AOB Approved Rule Changes.** The AOB approved two Rule changes. See Exhibit B for a redlined copy. See pages 4 and 41.
30. **AOB Approved Interim Rules and Supplemental Rules Governing Mass Arbitrations.** The AOB approved Interim and Supplemental Rules governing mass arbitrations. See pages 4 – 5.

31. **AOB and OIA Continued Commitment to Improve Diversity of the OIA Panel of Neutral Arbitrators.** The AOB and the OIA continued discussions about the ways in which the OIA could improve the diversity of the panel of neutral arbitrators. See pages 5 and 41.
32. **AOB Convened a Bylaws Committee.** The bylaws committee proposed, and the AOB approved, changes to existing bylaws. See pages 5 and 41.
33. **AOB Convened a Nominating Committee.** The nominating committee is charged with selecting potential candidates for vacated board positions. See pages 5 and 41.
34. **OIA Audit.** The AOB initiated the process to audit the OIA. The audit will take place in 2025. See pages 6 and 41.
35. **Senate Bill Regarding Consumer Arbitration.** In response to legislation, the California State Bar is poised to create a voluntary certification program for alternative dispute resolution firms, providers, and practitioners. See page 6.

Conclusion

The goal of the OIA is to provide a fair, timely, and low-cost arbitration process that protects the privacy of the parties. To summarize:

- Neutral arbitrators are selected expeditiously, and the cases close within the deadlines set by the *Rules*.
- Parties can, and do, disqualify neutral arbitrators they do not like.
- 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 OIA provides information on its website about its cases in compliance with California law. In addition, although no longer required by law, the OIA maintains a table about all its cases since January 1, 2003.
- The OIA has published annual reports since 1999 which are all available on the OIA website.

I. INTRODUCTION & OVERVIEW

The Office of the Independent Administrator (OIA) issues this report for 2024.¹ It describes the arbitration system that handles claims brought by members of Kaiser Foundation Health Plan, Inc. (KFHP) against KFHP or its affiliates, collectively Kaiser.² Marcella A. Bell, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board (AOB), the OIA maintains a panel of neutral arbitrators to hear Kaiser cases and independently administers the arbitration system between Kaiser and its members. The contract also requires that Ms. Bell write an annual report describing 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 occurred in the arbitration system during 2024, the final section compares this year with earlier years.

The AOB, an unincorporated association registered with the California Secretary of State, provides ongoing oversight of the OIA. Its activities are discussed in Section X.

The arbitrations are administered pursuant to the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of February 14, 2025 (Rules)*. The *Rules* are available in English, Spanish, and Chinese.³

The arbitrations are confidential. Names of individual claimants and respondents are not disclosed. The *Rules* provide procedures for selecting a neutral arbitrator expeditiously and completing most cases within 18 months.⁴ The 18-month timeline is displayed on the next page. Details about each step of the process are discussed in the body of this report.

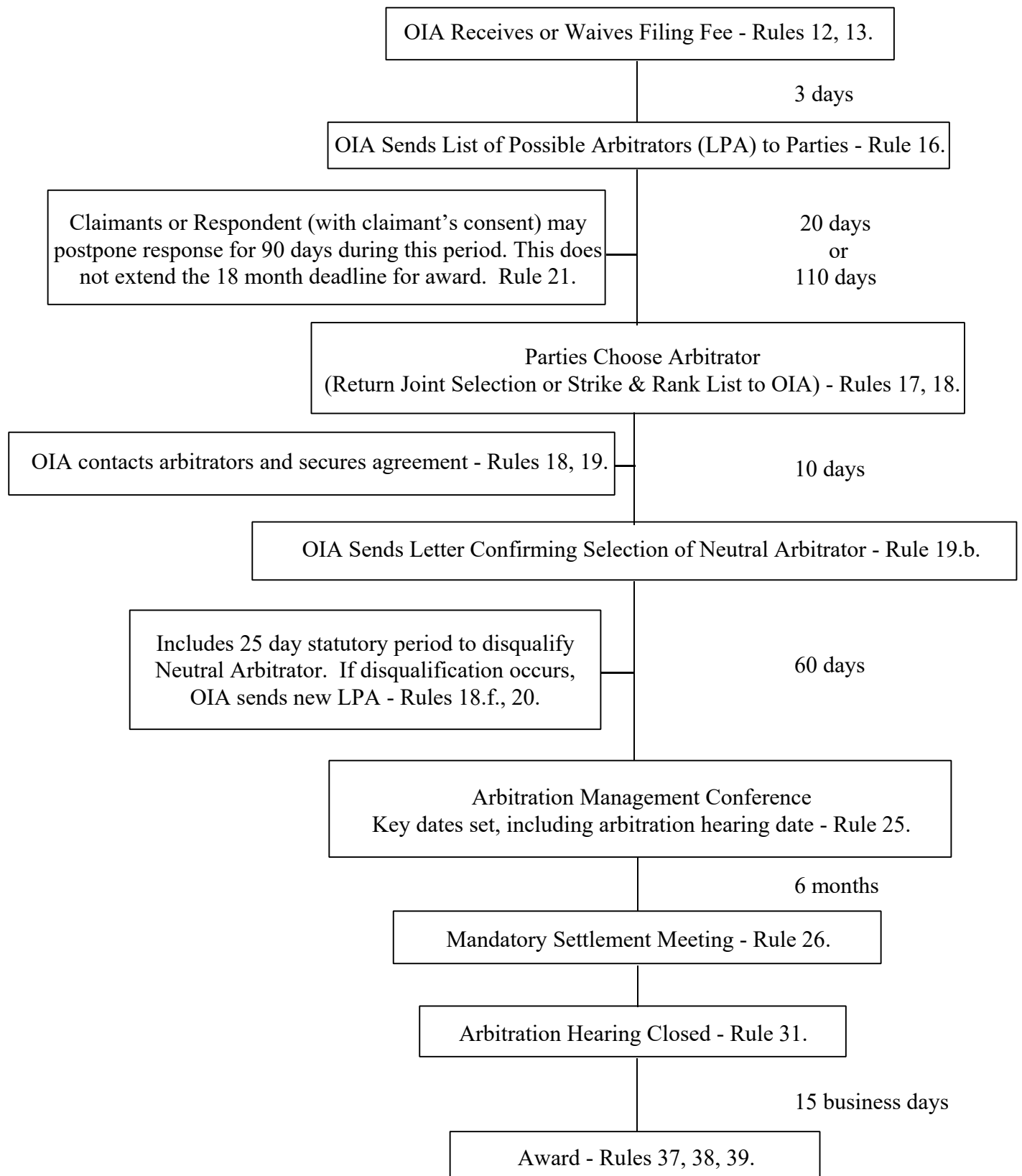
¹This report, along with the prior annual reports, the *Rules*, various forms, and other information, including OIA disclosures, are available on the OIA website, www.oia-kaiserarb.com. The OIA can be reached by calling 213-637-9847, faxing 213-637-8658, or e-mailing oia@oia-kaiserarb.com. A description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

²Kaiser is a California nonprofit health care service plan that arranges for health care services and other benefits for its enrolled members. Since 1971, it has required that its members use binding arbitration. Kaiser arranges for medical benefits by contracting with The Permanente Medical Group, Inc. (Northern California) and Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals, a nonprofit corporation. Almost all of the demands for arbitration received by the OIA are based on allegations against these affiliates.

³The *Rules* were amended and the changes took effect February 14, 2025. A redlined copy is attached as Exhibit B. See Section II for a discussion of the changes.

⁴See Rule 24.a. The *Rules* also include provisions for cases to be expedited and for cases that need more than 18 months to be completed. See Rules 24.b., 24.c., 28, and 33 – 36.

Timeline for Arbitrations Using Regular Procedures



MAXIMUM OF 18 MONTHS*

* Unless Rule 24.b., 24.c., or 28 applies.

A. Goals of the Arbitration System

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.⁵

B. Format of This Report

Section II discusses developments and changes in the system. 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 it takes for cases to close. Section VIII discusses the cost of arbitration. The parties' evaluations of neutral arbitrators and the parties' and neutral arbitrators' evaluations of the OIA system are summarized in Section IX. Section X describes the AOB's membership and activities. Finally, Section XI compares the operation of the system over time.

II. DEVELOPMENT AND CHANGES IN THE SYSTEM

A. Change in Membership of the AOB

Richard Spinello, retired Executive Director of Financial Risk and Insurance, Children's Hospital of Orange County resigned at the end of 2024. He had been a member of the AOB since 2009, oversaw the 2014 OIA audit, and served as the chair since 2018.

Mark Lane Welton, M.D., MHCM, Executive Vice President and Chief Medical Office President, Fairview Health Medical Group, Fairview Health Services joined the AOB in February 2025. See Exhibit D for Dr. Welton's resume.

Sylvia Drew Ivie, Special Assistant to the President, Charles R. Drew University of Medicine and Science resigned in February 2025. Ms. Drew Ivie has been a member of the AOB since 2014 and was instrumental in initiating the ongoing commitment to improving diversity of the OIA panel of neutral arbitrators.⁶

⁵The OIA was created in response to the recommendation of a Blue Ribbon Panel 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 report is available on the OIA website. The current status of each recommendation is attached as Exhibit C.

⁶See Section II.G.

B. New AOB Officers

Carlos Camacho, Staff Director for the Orange County Labor Federation, AFL-CIO was elected to serve as the new chair and John Swartzberg, MD, FACP, Clinical Professor, *Emeritus*, University of California Berkeley School of Public Health was elected to serve as the new vice-chair.

C. 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, 2027.

D. Reconvened *Rules* Sub-Committee

The AOB reconvened the *Rules* sub-committee to explore changes to the OIA *Rules*.⁷ Some of the potential amendments are in response to suggestions made by the parties or by neutral arbitrators. Some amendments are based on suggestions from the OIA, while others are in response to mass arbitration litigation.⁸ As a result, the AOB reconvened the sub-committee to address possible modifications.

E. AOB Approved Rule Changes⁹

The OIA presented the AOB with a proposal to amend Rule 37 (Time of Award) in response to many comments received from neutral arbitrators on evaluations submitted at the conclusion of cases (see Section X). Arbitrators asked for the rule be changed to allow for more time to serve the award. Arbitrators will now have thirty (30) calendar days after the close of the arbitration hearing in regular cases and forty-five (45) calendar days after the close of the arbitration hearing in complex and extraordinary cases to serve the award.

The OIA also presented the AOB with a proposal to amend Rule 8 (Serving a Demand for Arbitration) requesting a subsection to address amended demands for arbitration or amendments to demands for arbitration. At this time, the AOB decided that no change is warranted but discussions will continue.

The OIA also presented the AOB with a proposal to amend Rule 2 (Administration of Arbitration) to recognize the administration of the Supplemental Rules Governing Mass Arbitrations. The AOB approved the rule change.

⁷The *Rules* sub-committee consists of three members of the AOB, and the Independent Administrator.

⁸See Section II.F.

⁹See Exhibit B for a redlined copy of the *Rules*.

F. AOB Approved Interim Rules and Supplemental Rules Governing Mass Arbitrations

The AOB approved Interim Rules in response to mass arbitration litigation. The Interim Rules apply to the administration of claims that are alleged to arise from the Tracking Technologies Cases (“TTC”). The cases relate to, or arise out of, the use of online technologies on the websites or mobile applications of any of the Kaiser Respondent(s) (including cookies, pixels, and JavaScript), and any related alleged disclosure of communications or information on to the third-party providers of the online technologies. See Exhibit E. The Interim Rules exempted TTC cases from the deadlines set forth in the OIA Rules until the Supplemental Rules were in effect.

The AOB also approved the Supplemental Rules Governing Mass Arbitrations effective February 14, 2025. The Supplemental Rules replaced the Interim Rules and can be found in Exhibit F.

G. AOB and OIA Continued Commitment to Improve Diversity of the OIA Panel of Neutral Arbitrators

The AOB and the OIA continued discussions about the ways in which the OIA could improve the diversity of the panel of neutral arbitrators. With the inclusion of the diversity mission initiated by Ms. Drew Ivie, the OIA is actively seeking women and individuals of color and has seen improved results.¹⁰ The OIA continues to focus on increasing the panel’s diversity.

H. AOB Convened a Bylaws Committee

The bylaws committee proposed, and the AOB approved, changes to existing bylaws including clarification and updates of rules, term limits for board officers, and the creation of a nominating committee.

I. AOB Convened a Nominating Committee

The nominating committee is charged with selecting potential candidates for board positions. Dr. Welton was selected and approved by the AOB.¹¹

¹⁰Since 2020, the OIA has seen a 21% increase in women and 20% increase in individuals of color.

¹¹See Section II.A.

J. OIA Audit

The Blue Ribbon Panel recommended that the OIA be audited no less than every five years. The AOB initiated this process. The audit will take place in 2025.¹²

K. Senate Bill Regarding Consumer Arbitration

With the passage of Senate Bill 940, effective January 1, 2025, new Business and Professions Code section 6173 requires the California State Bar to create a voluntary certification program for alternative dispute resolution firms, providers, and practitioners. The program aims to promote adherence to ethical standards for provider organizations. The State Bar shall develop the framework and implementation strategy for this new certification program. Although the program will be voluntary, the OIA intends on participating.

III. PANEL OF NEUTRAL ARBITRATORS

A. Turnover and Panel Size

At the end of 2024, there were 195 neutral arbitrators on the OIA panel. Of those, 109 were former judges, or 56% of the total.

The neutral arbitrators are distributed into three geographic panels: Northern California, Southern California, and San Diego. See Table 1. Neutral arbitrators who agree to travel without charge may be listed on more than one panel. Exhibit H contains the qualifications for neutral arbitrators, and Exhibit I contains the names of the neutral arbitrators on each panel.

¹²See Exhibit C, Recommendation 29.

