FIFTH 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, 2003 - December 31, 2003

REPORT SUMMARY

This is the fifth annual report issued by the Office of the Independent Administrator (OIA) describing an arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (Kaiser) or its affiliates. Since 1999, the OIA has administered arbitrations between Kaiser and its California members.[1] Sharon Oxborough is the Independent Administrator. Under her contract with the Arbitration Oversight Board, the OIA maintains a pool of neutral arbitrators qualified to hear Kaiser cases and independently administers arbitration cases brought by Kaiser members. The contract also requires that the OIA write an annual report describing the arbitration system. The report is to describe the goals of the system, the actions being taken to achieve them, and the degree to which they are being met. This report focuses on our work from January 1 through December 31, 2003 and compares that activity with the OIA's earlier years. It finds that the system is continuing to achieve the goals set by the Blue Ribbon Panel in 1998. Here are some highlights:

Developments in 2004

1. **New Independent Administrator.** Sharon Oxborough became the Independent Administrator on March 29, 2003. Ms. Oxborough has worked on the OIA system since its inception. Her contract contains guarantees of independence, just as the contract for the prior Independent Administrator, Sharon Lybeck Hartmann, did. Ms. Oxborough has the same address, phone number, staff, and tracking software for the OIA. She has, however, a new website, www.oia-kaiserarb.com. See pages 3-4.

2. **New Disclosure Requirements for Arbitration Organizations Go Into Effect.** Beginning January 1, 2003, California law required organizations like the OIA that administered arbitrations to publish on their website information about all cases they received after January 1, 2003. We reveal no names of individual claimants or respondents. The information is updated quarterly. See page 6.

3. **New Disclosure Requirements for Neutral Arbitrators Go Into Effect.** Beginning January 1, 2003, California's *Ethics Standards* required neutral arbitrators to make disclosures about the organizations that provide neutrals for, or administer consumer arbitrations. The OIA includes information responsive to the *Ethics Standards* on its website and provides case specific information directly to the neutral arbitrators. See pages 4-5.

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

4. **New Method to Waive $150 Arbitration Filing Fee.** Beginning January 1, 2003, claimants whose gross monthly income is less than three times the federal poverty guidelines do not have to pay the $150 filing fee. Forty-six claimants submitted the form and all received the waiver. See pages 34-35.

System Meeting Deadlines

5. **Cases Close on Time, Though Length of Time Continues to Increase.** Cases closed, on average, in 319 days, or less than 11 months, in 2003. Only eight cases failed to close on time. See pages 26-30. Ninety-one percent of the cases closed within 18 months (the deadline for most cases), and 68% closed in a year or less.

6. **Hearings Completed Within Fifteen Months.** In 2003, 12% of the cases closed with an award after an evidentiary hearing (121 of 997 cases). These hearings ended an average of 447 days after we received the demands. This number includes cases that were designated complex or extraordinary or that received a Rule 28 extension, indicating the need for extra time. In the cases that went to such a hearing, claimants prevailed in 39%, and respondents prevailed in 61%. See pages 26-30.

7. **Half of Neutral Selections Proceed with No Delay; Half of Neutral Selections Include Delays Chosen by Claimants.** In 2003, the average time to select a neutral arbitrator was 69 days. This "average," however, is not truly representative of the system. About half of the neutral arbitrators are selected without the parties exercising options that delay the process. About half either postponed the deadline, disqualified the neutral arbitrator, or both. The percent of cases with no delays continues to decrease, so the overall average time keeps increasing. By category, the averages remain the same. These averages range from 25 days when there are no delays (52% of selections) to 162 days when parties request a postponement and disqualify neutral arbitrators after a selection (4%). In 2003, in 43% of the selections, the claimant, with one exception, postponed the selection deadline. See pages 19-22.

OIA's Pool of Neutral Arbitrators

8. **Large Neutral Arbitrator Pool.** We have 287 neutral arbitrators on our panel. More than one third of them, or 103, are retired judges. See page 7.

9. **Applications Reveal Balanced Pool of Neutral Arbitrators.** The applications filled out by the members of our pool show that 121 arbitrators spend all of their time acting in a neutral capacity. The remaining members divide their time almost equally between claimant's side and respondent's side work. See pages 9-10.

10. **Applications Reveal Medical Malpractice Experience by Neutral Arbitrators.** At the time they filled out their applications, 219 of our arbitrators told us they had medical malpractice experience. All but 9 of the remaining 68 have had OIA cases and therefore may have subsequently acquired such experience. See page 10.

11. **Large Percentage of Arbitrators Served on Arbitrations and Hearing Cases.** Seventy percent of the neutral arbitrators in our pool served on a case in 2003. Arbitrators averaged 2.9 assignments each in 2003. Eighty-five different neutrals decided the 121 awards made in 2003. Fifty-nine arbitrators made a single award while 20 decided only two. Six arbitrators decided the remaining 22 cases. See pages 10-11.

12. **Increasing Number of Neutral Arbitrators Selected by Strike and Rank.** In 2003, the percentage of neutral arbitrators chosen by strike and rank increased to 74% of all selections, with joint selections amounting to only 26%. Seventy percent of the arbitrators jointly selected were members of the OIA pool. See page 16.

How Cases Closed

13. **Nearly Three-Quarters of Cases Settled or Withdrawn; One-Quarter Closed by Decision of Neutral Arbitrator.** During 2003, 49% of the closed cases settled. The claimants withdrew another 23%. Nine percent were closed through summary judgment, 2% were dismissed by neutral arbitrators, and 12% of cases closed after an evidentiary hearing. See pages 26-30.

14. **Nearly All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** Most hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. Only eight of the awards made after a hearing in 2003 – about seven percent – were signed by a panel. The other 113 were decided by a single neutral. See pages 22-23.

Status of Arbitration Demands

15. **Slightly Fewer Number of Arbitration Demands.** In 2003, the OIA received 989 demands for arbitration. This is a decrease of 64 from 2003 and the first year the number fell below 1,000. See page 17.

16. **Fewer Open Cases.** As of December 31, 2003, the OIA was administering 865 open cases, a decrease of 47 from the end of 2002. See pages 25, 46.

17. **Most Cases Medical Malpractice.** Approximately 94% of the cases we administered in 2003 involved claims of medical malpractice. Only 2% presented benefits and coverage issues. See pages 13-14.

18. **Number of Claimants Without Attorneys Continues to Decline.** Twenty-two percent of claimants were not represented in 2003. This percentage has been slightly declining for five years. See pages 14 and 46.

19. **Kaiser Paid the Neutral Arbitrator's Fee in 81% of Cases in 2003.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases the OIA received in 2003 that also closed in 2003, Kaiser paid the entire fees for the neutral arbitrators in 81% of those cases that had fees. See page 35.

Accomplishments

20. **Positive Evaluations of Neutral Arbitrators and OIA.** At the end of cases, parties are asked to evaluate their neutral anonymously and neutral arbitrators are asked about the OIA system. In 2003, both claimants and counsel for both sides reported that they would recommend their neutral to another individual with a similar case. See pages 36-38. Similarly, neutral arbitrators continue to evaluate OIA procedures positively. Thirty-four percent said that the OIA experience was better than a court system, and 63% said it was about the same. Only three percent said the OIA experience was worse. See pages 38-41.

21. **Most Blue Ribbon Panel Recommendations Achieved.** The Blue Ribbon Panel convened by Kaiser after *Engalla* made 36 recommendations for change in Kaiser's arbitration system. Thirty-two of those recommendations have been essentially accomplished. Two – involving mediation and the audit of the OIA – have not been, and the audit should be completed in the first half of 2004. We have no information about two others, involving research and an ombudperson program, because they do not involve the OIA. See Exhibit B.

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Exhibits

Graphs & Tables

A Note About Numbers

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

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

Average:	The mean. The sum of the score of all items being totaled divided by the number of items included.
Median:	The midpoint. The middle value among items listed in ascending order.
Mode:	The single most commonly occurring number in a given group.

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

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

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

I. INTRODUCTION & OVERVIEW

This is the fifth annual report issued by the Office of the Independent Administrator (OIA)[1] describing an arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (Kaiser) or its affiliates.[2] Sharon Oxborough is the Independent Administrator. Under her contract with the Arbitration Oversight Board (AOB), the OIA maintains a pool of neutral arbitrators qualified to hear Kaiser cases and independently administers arbitration cases brought by Kaiser members. The contract also requires that the OIA write an annual report describing the arbitration system. The report is to describe the goals of the system, the actions being taken to achieve them, and the degree to which they are being met.[3] This fifth report focuses on our work from January 1 through December 31, 2003 and compares that activity with the OIA's earlier years.[4] It finds that the system is continuing to achieve the goals set by the Blue Ribbon Panel in 1998.

A. Background Information

In 1997, the California Supreme Court criticized Kaiser's longstanding arbitration system in *Engalla v. Permanente Medical Group*.[5] In part, the Court said that Kaiser should not administer the system itself and that there was too much delay in the handling of members' claims. In a voluntary response to the Court's evaluation, Kaiser convened a Blue Ribbon Panel of outside experts to examine the entire process and recommend improvements. The Blue Ribbon Panel issued its report in January 1998. It made 36 specific recommendations about how the

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[1]Until March 28, 2003, the Law Offices of Sharon Lybeck Hartmann served as the Independent Administrator. Under the new Independent Administrator, the OIA continues in the same office, 213.637.9847 (telephone), 213.637.8658 (facsimile), oia@oia-kaiserarb.com. (e-mail). The OIA has a website, www.oia-kaiserarb.com where this report can be downloaded, along with the prior annual reports, the *Rules*, forms, procedures and much other information, including organizational disclosures. A description of the OIA's staff is attached as Exhibit A.

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

[3]Contract, Section C(l). Copies of the contract may be obtained from the OIA.

[4]The comparison is in Section XI. The first annual report covered the period from March 29, 1999 through March 28, 2000. The second report covered the remainder of calendar year 2000, March 29, 2000 through December 31, 2000. The third annual report covered 2001. The fourth annual report covered 2002.

[5]15 Cal.4th 951, 64 Cal.Rptr.2d 843, 938 P.2d 903.

system should operate.[6] Kaiser accepted the recommendations, and in implementing them, created the Arbitration Advisory Committee (AAC) in 1998 to assist it in the process. Seeking an independent administrator for the system, Kaiser and the AAC issued a widely advertised Request for Proposal, interviewed a number of those who responded, and selected the predecessor to the current administrator, the Law Offices of Sharon Lybeck Hartmann, to create and operate the new system.

In 2001, Kaiser publicly announced the appointment of the AOB, made up of thirteen representatives of stakeholder interests and distinguished public members. The AOB replaced and expanded upon the role of the AAC. The AOB, an unincorporated association registered with the California Secretary of State, will provide ongoing oversight of the independently administered system.

Prior reports described the creation and development of the OIA *Rules for Kaiser Permanente Member Arbitrations Administered by The Office of the Independent Administrator Amended as of January 1, 2003 (Rules)*. The *Rules* consist of 54 rules in a 15 page booklet and are available in English, Spanish, and Chinese. They are attached as Exhibit C.[7] Some important features they contain include:

> Procedures under which claimants may choose to have Kaiser pay all the fees and expenses of the neutral arbitrator;[8]
>
> Deadlines requiring that the majority of cases be resolved within 18 months;[9]
>
> Procedures to shorten or lengthen time for cases that require either less or more than 18 months;[10]
>
> Deadlines requiring that cases have an arbitrator in place rapidly.[11]

The *Rules* were not changed at all for the first three years. However, in 2002, the OIA, the AOB, and Kaiser consulted together to amend them twice, once effective on July 1, 2002

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[6] Copies of the Blue Ribbon Panel's report can be obtained from the OIA. Exhibit B to this report contains the full text of all the Panel's recommendations along with an item by item response on what has been accomplished.

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

[8] Exhibit C, Rules 14 and 15; *see also* Exhibit B, recommendation 7.

[9] Exhibit C, Rule 24.

[10] Exhibit C, Rules 24 and 33.

[11] Exhibit C, Rules 16 and 18.

and a second time on January 1, 2003.[12] These changes were made largely to comply with new legislation and California's new Ethics Standards.

B. Goals of the OIA System

Consistent with the recommendations of the Blue Ribbon Panel, the OIA attempts to offer a fair, timely, and low cost arbitration process that respects the privacy of all who participate in it. These goals are set out in Rules 1 and 3. As set out in the balance of this report, we believe that the goals are presently being achieved.

C. Format of This Report

Besides focusing on what happened in 2003, the format of the report has been slightly modified from prior reports. It first discusses changes made in OIA procedures. The next sections look at the OIA's pool of neutral arbitrators, then the number and types of cases the OIA received in 2003. The selection of the neutral arbitrator in individual cases is next discussed. That is followed by a short section on the monitoring of open cases, and a longer analysis of how cases are closed and the length of time to closure. A new section discusses the information we are now assembling about the cost of arbitration in our system – both the types of waivers claimants can seek and the numbers who do, the amounts neutral arbitrators charge in general, and how those fees are allocated. The party's evaluations of their neutral arbitrators and the neutral arbitrators' evaluations of the OIA system are highlighted in the following sections. The report ends with a description of the AOB's activities during 2003 and a comparison of 2003 to prior years.

II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2003

Last year's report described several changes that would occur in 2003 because of action by the California Legislature, the Judicial Council, or rule changes. It also reported that the identity of the Independent Administrator would change, though the staff would remain the same. This section briefly describes how those changes have been put into effect.

A. Change in Independent Administrator

On March 28, 2003, Sharon Lybeck Hartmann, who had served as the Independent Administrator since the position was created in 1999, retired when her contract with the AOB ended. Sharon Oxborough was chosen by the AOB as the next Independent Administrator. She has a three year contract with the AOB to serve in this position.

[12] None of the changes affected the features listed above.

Ms. Oxborough, a California attorney, had been Of Counsel with Ms. Hartmann's firm since 1994. She drafted and was one of the negotiators of the original *Rules* and forms used by the OIA. She has consulted on issues throughout the existence of the OIA, and in 2001 she acted as Director of the OIA when Marcella Bell was on maternity leave. She has twenty years of experience in general civil litigation, appeals, and alternative dispute resolution. She is a graduate of Hamline University, *summa cum laude*, and of Harvard Law School, *cum laude*, where she was an editor of the law review. Immediately thereafter, she served as a federal law clerk to the Honorable Edward Rafeedie, United States District Court Judge, in the Central District of California.

The change in Independent Administrator made little, if any, difference in the operation of the office. The staff remains the same. Indeed, the OIA's address, phone number and fax number remain the same. While the e-mail address and website have changed – they are now oia@oia-kaiserarb.com and www.oai-kaiserarb.com – the contents of the website have not changed. The website continues to provide the annual reports for the earlier years.

B. New Organizational Disclosures Required by the Ethics Standards

As discussed in last year's report, the *Ethics Standards for Neutral Arbitrators in Contractual Arbitrations* (*Ethics Standards*) require that, beginning January 1, 2003, neutral arbitrators make certain disclosures about organizations that provide neutral arbitrators or administer arbitrations (provider organizations) to which the neutral arbitrator is connected.[13] These obligations only apply to "consumer arbitrations," which are arbitrations required in a contract between an individual and company.[14] Thus, all the neutral arbitrators in our cases must make disclosures about the OIA and some of our cases. They are required to disclose:

1) information about relationships between the provider organization and the neutral arbitrator, the parties, or lawyers in the arbitration (Standard 8(b)(1) and 8(c));

2) information about cases administered by the provider organization that closed after July 1, 2002, due to action by any neutral arbitrator (Standard 8(b)(2)(c)); and

3) the number of cases, administered by the provider organization, in which the parties or attorneys in the present case have been, or have represented, the prevailing party (Standard 8(b)(2) and 8(b)(3)).

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[13]The current *Ethics Standards* were adopted by the California Judicial Council in December 2002. A copy is available at the OIA website or at Division VI of the Appendix to the *California Rules of Court.*

[14]For a precise definition, see Ethics Standard 2(d) and (e), defining "consumer arbitration" and "consumer party." All arbitrations in the OIA systems are consumer arbitrations.

A neutral arbitrator may discharge this disclosure obligation by requesting information from the provider organization, and then sending whatever information the organization provides to the parties.[15] Technically, the *Ethics Standards* apply only to neutral arbitrators and do not require provider organizations to provide any information. The OIA, however, has tried to make it as easy as possible for neutral arbitrators to comply with these standards.

First, we have revised our Agreement to Serve (ATS) form, which the neutral arbitrator signs at the very beginning of each case. Now, by signing it, the neutral arbitrator asks us to provide the information.[16] We then provide the information in two ways. We print out for the neutral arbitrator the number of cases the attorneys, claimants, and Kaiser have had with the OIA, how many closed, and in how many each prevailed. This is faxed to the neutral arbitrator along with the ATS Form.[17] All of the information about cases includes cases when Ms. Hartmann was the Independent Administrator.

Information that complies with the remaining Standard 8 disclosure requirements is contained on the OIA website. We update the information about the closed cases weekly. A form we give to the neutral arbitrator to provide to the parties gives exact web addresses for the information, but the information is easily accessed by anyone who goes to our website. A copy of the materials we give to the neutral arbitrator, as well as the internet disclosures, is attached as Exhibit D.[18] Because the closed cases table is over 38 pages long, only the first page is included in Exhibit D.