Table 1 - Number of Neutral Arbitrators by Region

Total Number of Arbitrators on the OIA Panel: 195	
Northern California Total:	103
Southern California Total:	115
San Diego Total:	78
The three regions total 296: 73 arbitrators are on more than one panel; 28 are on all three panels, 4 are on No. Cal & So. Cal, 2 are on No. Cal & San Diego, and 39 are on So. Cal & San Diego.	

During the year, nine arbitrators voluntarily left the panel¹³ and two additional arbitrators were removed. One arbitrator was removed for failing to comply with the mandated Ethic Standards for Neutral Arbitrators in Contractual Arbitration¹⁴, and one arbitrator no longer met the required qualifications.¹⁵ Thirty-one neutral arbitrators joined the panel. One applicant was rejected because the arbitrator served as an attorney on a Kaiser case within the last three years.¹⁶

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, OIA neutral arbitrators spend their time as follows: 68% of the time acting as a neutral arbitrator, 6% as a claimant (or plaintiff) attorney, 6% as a respondent (or defense) attorney, 19% in other forms of employment (most working as mediators), and 1% acting as a respondent's party arbitrator, a claimant's party arbitrator, or an expert.

More than half (53%) of the panel, 103 members, report that they spend 100% of their practice acting as neutral arbitrators.¹⁷ On average, the neutral arbitrators on the OIA panel spend 12% of their time as litigators.

¹³For the arbitrators who provided reasons, the most common reason given for resigning was retiring practice.

¹⁴See Exhibit G.

¹⁵See Exhibit H.

¹⁶If the OIA rejects an application, the OIA informs the applicant of the qualification(s) he or she failed to meet.

¹⁷See 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	6	46	19	10	11	103

Finally, while not required by the qualifications, 89% of the neutral arbitrators on the OIA panel have medical malpractice experience. At the time they filled out or updated their applications, 173 reported they had medical malpractice experience, while 22 did not. Of the 22 who reported no medical malpractice experience, 13 of them have since served as a neutral arbitrator in an OIA case, and may now have acquired some medical malpractice experience.

C. Participation of All Neutral Arbitrators¹⁸

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 those closed by all other neutral arbitrators.

1. Number of Arbitrators Named on a List of Possible Arbitrators

All but one of the neutral arbitrators were named on at least one List of Possible Arbitrators (LPA) sent to the parties.¹⁹ The average number of times Northern California arbitrators appeared on an LPA was 34. The range of appearances was 1 – 62 times. In Southern California, the average number of appearances was 24. The range was 0 – 50.²⁰ In San Diego, the average number of appearances was five. The range was 0 – 14.²¹

¹⁸This section includes statistics for all neutral arbitrators selected, including those arbitrators who are not members of the OIA panel.

¹⁹In addition to chance, the number of times a neutral arbitrator is listed is affected by how long in a given year the 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. The number of times an arbitrator is selected also depends on whether the individual will hear *pro per* cases. Forty-five percent (45%) of the panel will not hear *pro per* cases.

²⁰The neutral arbitrator who was not listed on a Southern California LPA was admitted to the panel in December.

²¹There were five neutral arbitrators not listed on a San Diego LPA but all were listed on an LPA in another region.

2. Number of Arbitrators Who Served

This year, 125 different neutral arbitrators were selected to serve in 531 cases. The majority (113) were members of the OIA panel (58%). The number of times an arbitrator on the OIA panel was selected ranges from 0 – 21. The neutral arbitrator who was selected 21 times was jointly selected 7 of those times.²² The average number of assignments was two.

3. Number of Arbitrators Who Wrote Awards

Twenty-three neutral arbitrators wrote 27 awards. Twenty-one arbitrators (91%) wrote a single award, while two arbitrators each wrote three. Both arbitrators wrote two awards in favor of claimants and one in favor of Kaiser.

4. Number of Arbitrators Who Have Served After Making a Large Award

Concerns have been raised as to whether Kaiser will allow neutral arbitrators who have made large awards in favor of claimants to serve in subsequent arbitrations, since its attorneys could strike them from LPAs or disqualify them if selected.²³ The OIA's annual report describes what has happened to neutral arbitrators after making an award of \$750,000 or more.

This year, two arbitrators made an award for more than \$750,000. One arbitrator awarded claimants \$925,000 and was selected twice after making the award. The other arbitrator made an award for \$754,134 and has not been selected again.²⁴

5. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times with Cases Closed by All 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 thirteen neutral arbitrators who were selected ten or more times this year. Table 3 shows the comparison of cases closed with these thirteen neutral arbitrators versus cases closed with the remaining neutral arbitrators.

²²For joint selections, see Section V.B.

²³See Section V.A.

²⁴The award was made in October 2024.

Table 3 - Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times vs. Cases Closed with Remaining Neutral Arbitrators²⁵

Cases Closed 2023 – 2024	Cases with Neutral Arbitrators Selected 10 or More Times in 2024		Cases with Other Neutral Arbitrators	
Settled	153	53%	353	51%
Withdrawn	71	25%	167	24%
Summary Judgment	36	13%	111	16%
Awarded to Respondent	11	4%	24	3%
Awarded to Claimant	5	2%	10	1%
Dismissed	12	4%	34	5%
Total	288		699 ²⁶	

IV. DEMANDS FOR ARBITRATION

The OIA received 576 demands for arbitration, submitted to Kaiser. Geographically, 307 came from Northern California, 237 came from Southern California, and 32 came from San Diego.²⁷

A. Types of Claims

The OIA administered 576 new cases.²⁸ The OIA categorizes cases by the subject of their claim which appear in Chart 1: medical malpractice (536 cases), premises liability (19

²⁵Unless otherwise noted, the percentages in the tables and charts throughout the report may not add up to 100% due to rounding up or down.

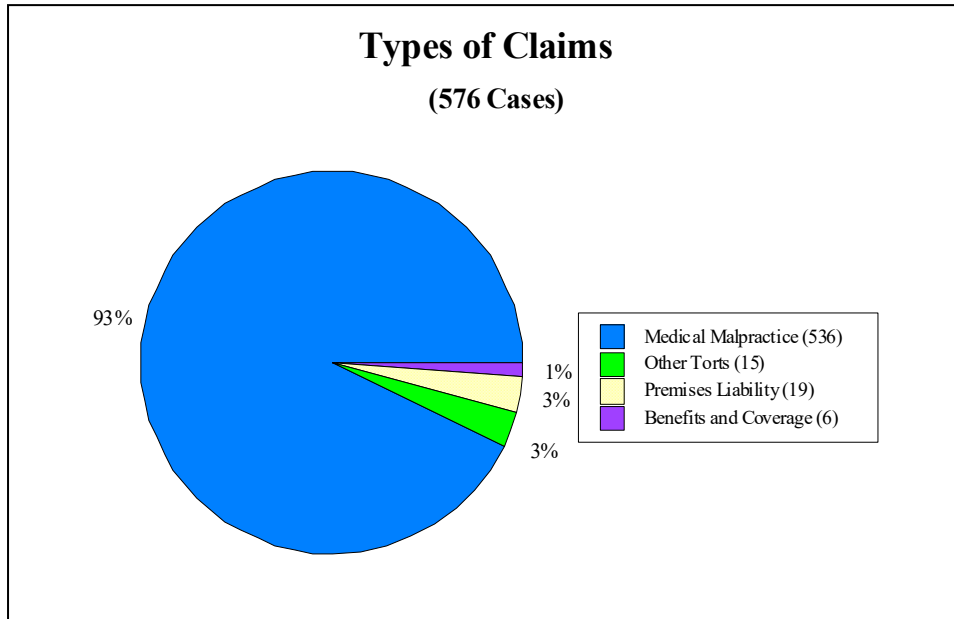
²⁶Two cases were consolidated with two other cases and are not included in these numbers.

²⁷The 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, which includes San Diego.

²⁸A few demands submitted by Kaiser are “opt in” cases. The cases may be based on a contract that required arbitration but not the use of the OIA, or non-members who have received treatment and are provided with an opportunity to opt in. There were two “opt in” cases. Both claimants chose to have the OIA administer their claims.

cases), other tort (15 cases), or benefits and coverage (6 cases). Medical malpractice cases make up 93% of the total. Benefits and coverage cases represent one-percent.

Chart 1



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

Rule 11 requires Kaiser to submit demands for arbitration to the OIA within ten days of receipt. The average length of time Kaiser took to submit demands to the OIA was six days.²⁹ The range was 0 – 316 days.³⁰

There were 56 cases in which Kaiser took more than 10 days to submit the demand. The average in these cases was 29 days, and the range was 11 – 316 days.

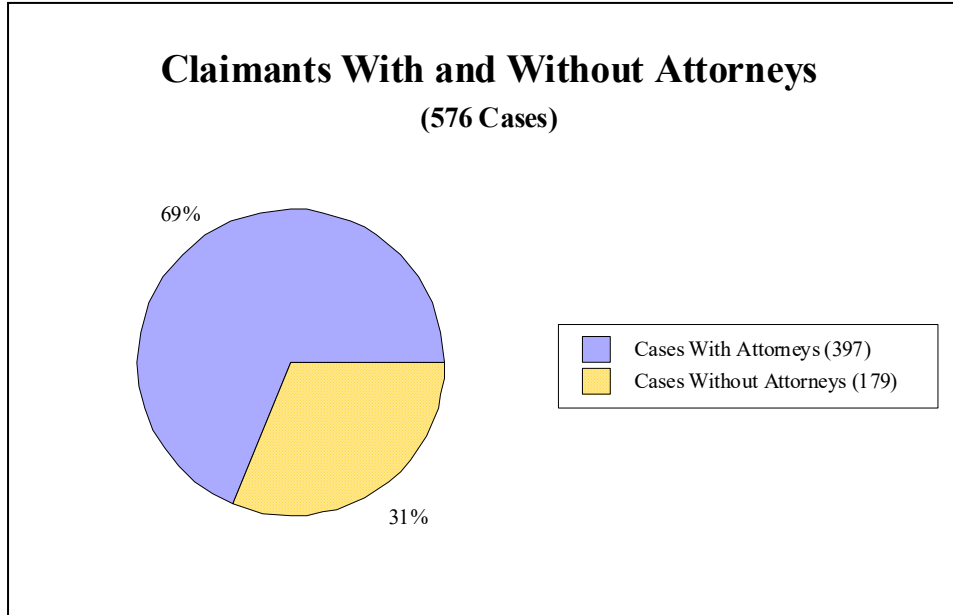
C. Claimants With and Without Attorneys

Claimants were represented by counsel in 69% of new cases (397 of 576). In 31% of cases, claimants represented themselves.

²⁹The median was 3 days and the mode was 1 day.

³⁰In the case that took 316 days, the claimant filed the demand for arbitration in August 2023 but was not forwarded to the OIA until July 2024.

Chart 2



V. SELECTION OF THE NEUTRAL ARBITRATORS

The most important step of the arbitration process is the selection of the neutral arbitrator. The first section describes the selection process in general. The remaining sections discuss different aspects of the selection process in detail. They outline: whether the parties selected the neutral arbitrator by joint selection or by striking and ranking the names on their LPA; the cases in which the parties decided to postpone the selection of the neutral arbitrator; the cases in which the parties disqualified a neutral arbitrator; and the amount of time it took the parties to select the neutral arbitrator. Lastly, the report examines cases in which parties have selected party arbitrators.

A. How Neutral Arbitrators are Selected

The process for selecting the neutral arbitrator begins after the OIA receives a claimant's demand for arbitration and the \$150 arbitration filing fee or a waiver of the filing fee.³¹ The OIA then sends both parties an LPA. The LPA contains 12 randomly computer-generated names of neutral arbitrators from the appropriate geographic panel, including whether the arbitrator accepts *pro per* cases.³²

³¹See *Rule 12*

³²Forty-five percent (45%) of arbitrators on the panel will not hear *pro per* cases.

Along with the LPA, the OIA provides the parties with password-protected access to information about the arbitrators named on the LPA.³³ The information includes each neutral arbitrator's application and fee schedule, and subsequent updates to the application, if any.³⁴

The information also includes copies of any evaluations that have been submitted about the arbitrator by previous parties within the last five years, and any redacted awards or decisions the neutral arbitrator has written within the last five years.

The parties have 20 days to respond to the LPA.³⁵ Parties can respond in one of two ways. First, both sides can jointly select a neutral arbitrator. Provided the arbitrator agrees to follow the *Rules* and completes the OIA Demographic Form required to be a member of the OIA panel,³⁶ the parties may jointly select anyone they want to serve as neutral arbitrator. The arbitrator does not have to be named on the LPA, be on the OIA panel, or meet the OIA qualifications.³⁷

Second, if the parties do not jointly select a neutral arbitrator, each side returns the LPA, striking up to four names and ranking the remaining eight names in order of preference, with "1" being the top choice.³⁸ 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 remaining names. The arbitrator with the best score³⁹ is asked to serve. This is referred to as the "strike and rank" process.

³³The OIA accommodates requests to receive the information by U.S. mail.

³⁴Neutral arbitrators are required to update their applications every two years. Arbitrators were not required to update this year.

³⁵A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

³⁶The AOB requested the OIA collect demographic data from jointly selected neutral arbitrators not on the OIA panel. This data is included in the aggregate on the OIA website. See Exhibit J for the form and report.

³⁷Neutral arbitrators who do not meet the OIA qualifications may serve as jointly selected neutral arbitrators so long as they agree to follow the *Rules*. 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. See Exhibit G, Standard 12(c).