During the first half of 2003, we spent considerable time refining the process for providing our information to the neutral arbitrators and helping them understand what they need to do to comply with Standard 8. By the end of the year, most of the members of our pool seem to understand and comply with the requirements.[19]

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[15] *Ethics Standards*, Standard 8(a).

[16] Disclosure information is attached as Exhibit D. The ATS form is at page 95.

[17] For samples, see Exhibit D at pages 97-99.

[18] Exhibit D at pages 96, 107-111.

[19] In addition to organizational disclosures, both the *Ethics Standards* and Code of Civil Procedure require the neutral arbitrators to make disclosures about any relationships they or their immediate family may have with the parties, their lawyers, and the lawyers' law firms. *Ethics Standards*, Standard 7, and California Code of Civil Procedure § 1281.9.

C. New Organizational Disclosures Required by Statute

Section 1281.96 of the California Code of Civil Procedures took effect January 1, 2003. It requires provider organizations such as the OIA to provide information to the public about demands for arbitration it receives on or after January 1, 2003 in consumer arbitrations. Unlike the organizational disclosures mandated by the *Ethics Standards*, this requirement directly applies to provider organizations. This information can be posted on the internet, and ours is. Quite a bit of information about each case is set out, but not the names of the claimants or non-corporate respondents. To obtain all the information called for in Section 1281.96, we began to require neutral arbitrators inform us about total fees charged and fee allocations in individual cases. All the information on this portion of our website is updated quarterly. The pages of our website that explain this disclosure, and the first page of the table of cases, are attached as Exhibit D.[20]

Many of our neutral arbitrators must make a second set of organizational disclosures because they work through an organization such as JAMS, ADR, Judicate West, IVAMS, Resolution Remedies, etc.[21] We also received some inquiries during 2003 about how to read our disclosures, or when they would next be updated. If the purpose of the statute is to provide more information to the public about arbitration, it has been successful, at least with respect to Kaiser arbitration.

D. Changes in the OIA Rules

The two rule changes that have been used the most this year are the new form of fee waiver that allows claimants to have the $150 arbitration fee waived when they meet statutory guidelines and the expansion of the time for an award to be served from 10 days to 15 business days. Forty-six claimants obtained the new waiver of the $150 arbitration fee. Similarly, in 82 cases, the neutral arbitrators used more than 10 days to serve their award.

E. Changes in the Report

As the length of time the OIA has operated has increased, its annual reports have become more complicated. In an attempt to simplify the report and make it more accessible to the public, this annual report, for the most part, concentrates on explaining what happened in 2003. The most obvious change is that the text reports only numbers about events that occurred in 2003. It does not contain cumulative numbers. A final section of this report discusses trends and

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[20] Exhibit D at pages 102-106.

[21] Their websites can be found at www.jamsard.com/consumer-arbitration-data.asp, www.are4acr.com/car.html, http://www.ivams.com/., http://www.adjudicateinc.com/, http://www.jamsadr.com/index3.asp, http://www.adrservices.org/, http://www.resolutionremedies.com/, http://dispute-solutions.com/, http://www.mediationmasters.com/ http://www.mediationspecialists.com/contact.html and, http://private-dispute-resolution.lawoffice.com/

compares important 2003 statistics with cumulative statistics, as well as statistics for prior years. For readers who want as much numerical analysis as possible, Appendix 1 compiles statistics from the earlier reports and allows for detailed comparisons.

III. POOL OF NEUTRAL ARBITRATORS

A. Activity in 2003 and the Pool at the End of 2003

On January 1, 2003, the OIA had 302 people in its pool of possible arbitrators. During the year, 46 people left the pool and 31 were added to it. On December 31, 2003, there were 287 people in the OIA's pool of possible arbitrators. Of those, 105 were former judges, or 37%.

One reason people left the pool in 2003 is that, as happens every two years, they were required to update the information contained in their applications.[22] When the OIA sends the parties a List of Possible Arbitrators (LPA) for selecting their neutral arbitrator, we also send copies of the applications of the 12 possible neutral arbitrators named on the LPA. Nineteen individuals, who did not have any open cases, either told the OIA that they were resigning because they did not want to complete the form, or were terminated because they failed to return the form.[23]

Because we expected to lose some neutral arbitrators through the update process, the OIA advertised for possible neutral arbitrators to apply to join our pool. Advertisements were placed in the State Bar's publication, *California Bar Journal* which is sent to all California attorneys, the *San Francisco Attorney Magazine*, which is sent to all members of the San Francisco County Bar Association, the *Bar Bulletin*, which is sent to all members of the Fresno County Bar Association, and *The Forum*, which is sent to all members of the Consumer Attorneys of California. We concentrated our advertising in Northern California because, as shown in the chart below, we have substantially more members in our pool for the Southern California and San Diego panels than for the Northern California panel. The Northern California panel has a greater percentage of former judges (42%) than either Southern California (33%) or San Diego (34%) panel. Exhibit F contains the names of the members of each panel.

[22] A copy of the application and the update is attached as Exhibit E.

[23] Thirteen of the 19 had never served as a neutral arbitrator in an OIA case. The OIA sent two letters to and telephoned each neutral arbitrator, reminding him or her of the deadline, before terminating any neutral arbitrator. Two neutral arbitrators who responded after receiving a letter of termination will be reinstated April 15, 2004.

Total Number of Arbitrators in the OIA Panel:	**287***
Southern California Total:	**169**
Northern California Total:	**103**
San Diego Total:	**50**

***The three regions total 322 because 34 arbitrators are in more than one panel; 29 in So. Cal & SD, 3 in No. Cal & So. Cal, 1 in No. Cal & SD, and 1 in all three panels.**

In addition to the advertising, we also contacted 26 local, minority, and women's bars to invite their members to apply to our pool. Many told us they passed the information on to their members.

During 2003, we received 57 requests for applications. These applications can also be obtained from our website. Forty-one completed applications were returned to the OIA. We admitted 31 people. In addition, as of December 31, 2003, we were waiting for final paper work from 14 applicants who met the qualifications. The OIA rejected three applicants in 2003 because they failed to meet the qualifications.[24]

B. Qualifications

The OIA qualifications for neutral arbitrators did not change in 2003. They are attached as Exhibit G and are available from the OIA website.

In keeping with the Blue Ribbon Panel's recommendations in this area, the qualifications are broad and designed to recruit an experienced, diverse, and unbiased panel.[25] They include the following:

- Arbitrators must have been admitted to the practice of law for at least ten years and have substantial litigation experience;

[24]If the OIA rejects an application, we inform the applicant of the qualifications which he or she failed to meet.

[25]The last annual report noted that the plaintiff and defense bars might make recommendations as to how to change OIA qualifications. None was received, but the issue was discussed at AOB meetings. The AOB did not recommend that the OIA make any changes to the qualifications.

- arbitrators must provide satisfactory evidence of their ability to act as arbitrators based upon judicial, trial or other experience or training; and

- arbitrators must not have served as attorneys of record or party arbitrators[26] either for or against Kaiser within the last five years.

In order to make the panel as large as possible, and also to approximate the experience of parties in a courtroom setting, the qualifications do not include a requirement that the potential arbitrator have medical malpractice experience. The extent to which they have this experience is discussed in the next section.

C. Composition of the Pool

During 2003, the OIA has looked at the information provided by the neutral arbitrators in their applications to assess the type of experience they possess. While the information may in some cases be somewhat outdated, it is still informative.

The applications request that the neutral arbitrators allocate the amount of their practice spent in various endeavors. Based on these responses the "average" neutral arbitrator in the OIA pool spends 57% of his or her time acting as a neutral arbitrator, 1% acting as a respondent's party arbitrator, 1% acting as a claimant's party arbitrator, 16% as a respondent (or defense) attorney, 17% as a claimant (or plaintiff) attorney, 1% as an expert, and 7% in other activities, including non-litigation legal work, teaching, mediating, etc. One of the interesting facts about the "average" member of the OIA pool is that the amount of plaintiffs side work and defense side work is nearly identical.

There is, of course, no such "average" neutral arbitrator, in part because a very substantial percentage of the pool spends 100% of their practice acting as neutral arbitrators. More than 40% of the pool, 121 members, reported that they spend 100% of their time that way.[27] The remainder are distributed between 0% and 99%.

Percent of Practice Spent As a Neutral Arbitrator

Percent of Time	0%	1 - 25%	26 - 50%	51 - 75%	76 - 99%	100
Number of NAs	**29**	**85**	**24**	**5**	**23**	**121**

[26]A party arbitrator is selected by only one side of the arbitration. Party arbitrators are not required to be neutral, although they may be, and often act as advocates for their side. We do not have <u>any</u> limits on who may be a party arbitrator, as long as that person agrees to follow the *Rules*.

[27]This is not surprising as 105 members of our pool are retired judges.

The remaining members of the OIA pool primarily spend their time as litigators. Significantly, the composition seems to be evenly balanced on both sides.

Percent of Practice Spent As an Advocate

Percent of Practice	Number of NAs Reporting Respondent Counsel Experience	Number of NAs Reporting Claimant Counsel Experience
0%	**177**	**173**
1 - 25%	**44**	**41**
26 - 50%	**36**	**39**
51 - 75%	**12**	**14**
76 - 100%	**18**	**20**

Finally, while the qualifications do not require that members of the OIA pool have medical malpractice experience, three-quarters of them do. At the time they filled out their applications, 219 reported that they had such experience, while 68 stated they did not. Members of the pool who have served on a Kaiser case since they joined the pool have most likely acquired medical malpractice experience since their initial report to us.[28]

D. How Many in the Pool of Arbitrators Have Served?[29]

One of the recurring concerns expressed about arbitration of this type is the possibility of a "captive," defense-oriented pool of arbitrators. The theory is that defendants (or respondents) are repeat players but claimants are not; defendants therefore have the capacity to bring more work to arbitrators than claimants. Then, if the pool from which neutral arbitrators are drawn is small, some arbitrators may become dependent on the defense for their livelihood. A large pool of people available to serve as neutral arbitrators, and actively serving as such, is therefore an important tool to avoid this problem. If the cases are spread out among many neutrals, nobody depends on the defendant for his or her income and impartiality is better served.

[28]Of the 68 who reported no medical malpractice experience in their applications, all but 9 of them have served as a neutral arbitrator in an OIA case. Thirty-five of these neutral arbitrators have decided at least one, and as many as six cases. While some of these could have been decided on purely procedural grounds, it appears likely that the report of medical malpractice experience is outdated. The OIA will try to get neutral arbitrators to update this information in the future.

[29]The procedure for selecting neutral arbitrators for a particular case is described below at Section V.A.

The size of the OIA pool from which the OIA randomly compiles the list of possible neutral arbitrators and the ability for parties to jointly select persons outside the pool are the two main factors which allow us to meet these objectives. In 2003, 234 different neutral arbitrators were selected to serve as neutral arbitrators in 936 OIA cases. Thirty-two of these neutral arbitrators, who served in 103 different cases, were not members of our pool. The remaining 202 neutral arbitrators were. Thus, in 2003, 70% of the OIA pool were selected to serve in a case. The range in number of times a neutral in our pool was selected in 2003 is 0 to 42. The neutral arbitrator at the highest end was jointly selected nine times. The average number of appointments in 2003 is 2.9 times, the median is 2 and the mode is 0.

The number of neutral arbitrators deciding awards after hearing is similarly diverse. The 121 awards made in 2003 were decided by 85 different neutral arbitrators. Fifty-nine of the arbitrators made a single award, while 20 decided only two. Two arbitrators decided five cases each and four other neutral arbitrators decided three cases each. These six neutral arbitrators made mixed awards – no one ruled either uniformly for the claimants nor uniformly for the respondents.

All but five of our neutrals have been named at least once on a list of possible arbitrators sent to the parties by the OIA in 2003.[30] The average number of Northern California arbitrators appearing on a list is 41; the median number is 44, and the mode is 45. The range of appearances is from 0 to 60 times.[31] In Southern California, the average number of appearances is 23; the median is 23, and the mode is 23. The range is from 0 to 40. In San Diego, the range of appearances is from 0 to 27. The average is 17; the median is 19, and the mode is 19.

E. One Case Neutral Arbitrators

Standard 12 of the *Ethics Standards* requires that neutral arbitrators disclose whether they will accept additional work from the parties or attorney in the case while the first case remains open. If a neutral arbitrator does not inform the parties in any case that he or she will, that neutral arbitrator is barred from accepting any new cases from the parties or attorneys until the first case closes, or until the neutral arbitrator resigns from the first case. Moreover, this particular disclosure must be made timely – a late disclosure is the same as no disclosure. A neutral arbitrator may also inform the parties that he or she will not accept any future work from the parties while the present case remains open and some do. Because we consider this to be a

[30]The five who have not been listed joined the panel between December 8, and 29, 2003, less than a month before the cut off date for this report.

[31]The range is affected by how long a given arbitrator has been in the pool. Some have been here since we started, others have joined within a week of this report date. The number of times an arbitrator is selected also depends on whether the individual will hear cases where the claimant has no attorney (*pro per* cases). Fifteen percent of the pool will not.

very important disclosure, we have prepared a sample Standard 12 disclosure form that neutral arbitrators can use.[32] It is available from our website, and we send it to anyone who requests it.

The OIA tracks Standard 12 disclosures, and removes one case neutral arbitrators from our pool, that is those who fail to timely serve the disclosure or state that they will not accept future work from the parties while the present case is open, unless the neutral arbitrator resigns from the case. During 2003, 12 neutral arbitrators were one case neutral arbitrators for part of the year. At the end of 2003, seven remained one case neutral arbitrators.

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 989 demands for arbitration in 2003. Geographically, 500 demands for arbitration came from Northern California; 408 came from Southern California and 81 came from Sam Diego.

The demands are initially treated differently depending on whether they are mandatory or opt ins. **Mandatory cases** are those which arose under contracts dated after December 31, 2000, when all Kaiser arbitration clause had been changed to make the use of the OIA mandatory. On the other hand, **opt ins** are those cases which arise under earlier contracts which require arbitration, but do not require that the OIA administer it. Thus, the claimant can choose to use the OIA or return to Kaiser for administration of the case.

When we receive an opt in demand for arbitration from Kaiser, we send the claimant several letters explaining our system and asking if the claimant wishes to opt in. We also explain the deadline to do so and that we will return the case to Kaiser if he or she does not opt in.

The following sections of this report describe how long it has taken Kaiser to submit demands for arbitration to the OIA after it received them from claimants, the number of cases that are mandatory, and what happened in the opt in cases. We then discuss the composition of the cases we administer: the types of claims and whether the claimant has an attorney.

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

Under the *Rules*, Kaiser must submit a demand for arbitration to the OIA within ten days of receiving it.[33] In 2003, the average length of time that Kaiser has taken to submit demands to the OIA is eight days. The mode is one. This means that usually Kaiser sent the OIA a demand on the day after Kaiser receives it. The median is five days. The range is 0 to 463 days.[34]

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[32]It is attached as Exhibit H.

[33]Exhibit C, Rule 11.

[34]Kaiser sent the demand in the 463 day case in August 2003, after a stipulation to stay the action pending arbitration had been filed in state court in May 2002.

B. Mandatory Cases

All Kaiser disputes with its members arising from events that occur after December 31, 2000 are subject to OIA administration. Of the 989 demands for arbitration the OIA received in 2003, 940 were mandatory and 49 were opt in. At the end of 2003, 823 of the open cases were mandatory and 42 were opt in.

C. Opt In Cases[35]

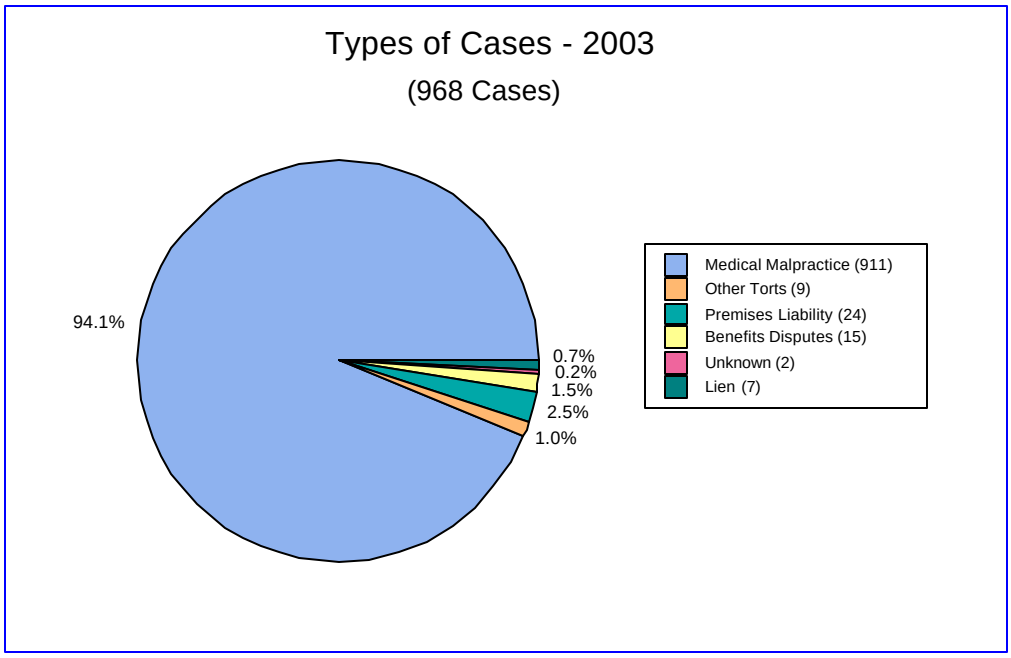
Of the 49 opt in demands the OIA received in 2003, the claimants in 28 of them decided to have the OIA administer their claims. Only two affirmatively opted out of the OIA. One claimant withdrew the claim before the deadline to opt in. In three instances, the deadline had not occurred by the end of the year. The remaining 15, however, were returned to Kaiser because the claimants did not opt in to the OIA.