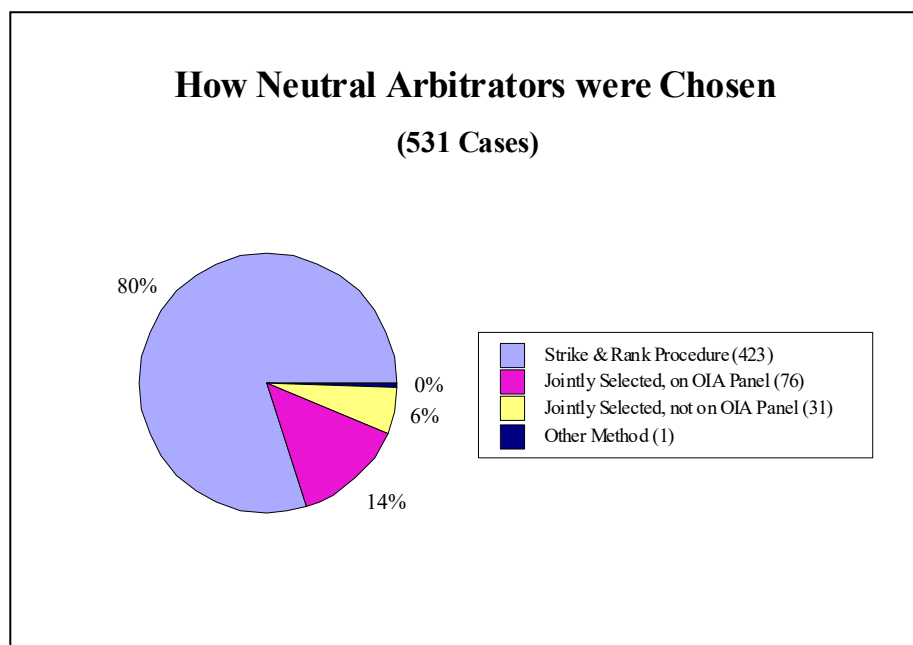
³⁸The selection is based on returned LPAs. If a party does not return the LPA by the deadline, all names are deemed acceptable. See *Rule* 18.c.

³⁹For example, a person who was ranked "1" by both sides – for a combined score of "2" – would have the best score. If there is a tie, the OIA selects the arbitrator that appears first on the randomly generated list.

B. Joint Selections vs. Strike and Rank Selections⁴⁰

Of the 531 neutral arbitrators selected, 107, or 20%, were jointly selected by the parties and 423, or 80%, were selected by the strike and rank process. One neutral arbitrator was selected by court order.⁴¹ This case accounts for less than half of one-percent of arbitrator selections.⁴² Of the neutral arbitrators jointly selected by the parties, 76, or 14%, were members of the OIA panel, though not necessarily on the LPA sent to the parties. In 31 cases, or 6%, the parties selected a neutral arbitrator who was not a member of the panel. See Chart 3. One neutral arbitrator who is not on the OIA panel accounts for 27 joint selections.

Chart 3



⁴⁰Thirty cases closed without a neutral arbitrator in place. Of those cases, 13 settled and 17 were withdrawn. One additional case was consolidated with another case. This includes cases with attorneys and cases where the claimant was in *pro per*. For *pro per* cases, two settled and 15 were withdrawn. For represented cases, 11 settled and 2 were withdrawn.

⁴¹In rare cases, when the parties cannot select a neutral arbitrator, generally because of multiple disqualifications of neutral arbitrators, either party can petition the state court to do so.

⁴²The percentage in Chart 3 appears as 0% due to rounding.

C. Status of Cases with Postponements

Under Rule 21, a claimant has a unilateral right to request a one-time postponement of up to 90 days to respond to the LPA.⁴³ If a claimant has not requested one, the respondent may do so, but only if the claimant agrees in writing.

Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines for good cause. The OIA has used this authority periodically to extend the deadline in which to respond to the LPA based upon the parties' stipulation to jointly select a neutral arbitrator or upon the claimant's medical condition.

There were 211 cases where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their LPAs, or both.⁴⁴ In 184 of these cases, the parties obtained a Rule 21 postponement. The claimants made all but three of these requests. There were 11 cases that received Rule 21 postponements and Rule 28 extensions.⁴⁵ There were 16 cases that received a Rule 28 extension this year.⁴⁶ Four cases received a Rule 28 extension without a prior Rule 21 postponement.⁴⁷

Chart 4 shows the outcome of those 211 cases where the parties obtained a postponement of the deadline to return their LPA. In 136 cases (64%), a neutral arbitrator has been selected. Twenty-three cases closed before a neutral arbitrator was selected but after a request for postponement was made. For the remaining 52 cases, the deadline to select a neutral arbitrator was after December 31, 2024.

⁴³A party cannot, for example, get a 30-day postponement at one point and a 60-day postponement later. There are times when parties request a postponement of less than 90 days.

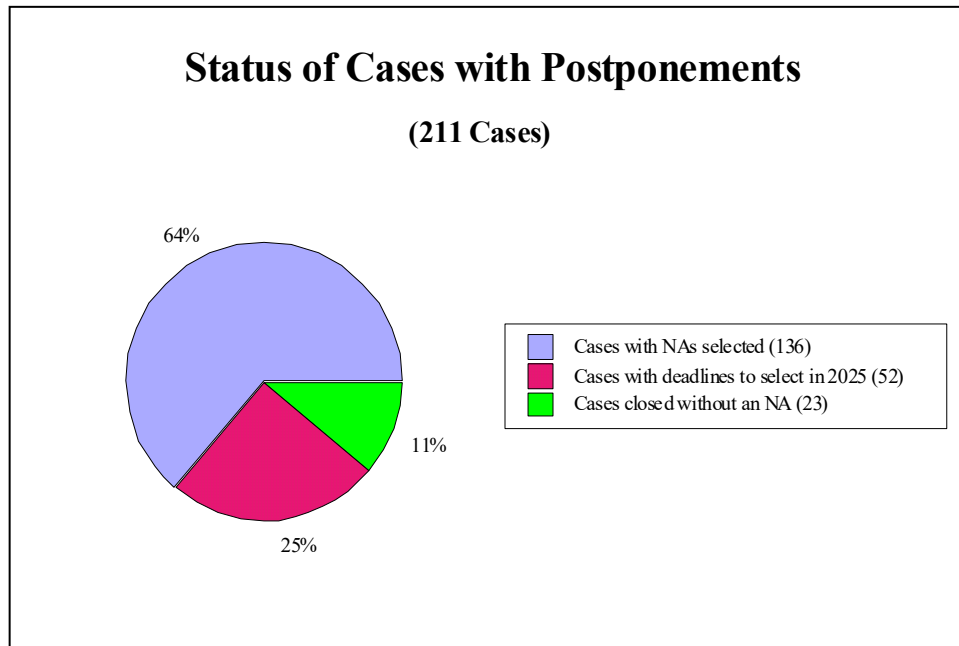
⁴⁴Two cases received Rule 28 extensions this year to provide time for the parties to submit settlement closing documents. The cases closed in 2023 based on the date of settlement.

⁴⁵Claimants made all of the requests for Rule 21 postponement. The majority of Rule 28 extensions were made by parties' stipulation.

⁴⁶Twelve cases received a Rule 21 postponement in prior years.

⁴⁷Generally, parties must use a 90-day postponement under Rule 21 before the OIA will extend the deadline under Rule 28. In two cases, the parties used this extension to send written notice of settlement or withdrawal without a neutral arbitrator being selected, which generally reduces expenses. In one case, the claimant attorney was set to petition a court-appointed arbitrator but withdrew the request. In the last case, the claimant was ill.

Chart 4



D. Status of Cases with Disqualifications

Neutral arbitrators have a statutory obligation to make various disclosures within ten days of their selection.⁴⁸ After they make these disclosures, the parties have 15 days to disqualify the neutral arbitrator.⁴⁹ Absent court action, there is no limit to the number of times a party can timely disqualify neutral arbitrators in a given case. After the first disqualification, the OIA sends the parties a supplemental LPA. After two disqualifications, the OIA randomly selects subsequent neutral arbitrators who have not been named on prior LPAs.⁵⁰

Neutral arbitrators were disqualified in 47 cases. Claimants disqualified 56 neutral arbitrators and Kaiser disqualified 24. Thirty-four cases had a single disqualification. Four cases had two disqualifications, two cases had three disqualifications, and four cases had four

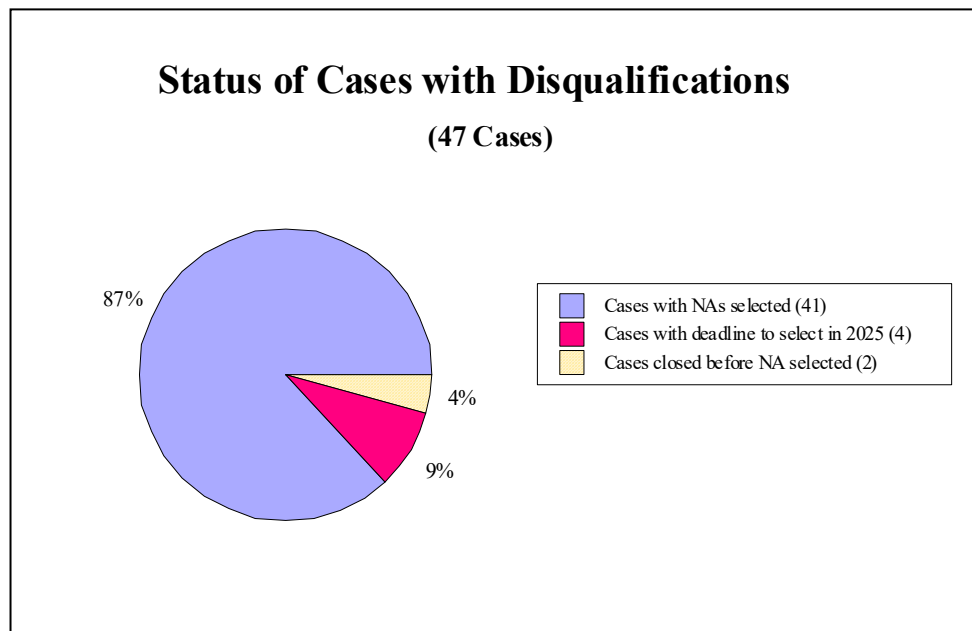
⁴⁸See Rule 20 and California Code of Civil Procedure §1281.9, especially §1281.9(b). In the OIA system, the ten days are counted from the date of the letter confirming service. After the neutral arbitrator agrees to serve, the OIA sends this letter to the neutral arbitrator and copies the parties.

⁴⁹See Rule 20 and California Code of Civil Procedure §1281.91. 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.

⁵⁰See Rule 18.f.

disqualifications. Two cases had five and one case had six disqualifications.⁵¹ In 41 of the cases with disqualifications, a neutral arbitrator had been selected. Two cases closed before the new neutral arbitrator was selected. In four cases, the deadline to select a neutral arbitrator was after December 31, 2024.

Chart 5

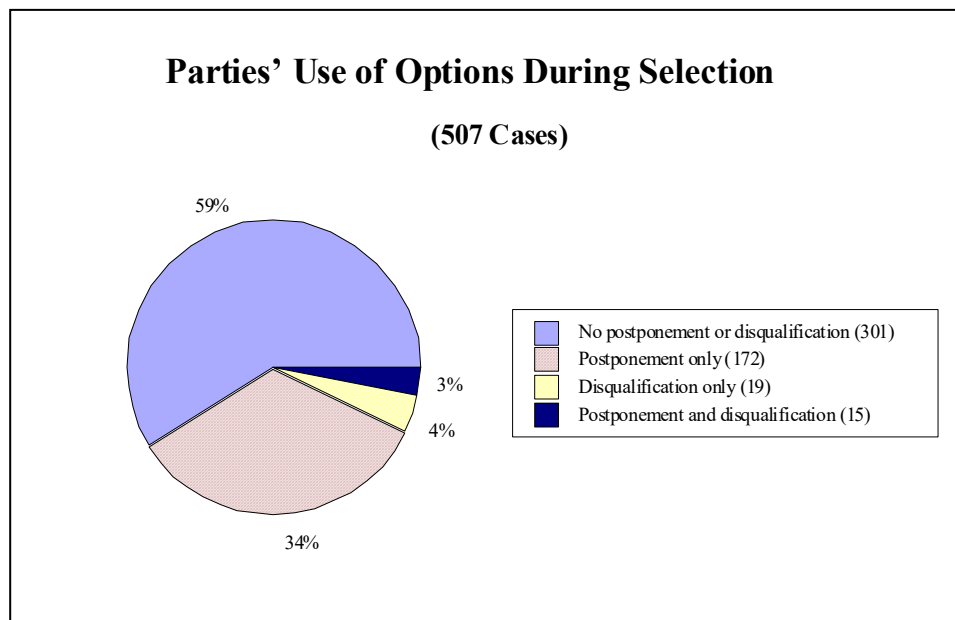


⁵¹In cases with multiple disqualifications, one of the parties may petition the Superior Court to select a neutral arbitrator. If the court grants the petition, a party is only permitted to disqualify one neutral arbitrator without cause; subsequent disqualifications must be based on cause. See California Code of Civil Procedure §1281.91(2).

E. Length of Time to Select a Neutral Arbitrator

This section considers 507 cases in which a neutral arbitrator was selected⁵² and divides the selections into four categories. The first category consists of cases in which there was no delay in selecting the neutral arbitrator. The second category lists those cases in which the deadline for responding to the LPA was postponed. The third category summarizes those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator was subsequently selected. The fourth category describes those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. The last three categories may include cases where the request for postponement and/or the disqualification was made in prior years, but the neutral arbitrator was selected this year. Chart 6 displays the categories.

Chart 6



⁵²Twenty-four cases in which a neutral arbitrator was selected are not included in this section. These include cases where a neutral arbitrator left because of illness, retired or made disclosures in the middle of the case – because of some event occurring after the initial disclosure – and was disqualified. Because time is counted from the first day that the arbitration process was initiated, these cases are not included in these computations of length of time to select a neutral arbitrator.

1. Cases Without Delays

There were 301 cases where a neutral arbitrator was selected without 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 these cases was 23 days, and the range was 3 – 41 days.⁵³ This category represents 59% of cases in which a neutral arbitrator was selected.

2. Cases with Postponements

There were 172 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 28.⁵⁴ 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 these cases was 111 days, and the range was 14 – 242 days.⁵⁵ This category represents 34% of all cases in which a neutral arbitrator was selected.

3. Cases with Disqualifications

There were 19 cases (4%) where a neutral arbitrator was selected and the only delay was one or more disqualification(s). Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is only one disqualification is 96 days.⁵⁶ The average number of days to select a neutral arbitrator was 63 days, and the range was 48 – 117 days.⁵⁷

⁵³Two cases took 41 days to select a neutral arbitrator. In one case, two different neutral arbitrators declined the case. In the other case, the OIA mistakenly sent an LPA for the wrong region which required correction.

⁵⁴Under Rule 28, there is no maximum number of days.

⁵⁵In the case that took 242 days to select a neutral arbitrator, the claimant attorney first obtained a 90-day postponement. The parties then stipulated to an additional 30-day postponement during which claimant attorney withdrew from the case. The *pro per* claimant then requested a 90-day postponement which was granted. The first neutral arbitrator declined the offer to serve before the second arbitrator was appointed.

⁵⁶The 96 days is comprised of the 33 days to select the first neutral arbitrator under the *Rules*; the 30 days for the statutory periods for service of disclosures and disqualification pursuant to California law; and then 33 days to select the second neutral arbitrator. The amount of time increases by 33 days for each disqualification.

⁵⁷In the case that took 117 days to select a neutral arbitrator, Kaiser's attorney disqualified 3 neutral arbitrators before the fourth arbitrator was appointed.

4. Cases with Postponements and Disqualifications

There were 15 cases (3%) where a neutral arbitrator was selected after a postponement and a disqualification. 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 152, and the range was 85 – 231 days.⁵⁸

F. Average Time for All Cases

The average number of days it took to select a neutral arbitrator in all cases was 58 days. For comparison purposes, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*⁵⁹ that the pre-OIA Kaiser system averaged 674 days to select a neutral arbitrator.

G. 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.⁶⁰ However, the parties may waive this right. The Blue Ribbon Panel that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with adding two more participants to the arbitration process. To that end, the Blue Ribbon Panel suggested that the system create incentives for cases to proceed with a single neutral arbitrator.

Rules 14 and 15 provide the above stated incentive. Kaiser pays the full cost of the neutral arbitrator if claimant waives the statutory right to a party arbitrator, as well as any court challenge to the arbitrator on the basis that Kaiser paid said arbitrator. If both claimant and Kaiser waive party arbitrators, the case proceeds with a single neutral arbitrator.

One case that went to hearing was decided with party arbitrators. Of the cases that remained open at the end of the year, parties have designated party arbitrators in six cases.

⁵⁸In the case that took 231 days, the parties each disqualified two neutral arbitrators. The claimant attorney planned to petition the court for arbitrator appointment but withdrew the request because of court delays. The parties then jointly selected the fifth and final arbitrator.

⁵⁹15 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.

⁶⁰California Health & Safety Code §1373.19.

VI. MAINTAINING THE CASE TIMETABLE

This section summarizes the methods for monitoring compliance with deadlines, as well as the actual compliance at various points during the arbitration process. The OIA monitors its cases in two ways.

First, the OIA tracks whether key events set out in the *Rules* occur on time. If arbitrators fail to notify the OIA that a key event has taken place by its deadline, the OIA contacts the arbitrators and asks for confirmation that it has occurred. In most cases, the events have occurred and arbitrators confirm this in writing. 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.⁶¹

Second, the OIA looks at cases overall and their progress toward closing on time. When a case enters the system, the OIA calendars a status reminder for 12 months. As discussed in Section VII, most cases close in 13 months. For those that remain open, 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 that they include statutory disclosure reports provided by the OIA. No arbitrator was suspended for failing to timely serve disclosures.

B. Arbitration Management Conference

Rule 25 requires neutral arbitrators to hold an Arbitration Management Conference (AMC) within 60 days of their selection. Neutral arbitrators 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 case. It also allows the OIA to make sure the hearing has been scheduled within the time frame allowed by the *Rules*. No arbitrator was suspended for failing to return the AMC form.

⁶¹Suspended arbitrators are not listed on any LPA and cannot be jointly selected by the parties.

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 complete and return, stating the meeting took place and its result.⁶² The OIA received notice from parties in 357 cases indicating they held an MSM. Thirty-five reported the case had settled at the MSM. Six cases involved *pro per* claimants. In 26 cases, neither party returned the MSM form by the end of the year.⁶³

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 arbitrator was suspended for failing to issue an order extending the deadline to serve an award. The arbitrator has complied.

E. Neutral Arbitrator Fees and Questionnaire

Under California Code of Civil Procedure §1281.96, neutral arbitrators are required to provide the amount of their fees and the allocation of that fee. Under Rule 48, neutral arbitrators are also required to return a questionnaire regarding their experience. No arbitrator was suspended for failing to provide their fees or return the questionnaire.

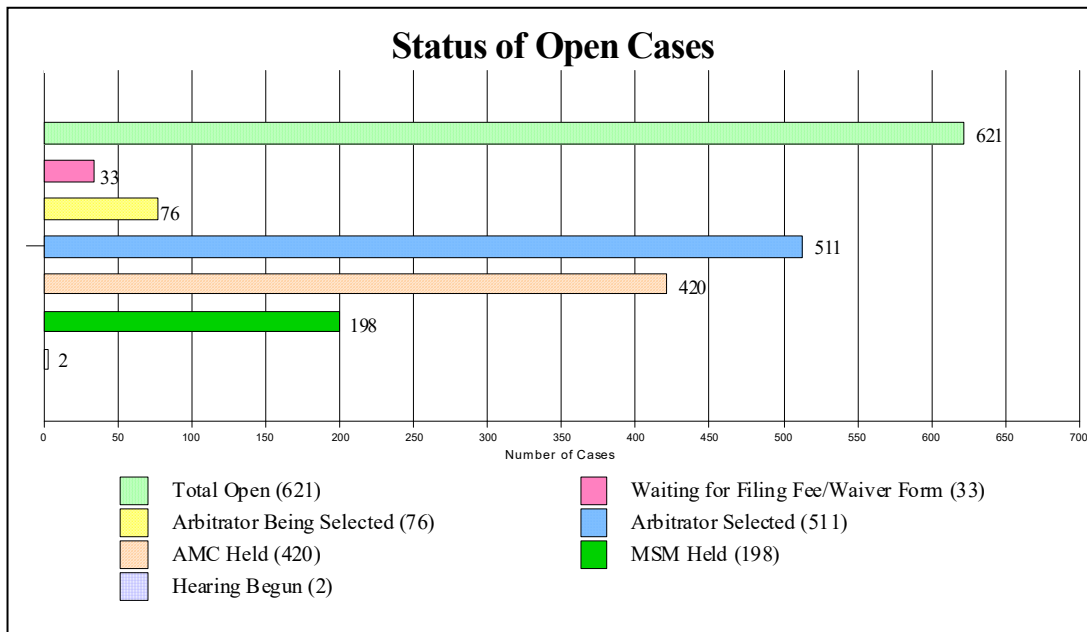
F. Status of Open Cases

There were 621 open cases at the end of the year. In 33 cases, the LPA had not been sent because the filing fee had not yet been paid or waived. In 76 cases, the parties were in the process of selecting a neutral arbitrator. In 511 cases, a neutral arbitrator had been selected. An AMC was held in 420 of these cases. In 198 cases, the parties held the MSM. In two 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.

⁶²While the OIA contacts 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.

⁶³While the OIA contacts 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.

Chart 7



VII. CASES THAT CLOSED

This section focuses on how the cases closed, how many closed, and the duration. It also discusses the number of hearings conducted by video and/or in-person and the results of those hearings. See Charts 8 and 9.

Thirty-two (32) cases closed after a demand for arbitration was served but before the filing fee was paid or waived. These cases included 20 that were abandoned for non-payment of the filing fee,⁶⁴ 2 that were settled and 8 that were withdrawn.⁶⁵ These cases account for five percent (5%) of the total number of closed cases, but are excluded from this section because the OIA does not begin measuring time until the fee is paid or waived.

The second half of this section discusses cases that used rules to either have the cases expedited or extended. Under the *Rules*, “regular” cases must ordinarily be closed within 18 months. Eighty-two percent (82%) of the cases closed within this period. Fifty-four percent (54%) closed in a year or less. If a claimant needs a case decided in less time, the case can be

⁶⁴Before cases are deemed abandoned, claimants receive three notices from the OIA and each time are offered the opportunity to apply for fee waivers.

⁶⁵The other cases include one which was moved to small claims court and one which was consolidated with another pending case.

expedited.⁶⁶ If the case needs more than 18 months, the neutral arbitrator can designate the case as complex or extraordinary under Rule 24. The neutral arbitrator may also extend the deadline under Rule 28 for good cause.⁶⁷ See Chart 10.

A. How Cases Closed

1. Settlements – 51% of Closures

Settlements occurred in 290 cases. This represents 51% of closed cases. The average time to settle was 431 days. The range was 0⁶⁸ – 2,174 days.⁶⁹ In 27 settled cases, or 9%, the claimant was in *pro per*. Thirty-five cases settled at the Mandatory Settlement Meeting.

2. Withdrawn Cases – 26% of Closures

Withdrawal notices were received in 147 cases. This represents 26% of closed cases. In 65 of these cases, or 44%, the claimant was in *pro per*. The OIA categorizes a case as withdrawn when a claimant executes a notice of withdrawal, writes a letter or sends an email withdrawing the claim, or signs a dismissal without prejudice. When the OIA receives a dismissal with prejudice, the parties are contacted to confirm the case was withdrawn, meaning it was voluntarily dismissed.

The average time it took for a party to withdraw a claim was 267 days. The range was 1 – 1,760 days.⁷⁰

3. Dismissed Cases – 5% of Closures

Neutral arbitrators dismissed 29 cases. Neutral arbitrators dismiss cases if the claimant fails to comply with arbitrator orders or otherwise conform to the *Rules* or applicable statutes.

⁶⁶See Rules 33-35.

⁶⁷A complex case can also have a Rule 28 extension if the case requires more than 30 months to close. Ten cases that closed were both complex and had a Rule 28 extension.

⁶⁸This case closed before the process was initiated resulting in 0 days open.

⁶⁹The deadline in the case that took 2,174 days to settle was originally extended by Rule 28. The parties continued the arbitration hearing four times before the case was designated extraordinary. The hearing was rescheduled an additional four times after the extraordinary designation. The case eventually settled, six years after the arbitration process began.

⁷⁰The case that took 1,760 days to close was originally extended under Rule 28 for good cause. Subsequently, the case was designated extraordinary due to newly discovered facts which delayed rescheduling of the hearing. Over the course of four years, the hearing was continued five times until the case was dismissed without prejudice due to the claimant's death.

Twenty-four (24) of these closed cases involved *pro pers*. The average number of days to close a case dismissed by a neutral arbitrator was 347 days. The range was 63 – 2,219 days.⁷¹

4. Summary Judgment – 13% of Closures

Summary judgment was granted in Kaiser's favor in 75 cases. In 59 cases, or 79%, the claimant was in *pro per*. The reasons given by neutral arbitrators for granting motions for summary judgment were: failure to file an opposition (36 cases), failure to produce an expert declaration (20 cases), no triable issue of fact (11 cases), no causation (1 case), and statute of limitations issues (7 cases).

The average number of days to close a case by summary judgment was 420 days. The range was 117 – 2,207 days.⁷²

5. Cases Decided After Hearing – 5% of Closures

a. Who Won

Twenty-seven cases (5%) proceeded through an arbitration hearing to an award. In three cases, the claimant was in *pro per*. Judgment was for Kaiser in 15 of these cases, or 56%. The claimant prevailed in 12 cases, or 44%. None were a *pro per* claimant.

b. Amounts Awarded to Claimants

Twelve cases resulted in awards to claimants. The range was \$10,000 – \$925,000. The average amount awarded was \$338,460. A list of the awards made is attached as Exhibit K.

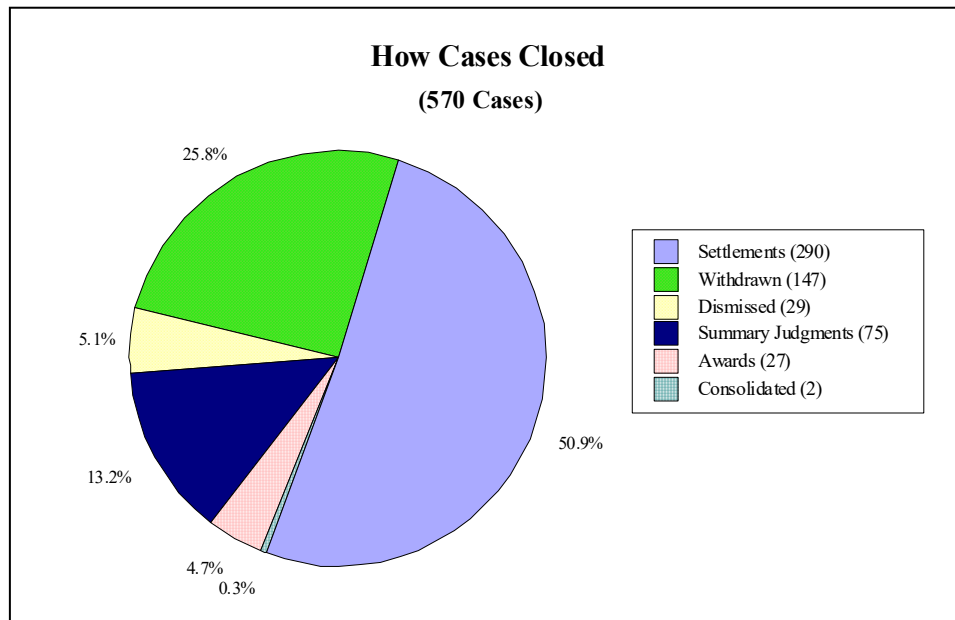
⁷¹The case that was dismissed after 2,219 days was first designated complex but later designated extraordinary. The hearing was continued several times due to COVID-19. During the course of the case, the neutral arbitrator became an inactive member of the state bar and served the parties with supplemental disclosures. Neither party disqualified the arbitrator. One year later the claimant attorney asked the arbitrator to recuse himself on the basis of the supplemental disclosure. The arbitrator denied the request. Claimant attorney then filed in court to seek the arbitrator's recusal. The court denied the petition. Claimant attorney then filed a motion to withdraw as attorney of record which was granted. *Pro per* claimant appealed the court decision which was also denied. The arbitration hearing eventually went forward and was dismissed, no opposition filed.