D. Types of Claims

In 2003, the OIA administered 968 cases. We categorize cases by the subject of their claim: medical malpractice, premises liability, other tort, liens, or benefits and coverage cases. In addition, a group of cases are categorized as unknown because the demand for arbitration does not describe the nature of the claim. Medical malpractice cases are the most common, making up 94% of the 911 cases in the OIA system. Benefits and coverage cases represent only 2% of the system (15 cases).

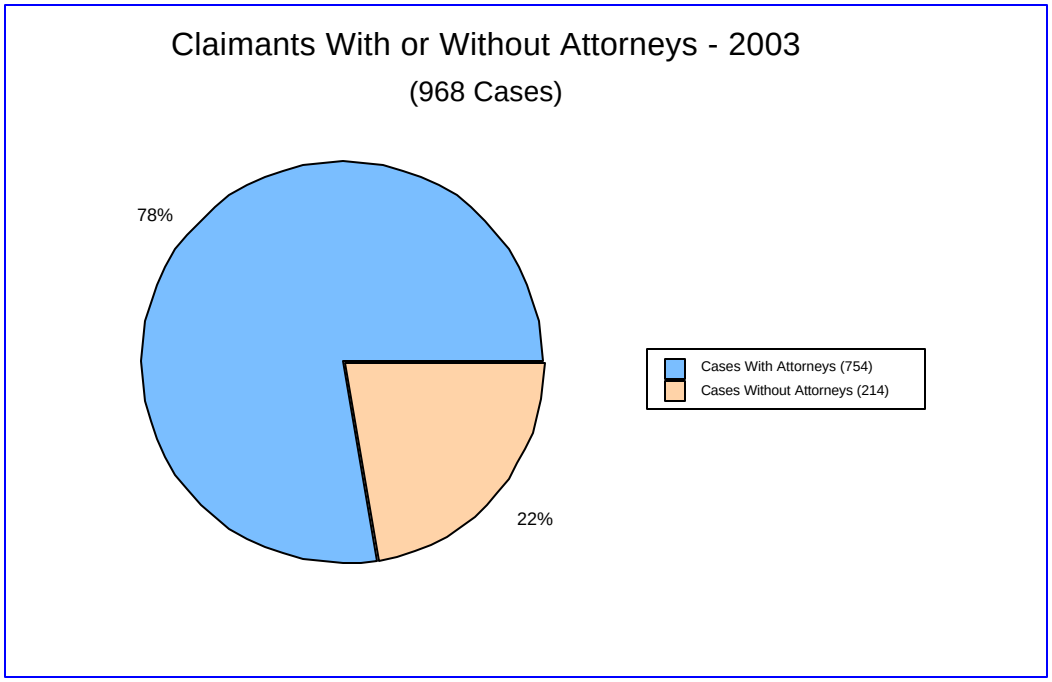
The chart on the following page shows the types of claims the OIA administered during 2003.

[35]Prior Annual Reports discussed cases it called "pre-OIA opt ins." We did not receive any such demands in 2003. The two pre-OIA opt ins that were open in the system at the beginning of the year closed in 2003.



E. Claimants With and Without Attorneys

In 78% of the cases the OIA administered in 2003, the claimants are represented by counsel (754 of 968). In the remaining 22% of cases, the claimants are representing themselves (or acting in *pro per*).



V. SELECTION OF NEUTRAL ARBITRATORS IN 2003

One of the most important parts of the arbitration process occurs at the beginning: the selection of the neutral arbitrator. This section of the report first describes the selection process in general. The next four sections discuss different aspects of the selection process in detail: the manner in which the parties selected the neutral arbitrator in 2003 – jointly agreeing or based upon their separate responses; the cases in which the parties - almost always the claimant - decided in 2003 to delay the selection of the neutral; the cases in which a neutral was disqualified in 2003; and the amount of time it took the parties to select the neutral arbitrator in 2003. Finally, we report the numbers of cases in which parties have selected party arbitrators.

A. How Neutral Arbitrators Are Selected

The process for selecting the neutral arbitrator begins after a demand has entered the OIA system[36] and a claimant has either paid the $150 arbitration fee or received a waiver of that fee. The OIA sends both parties in the case a List of Possible Arbitrators (LPA). This list contains names of 12 members of the appropriate panel from the OIA pool of neutral arbitrators.[37] The names are generated randomly by computer.

Along with the LPA, we send the parties information about the people named on the LPA. At a minimum, we send a copy of each person's application and fee schedule, along with any update. If the people have served in any earlier, closed OIA case, we send copies of any evaluations we have received of them, as well as redacted versions of the decisions they have prepared in OIA cases.

The parties have 20 days to respond to the LPA. Parties can respond in one of two ways. First, they can jointly decide on the person they wish to be the neutral arbitrator. Such a neutral arbitrator does not have to be one of the names included in the LPA, be in the OIA pool, or meet the OIA qualifications.[38] Provided the person agrees to follow our *Rules*, the parties can jointly select any one they want to serve as neutral arbitrator.

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[36]"Entered the OIA system" means that the case is mandatory or the claimant has opted-in. This office cannot do anything with a non-mandatory case before it has opted in except return it to Kaiser.

[37]Our pool of possible neutral arbitrators is divided geographically into Northern California, Southern California, and San Diego. If the neutral arbitrator agrees to travel for free, he or she may be listed in more than one panel. In addition, as there are neutral arbitrators who do not accept *pro per* cases, we have two versions of each geographic panel, one of which is composed of only neutral arbitrators who accept *pro pers*.

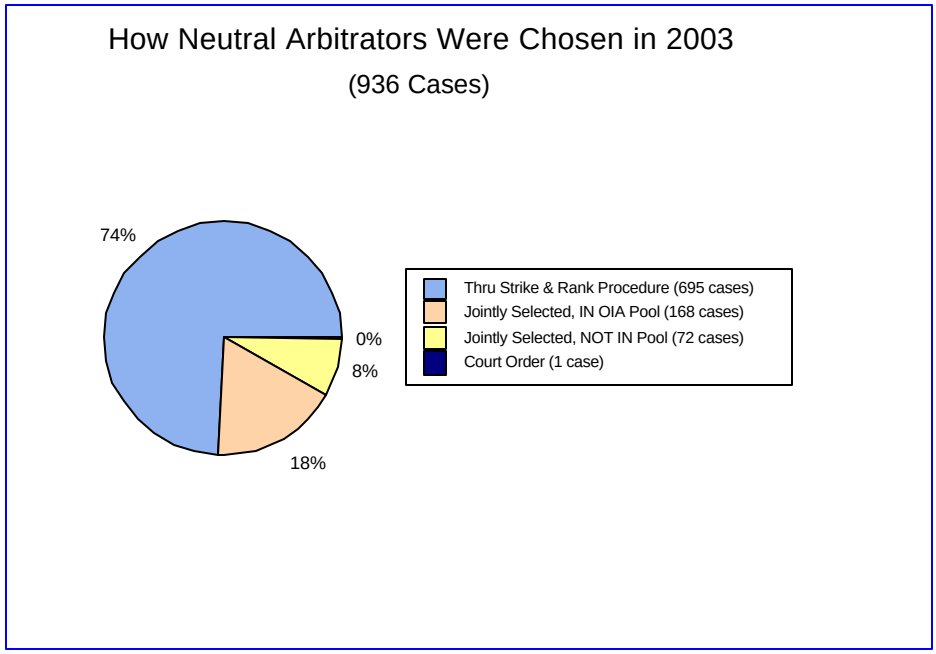
[38]Some neutral arbitrators who do no meet our qualifications – for example, they might have served as a party arbitrator in the past five years for either side in a Kaiser arbitration – do serve as jointly selected neutral arbitrators. There is, however, one exception: If a neutral arbitrator is considered a "one case neutral arbitrator" and we know the case is still open, we would not allow the person to serve as a neutral arbitrator in a subsequent case. Section III.E explains one case neutral arbitrators.