⁷²The case that took 2,207 days to close was initiated by a *pro per* claimant who subsequently obtained an attorney. Nine months later, claimant attorney withdrew and the case was designated complex. Shortly thereafter, the neutral arbitrator recused himself. Claimant received a 90-day postponement and a stay of the arbitration proceedings while the case was pending in court. The court hearing was delayed several times due to COVID-19 but the petition and subsequent motions for reconsideration were denied. The case returned to arbitration. When a neutral arbitrator was finally appointed, claimant had disqualified ten arbitrators and Kaiser's attorney had disqualified three. The next neutral arbitrator recused herself and the case was stayed again pending Kaiser's motion in court to appoint an arbitrator. The court appointed arbitrator granted Kaiser's motion for summary judgment.

c. How Long it Took

The 27 cases that proceeded to a hearing closed on average in 739 days.⁷³ The range was 285 – 1,845 days.⁷⁴

Chart 8



6. How Hearings were Held

Of the 27 arbitration hearings, 5 were held by video, 5 were held partially in-person and partially by video and 1 was decided by document submission. The remaining 16 hearings were held in-person (59%).

Of the 75 summary judgments, 55 (73%) were held telephonically. Four were held by submission of documents, and 16 were held by video.

Of the 29 cases dismissed by neutral arbitrators, 22 (76%) were held telephonically. Four were held by video, one was held in person and two by submission of documents.

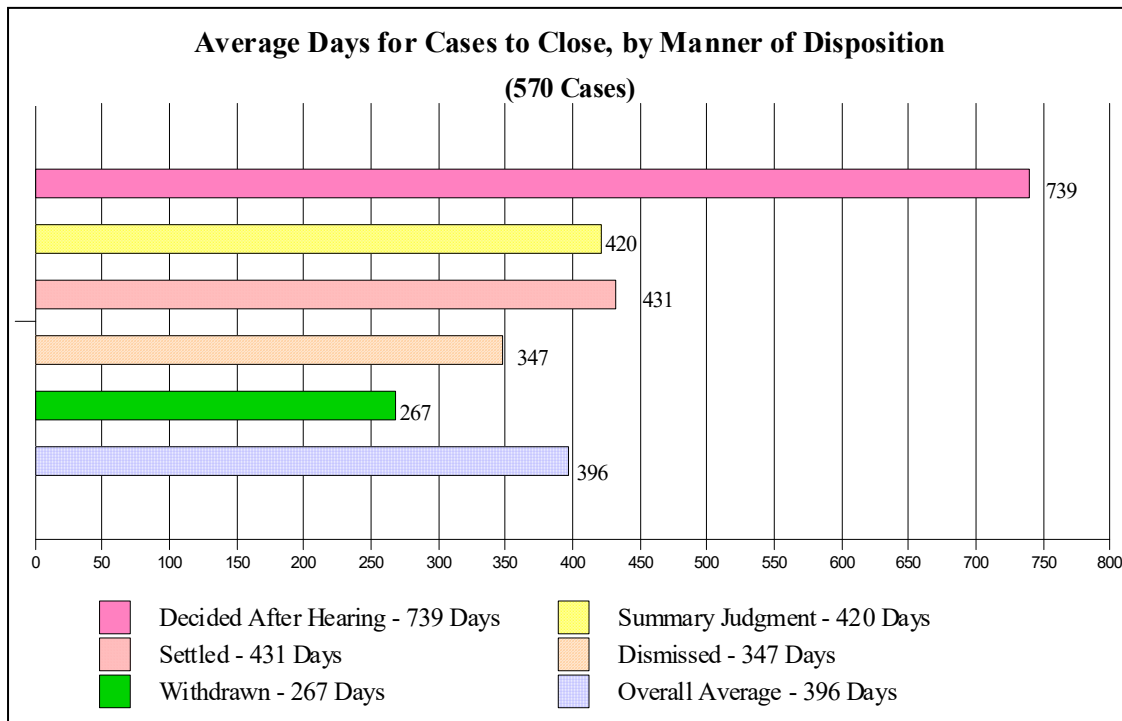
⁷³Nine of the 27 are “regular” cases and closed on average in 469 days (over 15 ½ months).

⁷⁴In the case that took 1,845 days to close, the first neutral arbitrator recused himself. The second neutral arbitrator designated the case complex due to COVID-19 and later designated it extraordinary. The arbitration hearing was continued seven times over the course of 4 years under Rule 28 for good cause. The hearing eventually went forward resulting in a judgment in Kaiser’s favor.

7. Average Days to Close

As shown on Chart 9, cases closed on average in 396 days, 13 months. The median was 350 days. The range was 0 – 2,219 days.⁷⁵ No case closed after its deadline.

Chart 9



B. Procedures to Expedite or Extend Cases

1. Expedited Procedures

Rules 33 – 36 include provisions for cases which need to be expedited. 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.

Claimants made six requests for expedited procedures to the OIA. Kaiser objected to one request. The OIA granted one and denied four.⁷⁶ One case settled.

⁷⁵The case that took 2,219 days to close is described in footnote 71.

⁷⁶Three failed to provide a deadline to receive the award, or to provide sufficient reasons or evidence for the request required under Rule 33.a., and were denied. The other request was made during the selection of a neutral arbitrator. The request was then directed to the neutral arbitrator who granted it.

Three requests for expedited procedures were made to the neutral arbitrator. One request was granted and two were denied.

The OIA had five expedited cases pending from 2023. Two were no longer expedited and three have closed.

Four expedited cases closed on average in 140 days, about 4 ½ months. At the end of the year, there was one open expedited case.

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

2. Complex Procedures

Rule 24.b. includes provisions for cases that need 24 – 30 months to be completed. There were 106 cases designated complex. Eighty-three complex cases (16%) closed.⁷⁷ The average length of time for complex matters to close was 513 days. The range was 84 – 835 days (under 28 months).⁷⁸

3. Extraordinary Procedures

Rule 24.c. includes provisions for cases that need more than 30 months for resolution. Eighteen cases were designated extraordinary, and 22 cases (4%) closed. The average time to close an extraordinary case was 1,111 days. The range was 213 – 2,219 days (over 6 years).⁷⁹

4. Rule 28 Extensions

Rule 28 allows neutral arbitrators to extend the deadline to close the case for good cause. This year, neutral arbitrators made Rule 28 extensions in 81 cases, and there were 84 cases with a Rule 28 extension that closed. The average time to close cases with a Rule 28 extension was 652 days. The range was 230 – 2,207 days.⁸⁰

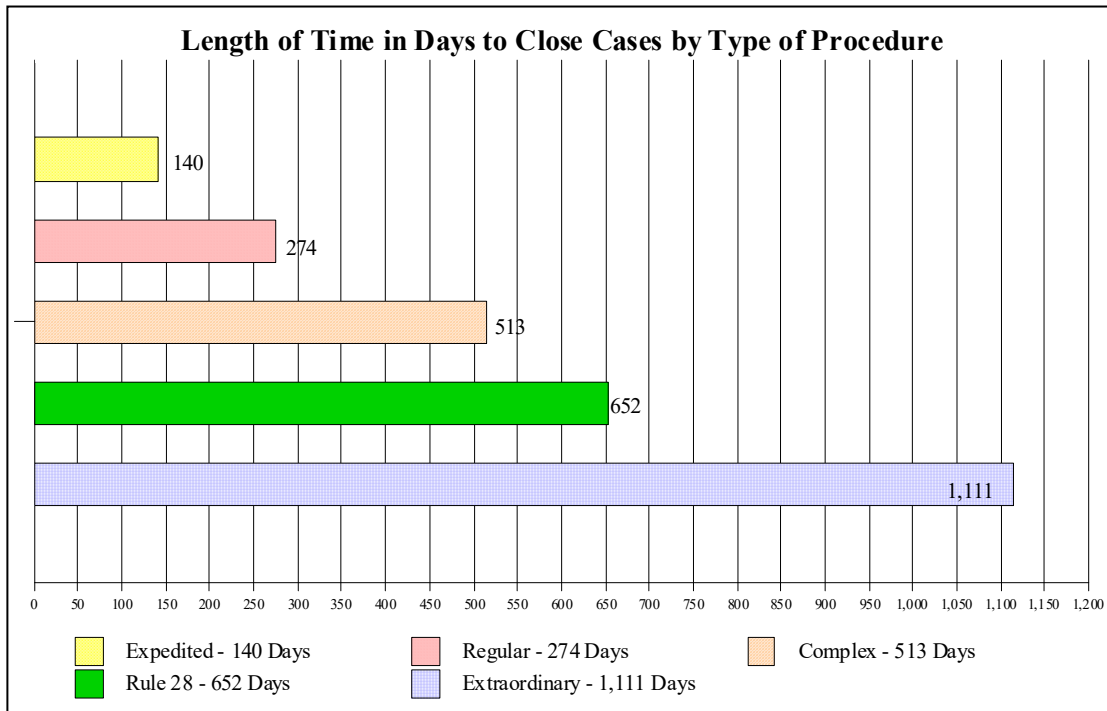
⁷⁷Ten cases were extended by Rule 28 and are counted in that section. See Section VII.B.4.

⁷⁸The complex case that took 835 days to close had the hearing continued several times due to demurrer filings and amended demands for arbitration filings. The hearing went forward two years later resulting in judgment in Kaiser's favor.

⁷⁹The extraordinary case that took 2,219 days to close is discussed in footnote 71.

⁸⁰The case that took 2,207 days to close is described in footnote 72.

Chart 10



VIII. COST OF ARBITRATION

A. OIA Arbitration Fees

In an OIA arbitration, a claimant must pay a \$150 arbitration filing fee⁸¹ and half of the neutral arbitrator's fees, in addition to any attorney's fees and fees for expert witnesses. State law provides that neutral arbitrator fees be divided equally between the claimant and the respondent.⁸² State law also provides that if the claim for damages is more than \$200,000,⁸³ the matter will be heard by an arbitration panel, which consists of three arbitrators – a neutral arbitrator and two party arbitrators.⁸⁴ In OIA arbitrations, parties may waive their right to party arbitrators and still proceed with a claim for damages for more than \$200,000.

⁸¹Unlike 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).

⁸²California Code of Civil Procedure §1284.2.

⁸³California Health & Safety Code §1373.19.

⁸⁴Party arbitrators are selected and paid for by each side.

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. When claimants request a waiver, they receive information about the different types of waivers and the waiver forms.⁸⁵

B. Options Claimants Have to Waive Fees

1. Waiving the \$150 Arbitration Filing Fee

Pursuant to state law, the \$150 arbitration filing fee waiver is available to claimants whose gross monthly income is less than three times of the federal poverty guidelines.⁸⁶ The OIA informs claimants of this waiver in the first notice sent to them. Rule 12 gives claimants 75 days from the date the OIA receives their demands for arbitration to submit this form. The completed form is confidential and only the claimant and/or claimant's attorney know if a request for the waiver was made, granted or denied.

2. Waiving the Arbitration Filing Fee and the Neutral Arbitrator's Fees and Expenses

Upon disclosure of financial information, a claimant may qualify for a waiver for extreme financial hardship.⁸⁷ Rule 13 requires the waiver form to be served on the OIA and Kaiser. Kaiser has the opportunity to object before the OIA grants or denies this request. If granted, the claimant does not have to pay the neutral arbitrator's fees or the \$150 arbitration filing fee. A claimant who obtains this waiver is also allowed to have a party arbitrator at claimant's expense.

3. Waiving the Neutral Arbitrator's Fees and Expenses

No financial information is required by signing the Waiver of Objection to Payment of Fees Form and Waiver of Party Arbitrators - Claimants Form provided in Rules 14 and 15. 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.⁸⁸

⁸⁵See Exhibit L for the fee waiver packet.

⁸⁶California Code of Civil Procedure §1284.3.

⁸⁷The fee waiver application is based on the form used by state court.

⁸⁸If the claimant waives his/her right to a party arbitrator but Kaiser wants to proceed with party arbitrators, Kaiser will pay all of the neutral arbitrator's fees and expenses. See Exhibit L for copies of the waiver forms.

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

1. Arbitration Filing Fee

The OIA received 40 requests to waive the \$150 filing fee. The OIA granted 33 requests and denied 7.⁸⁹ Fifteen of these claimants also submitted and received a waiver of the filing fee and the neutral arbitrators' fees and expenses discussed in the next section.

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

The OIA received 59 fee waiver requests and no objections from Kaiser. The OIA granted 56⁹⁰ and denied 3.⁹¹ Two requests were 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. We received fee information from neutral arbitrators in 538 cases that closed.

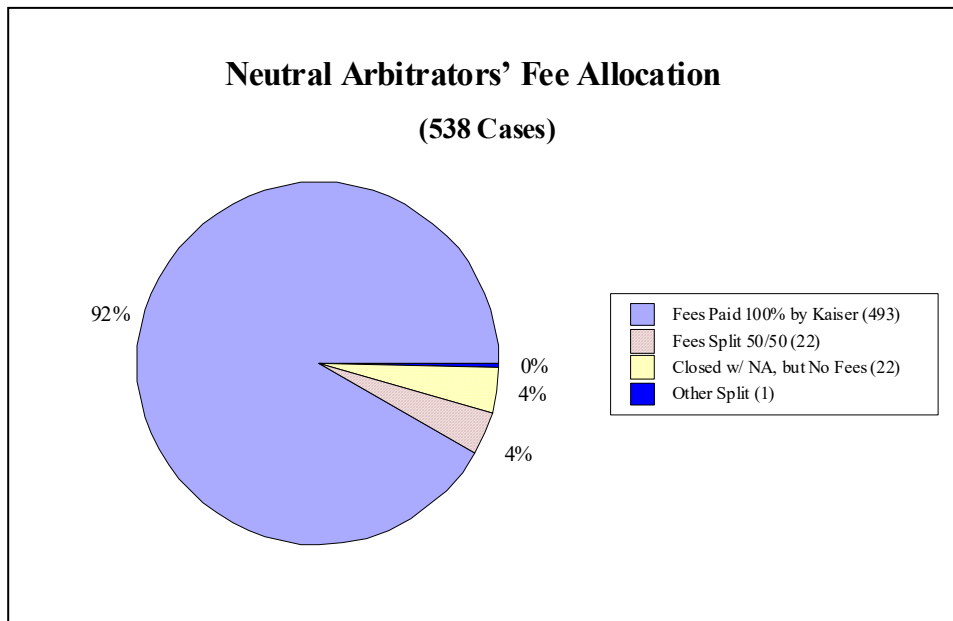
Kaiser paid 100% of the neutral arbitrators' fees and expenses in 493 cases. Fees were split 50/50 in 22 cases. One case had a different split, with claimant paying 33%. In 22 cases, no fees were charged. See Chart 11.

⁸⁹One resubmitted the form providing additional or missing information which was granted and two paid the filing fee. One other case was withdrawn shortly thereafter. The remaining three submitted the waiver of filing fee and neutral arbitrator fees form pursuant to Rule 12, two were granted and one was pending.

⁹⁰Two requests were received last year but granted this year.

⁹¹One request was resubmitted providing missing information and was granted. The other two paid the filing fee.

Chart 11



D. Fees Charged by Neutral Arbitrators

Neutral arbitrators on the OIA panel set their own fees. They are permitted to raise their fees once a year, only in new cases. The fees ranged from \$200/hour – \$1,600/hour. The average hourly fee was \$764. Some neutral arbitrators also offered a daily fee with a range of \$1,000/day – \$14,000/day. The average daily fee was \$6,337.

In 493 cases (96%) where the neutral arbitrator charged fees, Kaiser paid 100% of the neutral arbitrators' fees. The average neutral arbitrator fee in this category was \$11,271. The range was \$300 – \$395,750. This excludes the 22 cases in which there were no fees. The average for all cases, including those with no fees, was \$10,756.

In cases where the neutral arbitrator rendered a decision, the average fee was \$70,443. The range was \$12,480 – \$395,750.

IX. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

When cases close, the OIA sends forms to counsel for the parties and *pro per* claimants asking them questions about the OIA, the arbitration process, and the neutral arbitrator, if any. The OIA sends the neutral arbitrator a similar form with questions about the OIA and the arbitration process. This section discusses the highlights of the responses we received from the parties and the arbitrators. The copies of the forms are set out in Exhibits M, N, and O, respectively.

A. Parties Evaluate the Neutral Arbitrators

The OIA sends neutral arbitrator evaluations to counsel for the parties or *pro per* claimants only in cases where the neutral arbitrator decided the merits of 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. More importantly, they are asked whether they would recommend this arbitrator to another person with a similar case. The inquiries appear in the form of statements, and all responses appear on a scale from 1 - 5, with 5 being agreement and 1 disagreement. The evaluations are anonymous, though the parties filling out the forms are asked to identify themselves by category and how the case closed.

The OIA sent 264 evaluations and received 50⁹² responses, or 19%. Eleven identified themselves as *pro per* claimants, eight as claimants' counsel, and 31 as respondents' counsel.

Table 4 highlights the average responses to some of the inquiries.

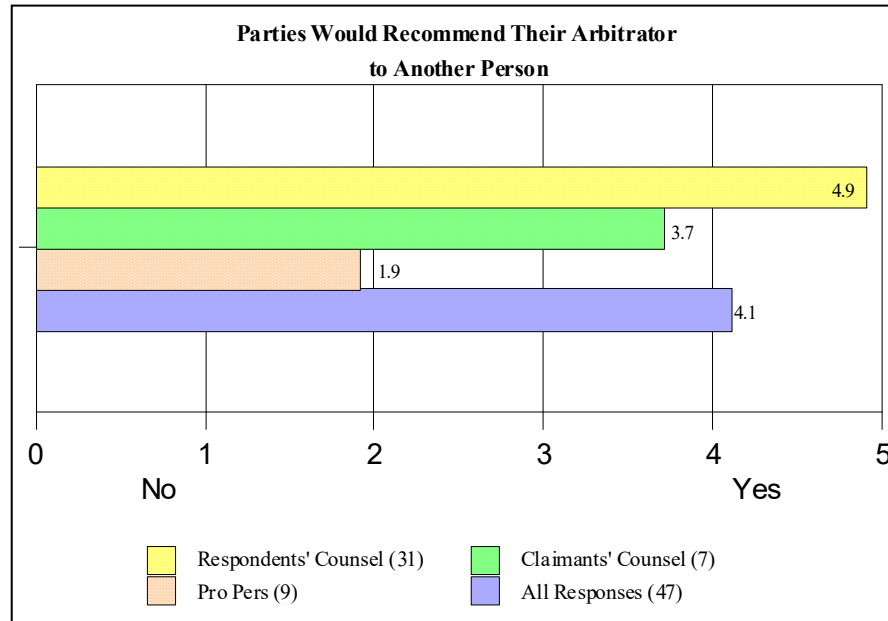
Table 4 - Parties' Evaluations of Neutral Arbitrators

Question	Claimants' Counsel (8)	<i>Pro per</i> (9)	Respondents' Counsel (31)	Total (48)
Impartial and treated parties fairly	3.8	2.1	5.0	4.3
Treated parties with respect	4.1	2.5	5.0	4.4
Explained procedures and decisions clearly	4.3	2.4	4.9	4.4
Understood applicable law	3.9	2.1	4.9	4.3
Understood facts of the case	4.2	1.8	5.0	4.2
Fees reasonable for work performed	3.3	1.0	4.9	4.6
Would recommend this arbitrator	3.7	1.9	4.9	4.1

⁹²Two evaluations were returned with comments only, no rankings.

As shown in Chart 12, the average on all responses when asked whether they would recommend this arbitrator to another person with a similar case was 4.1.

Chart 12



B. Neutral Arbitrators Evaluate the OIA System

When cases close, the neutral arbitrators complete questionnaires about their experience with the *Rules* and the overall system.⁹³ 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 they decided the merits of the case. The OIA sent questionnaires in 132 closed cases and received neutral arbitrator responses in 130 cases.

The arbitrators' average response was 4.8 agreeing that the procedures set out in the *Rules* had worked well in each specific case. The responses averaged 4.9 agreeing that based on this experience, they would participate in another arbitration with the OIA. The responses averaged 4.9 agreeing that the OIA had accommodated their questions and concerns in their specific case.

The questionnaire also includes two questions that asks arbitrators to check off features of the system which worked well and those that needed improvement in their specific case. The majority identified features of the OIA system that worked well. See Table 5.

⁹³See Rule 48.

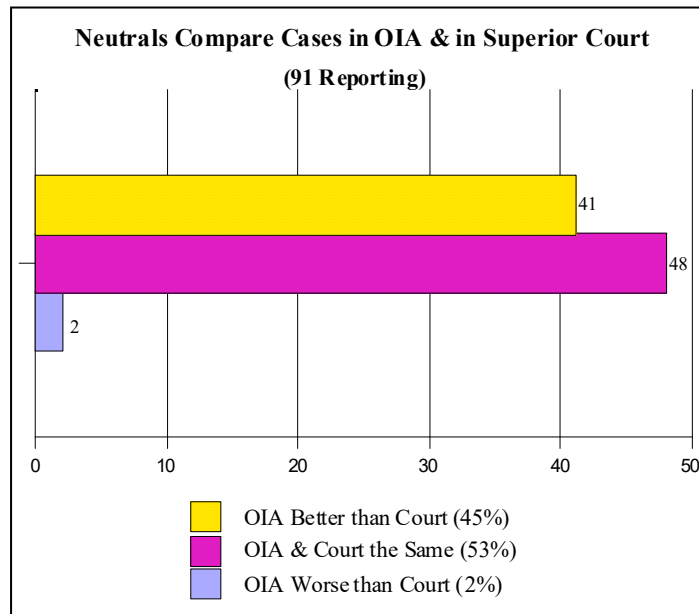
Table 5 - Neutral Arbitrators' Opinions Regarding the OIA System

Feature of OIA System	Works Well	Needs Improvement
Manner of neutral arbitrator's appointment	88	0
Early management conference	92	1
Availability of expedited proceedings	30	0
Award within 15 business days of hearing closure	35	2
Claimants' ability to have Kaiser pay neutral arbitrator	89	3
System's Rules overall	98	2
Hearing within 18 months	45	2
Availability of complex/extraordinary proceedings	30	1

Finally, the questionnaire asks the arbitrators whether they would rank the OIA experience as better, worse, or about the same as a similar case tried in court. Ninety-one arbitrators made the comparison. Forty-one arbitrators, or 45%, said the OIA experience was better. Forty-eight arbitrators, or 53%, said it was about the same. Two arbitrators (2%) said the OIA experience was worse.⁹⁴ See Chart 13.

⁹⁴One may have done so by mistake commenting that the Superior Court procedures are more time consuming and cumbersome than the OIA procedures. The other arbitrator complained about a *pro per* claimant's husband refusing to follow the *Rules*.

Chart 13



Nearly all responses from the neutral arbitrators were positive. Most expressed confidence in the OIA system, describing its communications as prompt, responsive and professional. Expedience was a theme, noting that the system is faster and smoother than Superior Court, and that cases are resolved in less time with less expense on experts and attorneys. When asked about what improvements they would suggest, one neutral arbitrator offered that the OIA should assign a specific case administrator to handle each case.

With regard to the *Rules*, the responses mostly reflected that they worked well. However, several arbitrators asked for more time to serve the award, suggesting a 30-day standard.⁹⁵ Some arbitrators asked for additional rules regarding payment of the neutral arbitrator's fees when *pro pers* refuse to participate in the arbitration process and fail to sign the waiver forms. Others asked for specific rules: that define each corporate entity and the need to be separately named and served in the demand; regarding procedures to consolidate cases; which require production of the arbitration agreement to the neutral arbitrator; to address dismissal or amendment of a case when a member dies.

Many neutral arbitrators mentioned difficulties with *pro pers*. They complained about the amount of time which is needed to explain rules and procedures and about their need for additional assistance from the OIA. One specifically asked that the OIA require *pro pers* to

⁹⁵See Exhibit B, redlined version of Rule 37 giving neutral arbitrators more time to serve awards. The amendment took effect February 14, 2025.

provide phone numbers and email address before sending the case to a neutral arbitrator.⁹⁶ It was also suggested last year that *pro pers* be required to produce a certificate of merit⁹⁷ before a case may proceed. A few suggested that the system should ensure that *pro pers* understand procedure and perhaps “an advisal form explaining the hazards of self-representation” should be created. Another recognized the difficulty in navigating *pro per* cases but suggested that no new rules could solve the situation.

C. Parties Evaluate the OIA System

The OIA sends the parties an additional one-page evaluation asking about their experience with the *Rules* and the overall system. The form is similar to, but shorter than, the form sent to the neutral arbitrators.

As with the other forms, this form asks the parties, on a scale from 1 - 5, whether they agree or disagree that the *Rules* had worked well in their case and whether they would rank the OIA experience as better, worse, or about the same as a similar case in court. The form also includes a questions about their experience obtaining medical records. A “5” is the highest level of agreement.

The OIA sent 1,076 evaluations and received 127 responses, or 12%. Twelve identified themselves as *pro per* claimants, 20 as claimants’ counsel, and 81 as respondents’ counsel. Fourteen did not specify a side.

Table 6 highlights the average responses for some of the inquiries.

Table 6 - Parties’ Evaluations of the OIA System

Question	Claimants’ Counsel (20)	<i>Pro per</i> (12)	Respondents’ Counsel (81)	Not Specified (14)	Total (127)
Procedures worked well	4.2	1.6	5.0	4.9	4.5
Obtaining medical records went well	3.8	2.6	4.9	4.8	4.5
OIA responsive to questions/concerns	4.6	2.6	5.0	4.9	4.7

⁹⁶The OIA provides contact information to neutral arbitrators for all parties, including email, except for those who elect to communicate by U.S. mail only.

⁹⁷California does not have a certificate of merit requirement in medical malpractice cases. However, in some states, a sworn affidavit by a medical expert declaring that there is sufficient evidence to bring a medical malpractice claim is required prior to the filing of the case.

The form also asks the parties if they have had a similar experience in Superior Court and, if so, to compare the two. Of the 90 people who made the comparison, 54 said it was better. Twenty-nine said it was the same. Seven said it was worse.⁹⁸ See Chart 14 and Table 7 for the breakdown.