On the other hand, if the parties do not jointly select a neutral arbitrator, each side submits a response to the LPA, striking up to four names and ranking the rest, with "1" as the top choice. When the OIA receives the LPAs, we eliminate any names who have been stricken by either side and then total the scores of the names that remain. The person with the lowest score is asked to serve. We call this the "strike and rank" procedure.

A significant number of OIA administered cases close before a neutral arbitrator is selected, and even before that process is begun. In 2003, 101 cases either settled (48) or were withdrawn (53) without a neutral arbitrator in place.[39] Before a neutral has been selected, the parties can request a postponement of the LPA deadline. In addition, after the neutral arbitrator is selected, but before he or she actually begins to serve, California law provides for disqualification by either party.

B. Joint Selections vs. Strike and Rank Selections

Of the 936 neutral arbitrators selected in 2003, 240 were jointly selected by the parties (26%) and 695 (74%) were selected by the strike and rank procedure. One neutral arbitrator was selected by the court. Of the neutral arbitrators jointly selected by the parties, 168, or 70%, were members of our pool, though not necessarily on the LPA sent to the parties.



[39] In 71 of the 101 cases, the process to select a neutral arbitrator had begun, and the cases closed before the process ended. In the other cases, the process never began. These cases included both cases with attorneys and cases where the claimant was *pro per*. The disposition varied however. In the 47 *pro per* cases that closed without a neutral arbitrator selected, 13 settled and 34 were withdrawn. In the 54 such cases with an attorney, 35 settled and 19 were withdrawn.

C. Cases with Postponements of Time to Select Neutral Arbitrators

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

Claimants do not have to give a reason for why they want a 90 day postponement under Rule 21, though there must be a reason for a Rule 28 extension. The reasons for a Rule 28 extension are often the same as claimants volunteer for why they use Rule 21. In some cases, the parties are seeking to settle the case or to select a neutral arbitrator jointly. Some claimants or attorneys want a little more time to evaluate the case before incurring the expense of a neutral arbitrator. As noted above, 101 cases either settled or were withdrawn before a neutral arbitrator was put in place. Some claimants who do not have an attorney want time to find one. There are also some unrepresented claimants who are not feeling well and want more time for health reasons. One reason for Rule 21 postponements that does not justify a Rule 28 extension is that the claimants or their attorneys simply want more time to submit their LPA responses.

As mentioned in last year's report, a member of the OIA staff attempts to contact the parties before their response to the LPA is due to remind them of the deadline. This may be prompting people who would have otherwise failed to respond to the LPA to instead obtain a postponement and send in their response.

In 2003, claimants and claimants' attorneys requested Rule 21 postponements of the deadline to return their responses to the LPA in 433 cases. There was only one request from the respondent side. Forty-four of these cases also had a subsequent Rule 28 extension. In 17 cases, there was only a Rule 28 extension.

The following chart shows what has happened in the 451 cases that had either a Rule 21 postponement or a Rule 28 extension in 2003. Roughly two-thirds of them (287) now have a neutral arbitrator in place. Sixty of them closed before a neutral arbitrator was ever selected. For the remaining 104 cases, the deadline to select a neutral arbitrator is after December 31, 2003.

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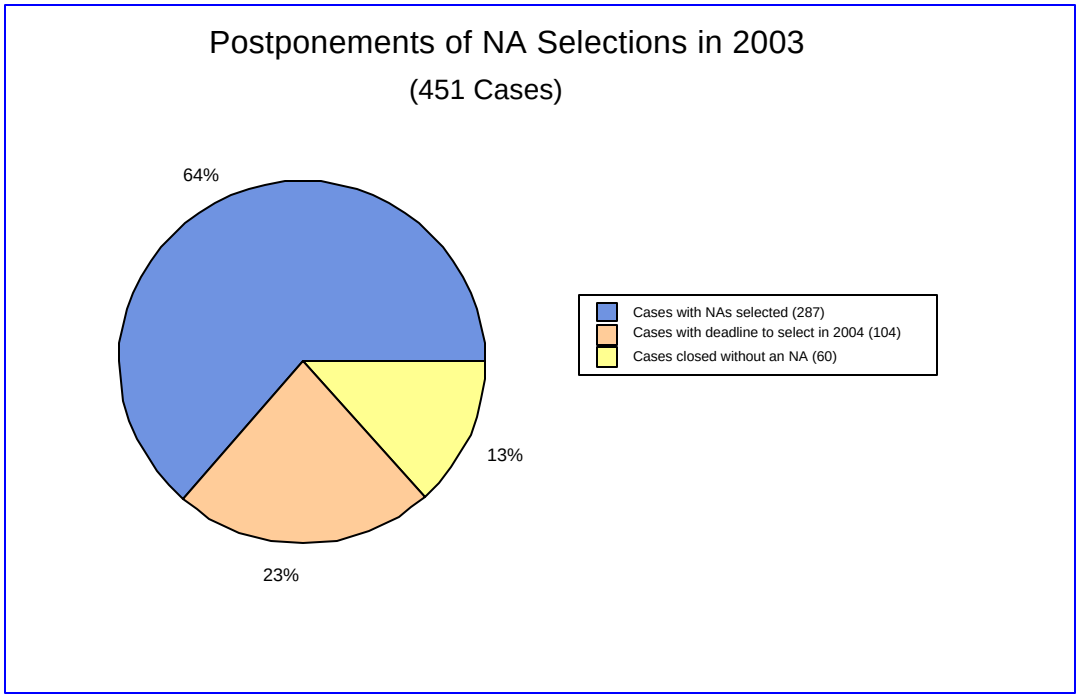
[40]The extension allows the claimant to send in a written notice of settlement or withdrawal without a neutral arbitrator being selected and sending out disclosure forms, reducing expenses generally.



D. Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators at the start of a case.[41] Neutral arbitrators are required to make certain disclosures within ten days of the date they are selected.[42] After they make these disclosures, the parties have 15 days to serve a disqualification on the neutral arbitrator. Similarly, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can disqualify neutral arbitrators in a given case.[43]

Even given the parties' right to disqualify, multiple disqualifications very rarely occur. In 2003, neutral arbitrators were disqualified in 49 cases. Forty-six cases had a single disqualification. Two cases had two disqualifications, and one case had three. In 44 cases with a

[41] California Code of Civil Procedure § 1281.91 and Exhibit C, Rule 20.

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

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

disqualification, a neutral arbitrator had been selected at the end of 2003. In 4 cases with a disqualification, the time for the neutral arbitration selection had not expired by the end of the year. In the last case, the claimant withdrew the demand after the neutral arbitrator was disqualified, but before a new one was selected. Because of multiple disqualifications, these 49 cases represent 53 neutral arbitrators who were disqualified in 2003. The neutrals were disqualified by the claimants' side 46 times, and by the respondents' side 7 times.

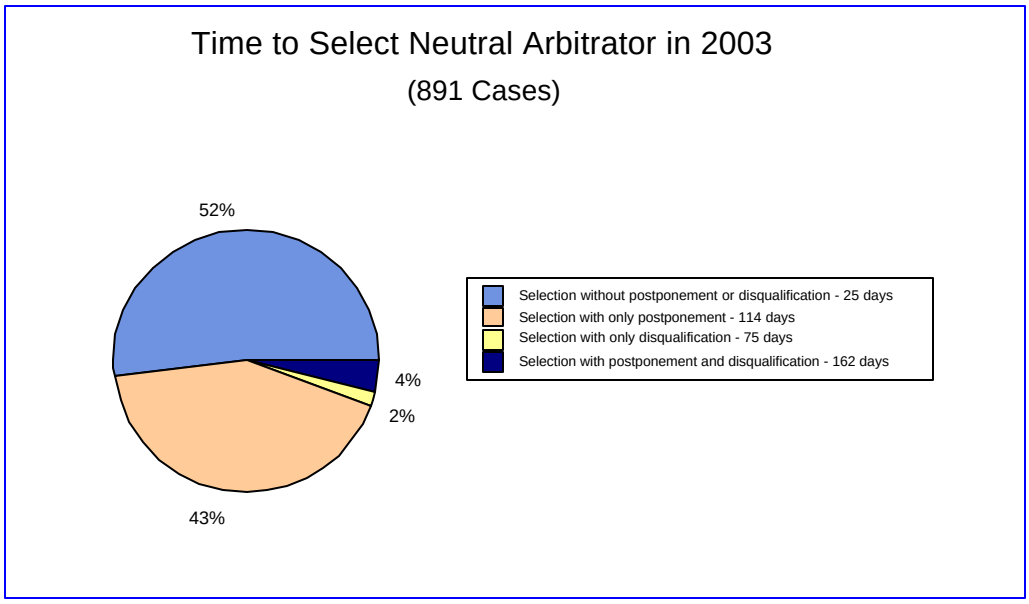
E. Length of Time Taken to Select a Neutral Arbitrator

In this section we consider the 891 cases in which a neutral arbitrator was selected in 2003, where no one previously served as the neutral arbitrator. This number includes those cases in which a neutral arbitrator had been selected, but was disqualified by one of the parties, and a second neutral arbitrator selected. There are an additional 159 cases where the process for selecting the neutral arbitrator began in 2003 – a LPA was sent – but the process was not completed December 31, 2003.

There were an additional 45 cases in which a neutral arbitrator was selected in 2003 which are excluded from this section only. In these cases, a neutral arbitrator had previously been appointed, had begun acting as the neutral arbitrator, but had subsequently removed him or herself, or had been removed, as the neutral arbitrator.[44] Because we count time from the first day that the case entered the OIA system, those cases are not included in these computations of length of time.

Given the possibility of parties postponing the deadline and disqualifying a neutral arbitrator, when discussing the length of time to select a neutral arbitrator, we look at four different categories. The first is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was extended, generally because the claimant has requested a 90 day postponement before selecting a neutral arbitrator. The third category is those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator has to be selected. The fourth category is those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. Finally, we give the overall average for the 891 cases. The four categories are displayed in the chart below.

[44]These include cases where a neutral arbitrator died or became seriously ill, was made a judge, moved, etc. In addition, after the promulgation of the *Ethics Standards* some neutral arbitrators have made disclosures after the initial disclosures, reopening the opportunity for parties to disqualify. There were 49 cases in 2003 where a neutral arbitrator removed him or herself after acting in that capacity. The text refers to the number of cases in which a subsequent neutral arbitrator was selected.



1. Cases with No Delays

There were 464 cases where a neutral arbitrator was selected in 2003 in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay was 33 days. The average number of days to select a neutral arbitrator in those cases was 25 days, the mode was 22 days, the median was 24 days, and the range was 0-62 days.[45] At 52%, this category still represents a majority of the cases which selected a neutral arbitrator in 2003.

2. Cases with Postponements

There were 380 cases where a neutral arbitrator was selected in 2003 and the only delay was a 90 day postponement and/or an OIA extension of the deadline under Rule 28. This includes cases where the request for the postponement was made in 2002, but the neutral arbitrator was actually selected in 2003. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement was 123 days. The average number of

[45] Part of the reason it took 62 days to select a neutral arbitrator in one case was that the LPA was sent to the parties in 2002. This meant that the notice and objections provisions under the section of the *Ethics Standards* which were only in effect for the last part of 2002 applied. This added 22 days to the process. Additionally, the OIA was delayed another ten days because the neutral arbitrator's assistant said the agreement to serve had been mailed, and we waited for it over the Christmas and New Years holidays. The neutral arbitrator was put in place January 6, 2003. The case settled ten days later.

days to select a neutral arbitrator in those cases was 114 days, the mode was 112 days, the median was 115 days, and the range was 23-206 days.[46] This category now represents 43% of all cases which selected a neutral arbitrator in 2003.

3. Cases with Disqualification(s) of the Neutral Arbitrator

There were 14 cases where a neutral arbitrator was selected in 2003 and the only delay was that one or more neutral arbitrators were disqualified by a party. Again, this includes cases where a disqualification was made in 2002. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96 if there is only one disqualification.[47] The average number of days to select a neutral arbitrator in the 14 cases is 75 days, the mode is 69 days, the median is 70 days, and the range is 42-155 days.[48] Disqualification only cases represent only 2% of all cases which selected a neutral arbitrator in 2003.

4. Cases with Postponements and Disqualifications

There were 33 cases where a neutral arbitrator was selected in 2003 after a 90 day postponement and the disqualification of a neutral arbitrator. Again, this includes cases where the postponement or disqualification was made in 2002. 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 those cases is 162 days, the mode is 139 days, the median is 159 days, and the range is 95-224 days.[49] These cases represent only 4% of all cases which selected a neutral arbitrator in 2003.

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[46]In the case that took 206 days to select a neutral arbitrator, the claimant's attorney requested an additional postponement of the time to respond to the LPA after the 90 day postponement because the claimant was undergoing surgery. The OIA granted it under Rule 28. The parties ultimately jointly selected their neutral arbitrator.

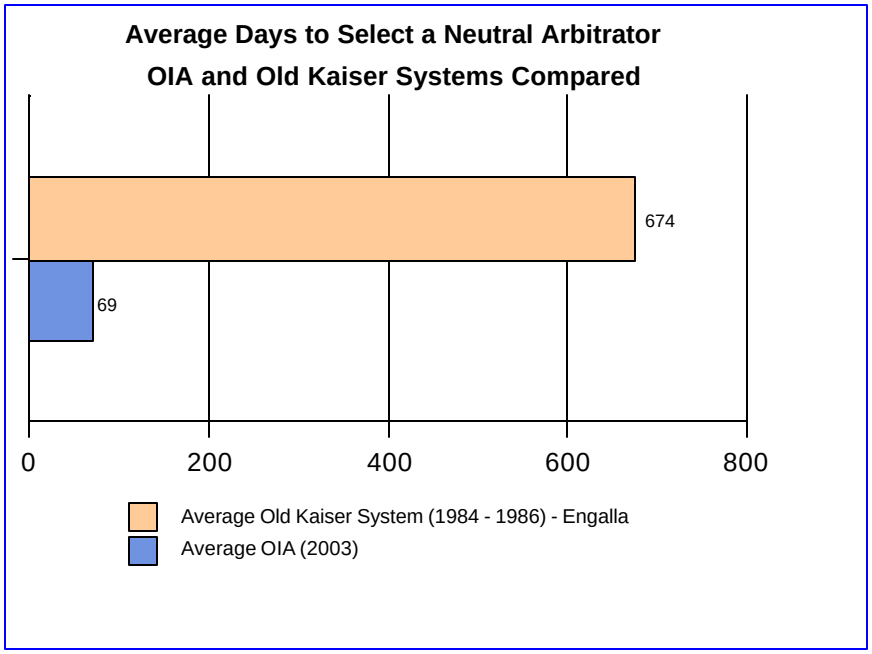
[47]The 96 days is comprised of the 33 days to select the first neutral arbitrator, the 33 days to select the second neutral arbitrator, and 30 days for the statutory periods for disclosure, disqualification, and service under the California Code of Civil Procedure. The amount of time increases if there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

[48]The case that took 155 days to select the neutral arbitrator had two disqualifications, which automatically extend the time to 129 days. The first disqualification was not sent to the OIA, which further delayed the process. Ultimately, the parties were able to jointly select a neutral arbitrator.

[49]The case that took 224 days to select a neutral arbitrator was complicated. The claimant's first attorney requested a 90 day postponement. When we called to remind the attorney of the deadline, we were informed that there was new counsel, whom we also contacted. The new claimant's counsel did not submit a response to the LPA, but disqualified the subsequently appointed neutral arbitrator. We did not learn of the disqualification for two months, when the first neutral arbitrator held the AMC. When the response to the second LPA was due, the claimant's counsel told us they were trying to settle the case. The OIA granted a two week extension under Rule 28. The case did not settle, but the claimant's attorney said she might withdraw the demand. After the neutral arbitrator was put in place, she did so.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases in 2003, is 69 days. For purposes of comparison, the *Engalla* decision reported that the old Kaiser system averaged 674 days to select a neutral arbitrator over a period of two years. Thus, in 2003, the OIA system was ten times faster.



F. Cases With a Party Arbitrator

A California statute gives parties in medical malpractice cases where the claimed damages exceed $200,000 a right to proceed with three arbitrators: one neutral arbitrator and two party arbitrators.[50] The parties may waive this right. The Blue Ribbon Panel Report questioned whether the value added by party arbitrators justified their expense and the additional delay of obtaining and scheduling two more participants in the arbitration process.[51] Such delay and rescheduling lengthens cases and raises costs for all parties. In the interest of increased speed and lowered expense, the Panel suggested that the system create incentives for cases to proceed with one neutral arbitrator, specifically by having Kaiser pay the neutral arbitrators' fees if the arbitration proceeds with a single neutral arbitrator.[52]

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[50] California Health & Safety Code §1373.19.

[51] Blue Ribbon Panel Report at 42.

[52] Blue Ribbon Panel Report at 41-42, Exhibit B at Recommendation 27.