Chart 14

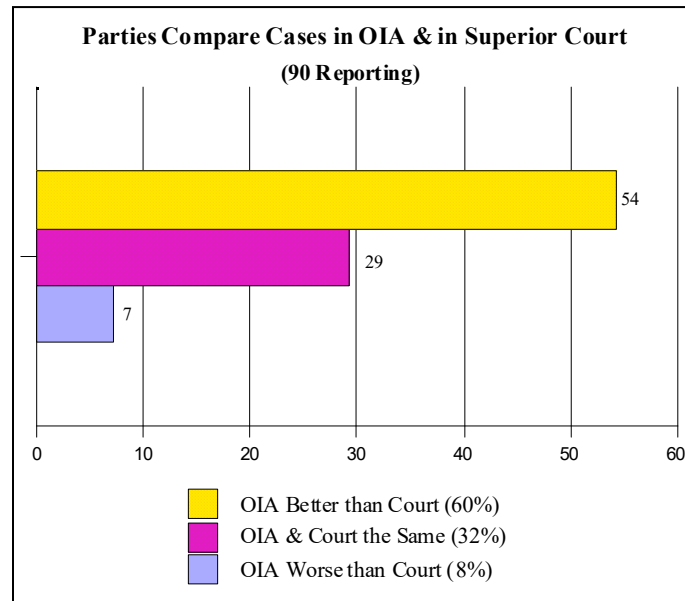


Table 7 - Parties Compare the OIA System & Superior Court

	Made Comparison	Better	Worse	About the Same
Claimants' Counsel	15	7	3	5
<i>Pro per</i>	4	1	2	1
Respondents' Counsel	67	42	2	23
Not Specified	4	4	0	0
Total	90	54	7	29

⁹⁸Of the seven people who said the OIA experience was worse, two may have done so by mistake as they responded with all "5's". The others complained that arbitration is inherently unfair and the system only favors Kaiser. Some also complained that arbitrator decisions lack impartiality and transparency and that there should be stricter deadlines for addressing motions prior to the arbitration hearing.

The parties praised the OIA as helpful, accommodating, and always prompt when returning phone calls and emails. Some commented that the OIA should provide a list of lawyers for claimants; provide a single point of contact; not allow parties to proceed in pro per; and provide an OIA-endorsed process for obtaining medical records.

The parties also praised the arbitration process as more efficient than the courts, noting how courts are consistently backlogged and they appreciated the flexibility and ease of the process, along with the congeniality of the arbitrators.⁹⁹

Conversely, some complained that the arbitration system is biased, unfair, and one-sided in Kaiser's favor. They claim that the mandatory arbitration agreement should be unenforceable, allowing parties to stay in court or the process should not be confidential. Further, they claim that case limits should be set for neutral arbitrators and appeals of arbitrator decisions should be allowed.

The most common complaint by the parties concerned obtaining medical records. Some stated that requests were made but never received; that their records were different than those of opposing counsel; that records should include internal medical staff communication, messaging and emails; and that access should be provided to the actual medical records on Kaiser's server. They claim that Kaiser should also provide enhanced Adobe PDF management to "equalize the playing field."

Parties also offered rule changes that specifically covered certain situations, i.e., guardian ad litem; omitted heirs and verifications for compromised claimants. Others requested clarification of specific rules that include: naming and serving individual respondents pursuant to Rule 8.c.; removing payment reference in Rule 27.c., because Kaiser does not charge for electronic production of records, does not provide paper records or records at all, that only the medical groups send records; clarifying that if a party is named in a court case, the order to arbitrate constitutes service only on the parties who are served pursuant to Rule 8.d.

X. ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

The Arbitration Oversight Board (AOB) was chaired by Richard Spinello, retired Executive Director of Financial Risk and Insurance at Children's Hospital of Orange County. Mr. Spinello resigned from the AOB at the end of 2024. The vice-chair was Donna Yee, retired Chief Executive Officer of the Asian Community Center of Sacramento Valley. Ms. Yee remains a member of the AOB.

⁹⁹One claimant attorney commented giving claimants the opportunity to sign waivers of fees is a "big game changer."

Carlos Camacho was elected to serve as the new chair and Dr. John Swartzberg was elected to serve as the new vice-chair. Dr. Mark Lane Welton¹⁰⁰ joined the AOB in February 2025. Sylvia Drew Ivie, Special Assistant to the President, Charles R. Drew University of Medicine and Science, Los Angeles resigned in February 2025. The selection of her replacement by the AOB's nominating committee is ongoing.

The membership of the AOB is a distinguished one and includes well respected members of the community. Pursuant to the AOB bylaws, 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 current membership of the AOB in alphabetical order:

Carlos Camacho, Chief of Staff, Orange County Labor Federation, AFL-CIO, Orange County, CA.

Doris Cheng, plaintiff attorney representing claimants, San Francisco, CA.

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

Margaret B. Martinez, MPH, retired Chief Executive Officer of the Community Health Alliance of Pasadena, dba ChapCare, Pasadena, CA.

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

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

Tony Rodriguez, Vice President and Assistant General Counsel, Litigation / Legal Department, Kaiser Foundation Hospitals / Health Plan, Oakland, CA.

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

Matt Weber, Deputy General Counsel for TMC HealthCare, Oro Valley, AZ.

Mark Lane Welton, M.D., MHCM, past Executive Vice President and Chief Medical Office President, Fairview Health Medical Group, Fairview Health Services, Minneapolis, MN.

¹⁰⁰Dr. Welton's resume is attached as Exhibit D.

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

Roxana Heidi Yoonessi-Martin, MD, JD, Emergency Medicine Physician and Legal Counsel, Southern California Permanente Medical Group, Pasadena, CA.

B. Activities

The AOB oversees the OIA's administration of cases in the arbitration system. In quarterly meetings, it reviews and makes recommendations on regular and quarterly reports from the OIA. The AOB also makes requests for supporting information as needed.

The AOB convened two new committees: a Bylaws Committee for periodic review to assure compliance with the Blue Ribbon Panel and a Nominating Committee to recruit new members for the AOB.

The AOB renewed its contract with Ms. Bell to act as the Independent Administrator for three more years, through March 28, 2027.

The AOB convened the Rules sub-committee to address the OIA's proposals for Rule changes. The sub-committee moved two 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 approved Interim Rules: Tracking Technologies Cases to address mass arbitrations. It also approved Supplemental Rules Governing Mass Arbitrations which replaced the Interim Rules effective February 14, 2025.¹⁰¹

The AOB initiated the process to audit the OIA. The Blue Ribbon Panel recommended that the OIA be audited no less than every five years. The audit will take place in 2025.¹⁰²

The AOB continues to receive quarterly updates regarding the status of cases open over 18 months.

The AOB is committed to improve the diversity of the OIA panel of neutral arbitrators. The AOB receives quarterly reports regarding the demographics of the panel of neutral arbitrators. It also receives quarterly reports regarding the OIA's efforts in recruitment.

¹⁰¹See Section II.F and Exhibits E and F.

¹⁰²See Exhibit C, Recommendation 29.

Finally, the AOB reviews the draft annual report and provides comments. Exhibit P is the AOB Comments on the Annual Report for 2024.

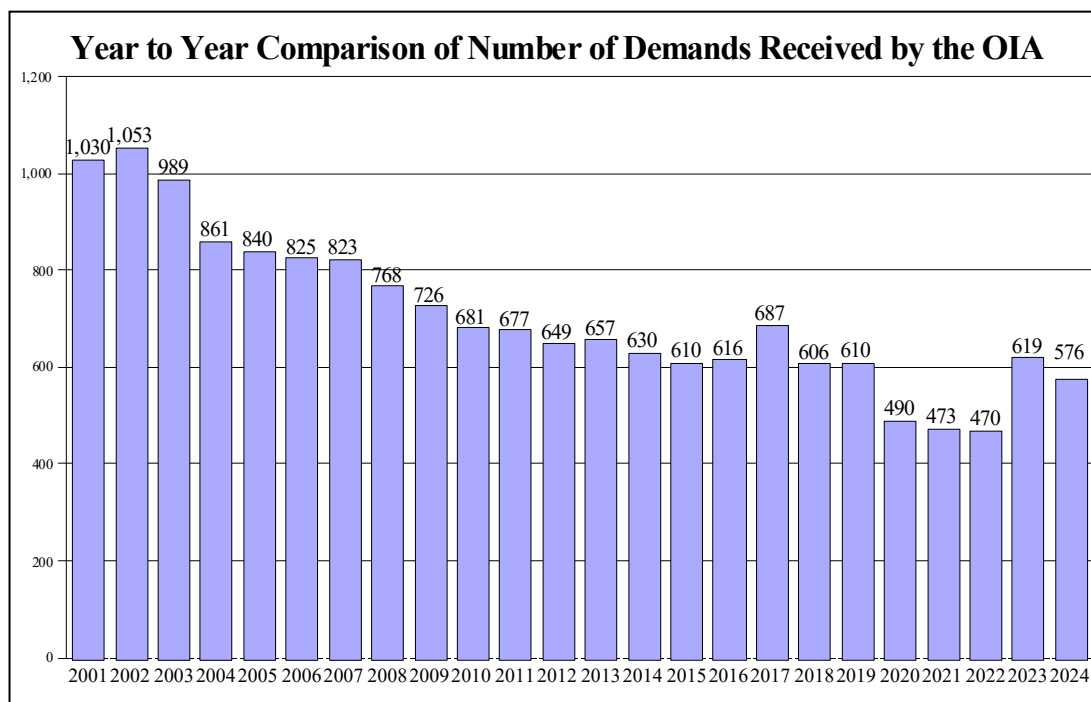
XI. TRENDS AND DATA OVER THE YEARS OF OPERATION¹⁰³

Using the data that the OIA has published in prior reports, this section considers the operation of the OIA over time.

A. Number of Demands for Arbitration

In 2024, the OIA received 576 demands for arbitration, 43 less than last year. Chart 15 shows the year to year comparison of the number of demands received since 2001.

Chart 15



B. Number of Neutral Arbitrators

There were 195 neutral arbitrators on the OIA panel, 19 more than last year. The panel has ranged from 164 in 2021 to 326 in 2006. On average, 41% have been retired judges. This

¹⁰³Unless otherwise noted, this section compares data over the years since 2001, the first time the OIA reported on a calendar year. Prior reports covered partial years.

year, 56% are retired judges - 1% more than last year and the highest percentage of judges over all time. The composition of the panel of neutral arbitrators includes those who have plaintiff's side experience and those who have defendant's side experience. This year, 89% report medical malpractice experience.

C. Number of Arbitrators Who Served

The percentage of neutral arbitrators on the OIA panel who have served in any given year remains consistent with the number of demands. This year, the OIA received 576 demands and had 195 arbitrators. Fifty-eight percent (58%) of those arbitrators served on a case this year. This is 5% less than last year.¹⁰⁴

D. Number of Arbitrators Who Wrote Awards¹⁰⁵

This year, 23 neutral arbitrators wrote 27 awards. The largest number of arbitrators (93) who wrote awards occurred in 2004, with an average of 68 – 91% writing a single award. This year, as in 2020, 91% wrote one award.

E. Number of Arbitrators Who Served After Making a Large Award¹⁰⁶

Ninety-four (94) different neutral arbitrators have made 121 awards of \$750,000 or more in favor of claimants. Most of the neutral arbitrators who made the awards were members of the OIA panel, nine were not. The awards have ranged from \$750,000 to \$25,638,059.

As Chart 17 illustrates, most neutral arbitrators who have made awards of \$750,000 or more served again. Specifically, 74 neutral arbitrators served 1,868 times after making their awards for \$750,000 or more. In almost half of these cases (852), the parties jointly selected the neutral arbitrator.¹⁰⁷

Of the 20 neutral arbitrators who were not selected after making their awards, 2 were never on the OIA panel and 15 are no longer on the panel. The remaining three arbitrators have not served again.

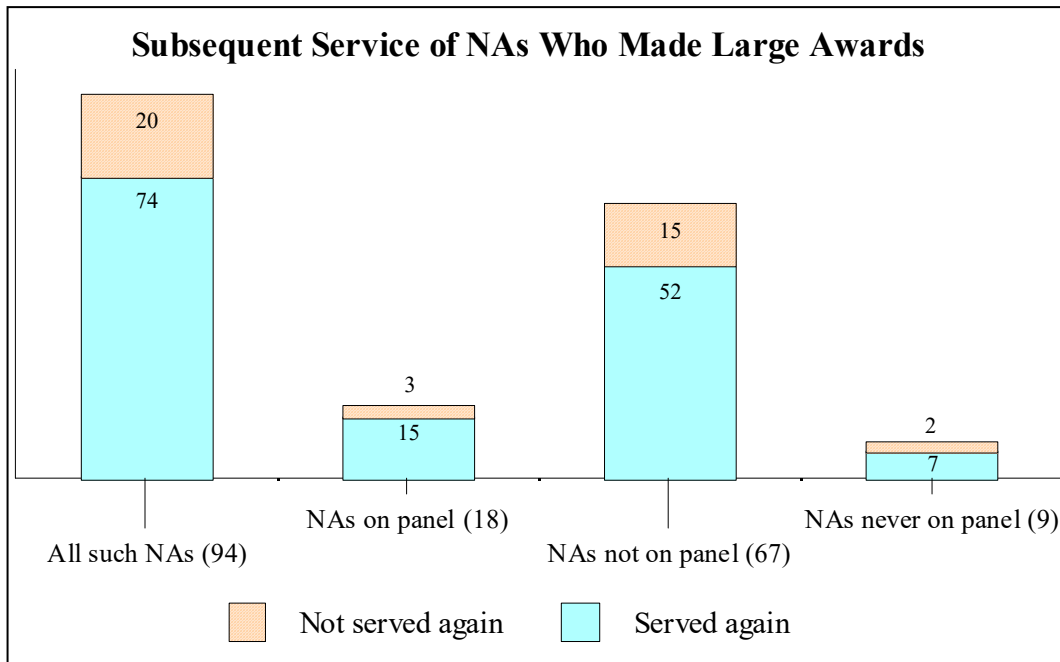
¹⁰⁴In 2003, the OIA received 989 demands and had 287 neutral arbitrators, 70% served on a case.

¹⁰⁵The OIA began comparing this data in 2003.

¹⁰⁶In 2023, the award amount increased from \$500,000 to \$750,000.

¹⁰⁷Fifteen neutral arbitrators who made such awards were selected in 69 cases in 2024. In 40 of these cases, they were jointly selected.

Chart 16



F. Types of Claims

The large majority of demands for arbitration are claims that allege medical malpractice. The percentage has ranged from 86 – 97%.¹⁰⁸ This year, 93% of the cases involved allegations of medical malpractice. Benefit claims are generally less than two percent (<2%).

G. Claimants Without Attorneys

On average, 26% of claimants are in *pro per*. This year, 31% of claimants did not have an attorney.¹⁰⁹ Neutral arbitrators continue to express their concerns regarding *pro per* claimants and their inability to follow the *Rules*. In 2023, the AOB revised the language in Rule 54¹¹⁰ to be stated more clearly and provided additional information for *pro pers*.¹¹¹

¹⁰⁸The range may actually be smaller because during the early years, a large percentage of demands gave no specifics and were categorized as “unknown.” Kaiser now provides information as to the type of claim being made.

¹⁰⁹By contrast, in 2004 only 17% of claimants did not have an attorney, while more recently in 2022, 33% did not have an attorney.

¹¹⁰See Exhibit B, Rule 54.

¹¹¹The 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.

H. Joint Selections vs. Strike and Rank Selections

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 any arbitrator who agrees to follow the *Rules*, and parties can also timely disqualify neutral arbitrators after their selection. The OIA provides both sides the same access to information about neutral arbitrators, including evaluations of the neutral arbitrators by parties in earlier cases.

The majority of arbitrators (72%) were selected by the strike and rank. The remaining (28%) were jointly selected by the parties. Annually, joint selections comprise 20% (this year and in 2021) to 35% (2015) of arbitrator selections. The majority of jointly selected arbitrators were also on the OIA panel. The percentage has ranged from 55% (2011) to 89% (2023).¹¹²

I. Parties' Use of Options During Selection of Neutral Arbitrator

The parties in 34 – 57% of the cases used postponement and disqualification allowing more time to select a neutral arbitrator.¹¹³ Claimants made almost all of the postponements (99%, 7,588 out of 7,659) and the majority of disqualifications (76%, 1,243 out of 1,633).

The length of time to select a neutral arbitrator has remained consistent: 23 – 27 days for cases with no postponements. This year it took 23 days, maintaining the lowest average for 6 years in a row. For all cases where a neutral arbitrator was selected this year, it took 58 days, 2 days less than last year.

¹¹²There have been 20 cases in which the neutral arbitrator was selected by court order including 1 case this year.

¹¹³A member of the OIA staff contacts the parties to remind them of the deadline to respond to the LPA. When contacting claimants or their attorneys, the OIA reminds them that they may seek a postponement under Rule 21 if they are not able to return their responses by the deadline.

See Table 8 for year to year comparison of days to select neutral arbitrators since 2016.

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

	2016	2017	2018	2019	2020	2021	2022	2023	2024
No delay	24 days 51.7%	24 days 51.7%	24 days 51%	23 days 55%	23 days 46%	23 days 58%	23 days 55%	23 days 59%	23 days 59%
Only Postponement	110 days 40.9%	104 days 40.8%	104 days 42%	109 days 40%	108 days 48%	107 days 38%	111 days 40%	109 days 35%	111 days 34%
Only Disqual.	64 days 3.7%	61 days 3.4%	54 days 3%	55 days 2%	67 days 2%	54 days 3%	50 days 2%	62 days 3%	63 days 4%
Postponement & Disqual.	158 days 3.7%	165 days 4.1%	144 days 4%	149 days 3%	210 days 4%	149 days 2%	188 days 3%	202 days 3%	152 days 3%
Total Selections	66 days	64 days	63 days	62 days	72 days	58 days	63 days	60 days	58 days

J. How Cases Closed

Most cases close by settlement. On average, 40 – 53% of cases settle. This year, 51% settled. On average, 21 – 28% of cases are withdrawn. This year, 26% were withdrawn. This year, five percent (5%) of cases were decided after hearing; five percent (5%) were dismissed by neutral arbitrators. The remaining cases (13%) were closed by summary judgment.

Of the cases that closed before the arbitration process was initiated, 20 (3%) were abandoned for non-payment of the filing fee. The remaining cases were settled (3), withdrawn (8), consolidated with another case (1) and returned to Kaiser for administration (1).¹¹⁴

¹¹⁴These cases account for 6% of the total number of closed cases (602), but are excluded from Section VII because the OIA does not begin measuring time until the fee is paid or waived.

Table 9 displays how cases have closed since 2016.

Table 9 - Year to Year Comparison of How Cases Closed

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Settlements	44%	47%	46%	45%	45%	45%	53%	50%	51%
Withdrawn	25%	25%	23%	26%	27%	26%	25%	26%	26%
Dismissed	3%	4%	5%	5%	5%	5%	5%	4%	5%
Summary Judgment	12%	11%	13%	11%	14%	13%	11%	15%	13%
Awards	9%	8%	6%	8%	4%	9%	6%	5%	5%

K. Awards for Claimants

In those cases in which the claimant won after a hearing, the average award was \$576,336. 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, took place in 2001, when the largest award was \$1,100,000. The largest annual average, \$4,901,115, took place in 2022 when the largest award was \$25,638,059. This year, the average was \$338,460, and the largest award was \$925,000.

Since 2010, the average percentage of cases in which claimants prevailed after a hearing was 34%.¹¹⁵ This year, 44% of claimants prevailed, 31% more than last year and 2% lower than the highest percentage of all time (46% in 2022).

L. Average Days to Close Cases

The lowest average for all cases to close was 281 days in 2001. This year, it took 396 days, 37 days less than the highest average (433 days in 2022). See Table 10.

¹¹⁵Up until 2009, lien cases were included in this percentage. The OIA has not received a lien case from Kaiser since 2019. The last lien case closed in 2020. Lien cases are brought by Kaiser against its members to recover costs of medical care provided to a member who received a third party recovery.

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

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Settlements	376 days	383 days	357 days	386 days	376 days	418 days	460 days	447 days	431 days
Withdrawn	255 days	249 days	230 days	238 days	267 days	305 days	256 days	263 days	267 days
Summary Judgment	363 days	372 days	356 days	388 days	363 days	403 days	361 days	401 days	420 days
Awards	589 days	598 days	653 days	676 days	660 days	784 days	1,022 days	760 days	739 days
All Cases	363 days	368 days	343 days	366 days	356 days	418 days	433 days	399 days	396 days

The OIA closely monitors each case that is open more than 15 months to ensure the case remains in compliance with the *Rules*. Thirty-eight cases over all time have closed beyond the deadline set by the *Rules*.¹¹⁶ No case closed late in 2024.

M. Cases Older than 18 Months

The OIA provides quarterly reports to the AOB comparing open cases older than 18 months with those in prior years, both pre- and post-pandemic. As shown in Chart 18, in 2020, the first year of the pandemic, the OIA had the highest number of Rule 28 extensions (67 cases) and complex and extraordinary designations (52 cases).¹¹⁷ The second and third years (2021 and 2022) of the pandemic, the number of cases with extensions began to decrease. In 2024, 32 cases open more than 18 months had Rule 28 extensions and 41 cases were designated complex or extraordinary.¹¹⁸ One case is pending a court appointed neutral arbitrator.¹¹⁹

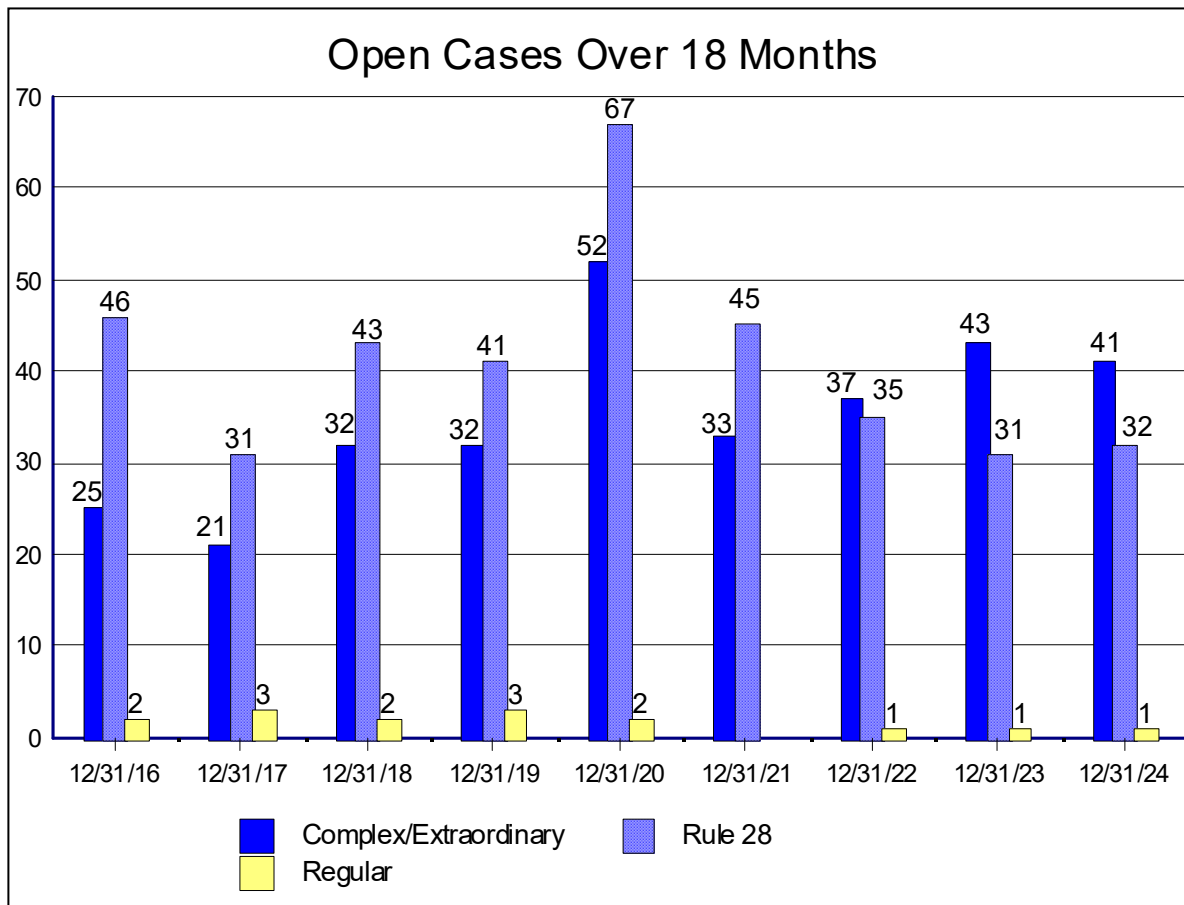
¹¹⁶This number was adjusted this year to distinguish between cases that closed beyond the deadline to close pursuant to Rule 24 (38 cases) and the cases where the decisions were served late pursuant to Rule 37 (3 cases).

¹¹⁷A neutral arbitrator may extend the deadline to close a case for good cause under Rule 28 or by designating the matter complex or extraordinary under Rule 24. See Section VII.B. for further information.

¹¹⁸The graph now includes statistics from 2016 - 2024, consistent with this section.

¹¹⁹Several court selected arbitrators have declined to accept the case or have recused themselves after acceptance.

Chart 17



N. Payment of Neutral Arbitrator’s Fees

California law provides that the neutral arbitrator fees shall be divided equally between the parties, however, the *Rules* provide several ways to shift those fees to Kaiser.¹²⁰ This year, 96% of the fees were paid by Kaiser, 1% less than the highest percentage (97% in 2022).¹²¹

¹²⁰See Sections VIII.B.2. and 3 and Exhibit L.

¹²¹The lowest reported average, 81%, occurred 3 years in a row (2003 – 2005). Pursuant to state law, provider organizations, like the OIA, are required to report the amount of a neutral arbitrator’s fees and the allocation on their websites.

O. Evaluations of Neutral Arbitrators and the OIA System

Since the year 2000, the OIA has sent the parties forms to evaluate their neutral arbitrators.¹²² The evaluation asks, among other things, whether the neutral arbitrator treated the parties with respect and whether the parties would recommend the arbitrator to others. This year, the overall average decreased from 4.3 last year to 4.1 (on a 1 – 5 scale) whether the parties would recommend the arbitrator to others. In 2022, this average was 3.7, and in 2004, it was 4.7.

The OIA also asks neutral arbitrators to evaluate the OIA system. The questions ask them to identify whether certain 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 who answered the question rated the OIA system the same as, or better than, the state court system.

In 2009, the OIA began asking parties to evaluate the OIA system and the ease with which medical records were obtained. The form is similar to the form sent to neutral arbitrators and also asks parties to compare the OIA system to court. This year, 92% of the parties who answered the question rated the OIA system the same as, or better than, the state court system. This is 4% higher than last year. The lowest average of all time was in 2022 (76%). The highest average (96%) was in 2018.

P. Conclusion

The goals of the arbitration system as outlined by the Blue Ribbon Panel are set out in Rule 1. They provide for a fair, timely, and low-cost arbitration process which respects the privacy of the parties. The *Rules* and OIA procedures were created with these goals in mind.

This report describes the ways in which the *Rules* and OIA meet these goals. Some of the highlights include:

Neutral arbitrators are selected expeditiously, and cases close faster than the Blue Ribbon Panel recommendation.

The arbitration filing fee is lower than in court, and parties can, and do, shift the cost of neutral arbitrators to Kaiser.

The OIA provides parties with neutral arbitrators' applications and updates; evaluations received from the parties within the last five years; and redacted decisions by OIA neutral arbitrators within the last five years.

¹²²In 2013, the OIA began sending neutral arbitrator evaluations only in cases where the neutral arbitrator decided the merits of the case.

Parties may jointly select any neutral arbitrator, as long as the arbitrator agrees to follow the *Rules*.

Either party can timely disqualify the neutral arbitrator after the selection.

OIA arbitrations are confidential. Names of individual claimants and respondents are not disclosed.

The annual reports provide more information about arbitrations than any other arbitration provider. The OIA website provides a searchable database of all its cases since January 1, 2003. It also includes a sortable database about cases received in the past five years as required by state law.¹²³

The information in this report is collected and published on the OIA website to allow the AOB and the public to determine how well the arbitration system meets the goals in Rule 1 of providing a fair, timely, and low-cost arbitration process that respects the privacy of the parties.

¹²³No names of individual claimants or respondents are included, only corporate entities.