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

Few party arbitrators are being used in our system. Claimants submitted waivers of party arbitrator forms in 415 cases in 2003; Kaiser submitted them in 337 cases. This does not mean that the remaining cases had party arbitrators; only cases with claims of more than $200,000 are entitled to them. In 2003, party arbitrators signed the award in only 8 of the 121 cases in which we received an award. That means that the remaining 113 cases were decided by a single arbitrator. These 8 cases closed in an average of 406 days, with a range from 297 to 533 days. Five of the 8 cases found for the claimant, awarding from $69,320 to $451,550.

In 2003, we received designations of party arbitrators in 17 cases that remain open. In seven of these cases, we have designations from both sides. Considering all cases that were open at the end of 2003, 27 have a designation of a party arbitrator. In eight of these, we have both designations.

VI. MAINTAINING THE CASE TIMETABLE

In this section we briefly summarize our approach to monitoring compliance with deadlines, and then look at actual compliance with deadlines at various points during arbitration.

The OIA monitors its cases in two different ways. First, when cases enter the system, the OIA computer system calendars a reminder for 12 months. Most cases close before then, but OIA attorneys call the neutral arbitrators in all cases that remain open at 12 months to ensure that the hearing is 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 that have been open more than 15 months. Cases that fall into this category generally require more contact as there are usually ongoing issues or one time events that delay the cases. An example of an ongoing issue is that claimant has a continuing medical problem which makes scheduling the hearing and maintaining scheduled dates difficult. An example of a one time event is the recusal or death of the neutral arbitrator late in the case and/or right before the scheduled hearing. OIA attorneys also keep track of many more cases informally because they review neutral arbitrator's open cases when they offer new cases.

Besides looking at older cases, through its software, the OIA tracks whether the key events set out in the *Rules* – service of the arbitrator's disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – occur on time. If arbitrators fail to notify us that a key event has taken place by its deadline, the OIA contacts them by phone, letter, or e-mail and asks for confirmation that it has occurred. In most cases, it has and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In some cases, the

OIA sends a second letter and/or makes a phone call asking for confirmation. The second letter and/or phone call warns arbitrators that, if they do not provide confirmation that the event took place, the OIA will remove their names from its panel until confirmation is received.

In a few cases, neutral arbitrators have not responded to a second communication. In those cases, the OIA removes the neutral arbitrators' names from its panel until they took the necessary action. As discussed in the following sections, this occurred 19 times in 2003. Three neutral arbitrators were still suspended at the end of the year, but all were reinstated by January 8, 2004.

A. Neutral Arbitrator's Disclosure Statement

As we discussed, once neutral arbitrators have been selected, they must make written disclosures to the parties within ten days. The OIA *Rules* require neutral arbitrators serve the OIA with a copy of these disclosures. The OIA monitors its cases to attempt to ensure that timely disclosures are made. In 2003, three neutral arbitrators were suspended three times until they served them. All were reinstated.

B. Arbitration Management Conference

Beginning in 2003, the OIA *Rules* allow 60 days from the selection of the neutral arbitrator to hold an arbitration management conference (AMC).[53]

The neutral returns the AMC form to the OIA within five days after the conference. The schedule set forth on the form controls dates for the rest of the case and allows the OIA to see that the case has been scheduled for completion within the time allowed by the *Rules*, usually eighteen months. Receipt of the form is therefore important. Eight neutrals were suspended for failing to return an AMC form in 2003, and one, who had been suspended in 2002, remained suspended at the beginning of 2003. Eight have been re-instated and one remains suspended at the end of 2003.

C. Mandatory Settlement Meeting

The *Rules* instruct the parties to hold a mandatory settlement meeting (MSM) within six months of the AMC.[54] Consistent with the Blue Ribbon Panel recommendation, the *Rules* state

[53]Exhibit C, Rule 25. It was formerly 45 days. The extension of time allowed neutral arbitrators to wait to schedule the AMC until after the time for disqualification had passed.

[54]Exhibit C, Rule 26.

that the neutral arbitrator is not present at this meeting.[55] The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. We have received notice from the parties in 421 cases that they have held an MSM. Seventeen of them reported that the case had settled at the MSM. Four of these cases involved *pro pers*. On the other hand, in 165 cases neither party returned the MSM form to the OIA despite requests in 2003.

D. Hearings and Awards

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*. We suspended four neutral arbitrators for failing to set a hearing date (this usually means one was cancelled) or setting a date that violated the *Rules*. Additionally, we suspended three neutrals for not submitting a timely award in 2003. Two failed to serve their awards until the first week in January.

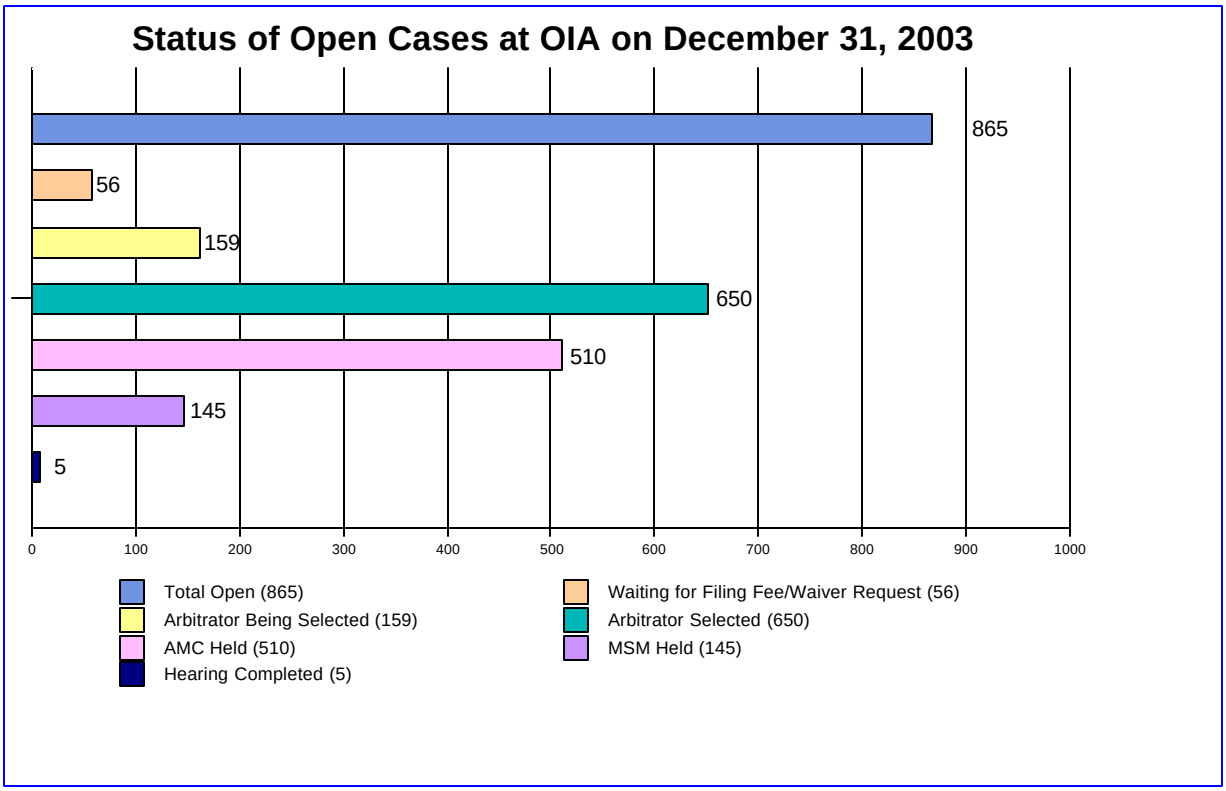
We suspended one neutral arbitrator for failing to provide the fee and fee allocation information required by California Code of Civil Procedure § 1281.96. He was one of the neutral arbitrators who failed to serve his award.

E. Status of Open Cases Currently Administered by the OIA

As of December 31, 2003, the OIA was administering 865 open cases. In 36 of these cases, the OIA was waiting for the payment of the filing fee or submission of paperwork which would waive it.[56] In 159 cases, the parties were in the process of selecting a neutral arbitrator. In 650 cases, a neutral arbitrator had been selected. Of these, in 510 an arbitration management conference had been held, or 59% of all open cases. In 145 cases, the parties had held the mandatory settlement meeting. In five cases, the hearing had been held but the OIA had not yet been served with the decision. Ninety-five percent of the open cases were mandatory - 823. The following graph illustrates the status of open cases:

[55] As the settlement conference is supposed to be conducted without the appointed neutral and in a form agreed to by the parties, the OIA has no real way to track whether the event has occurred except for receiving the forms from the parties. We have 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.

[56] See Section VIII.2 as to how the fee can be waived..



VII. THE CASES THAT CLOSED IN 2003

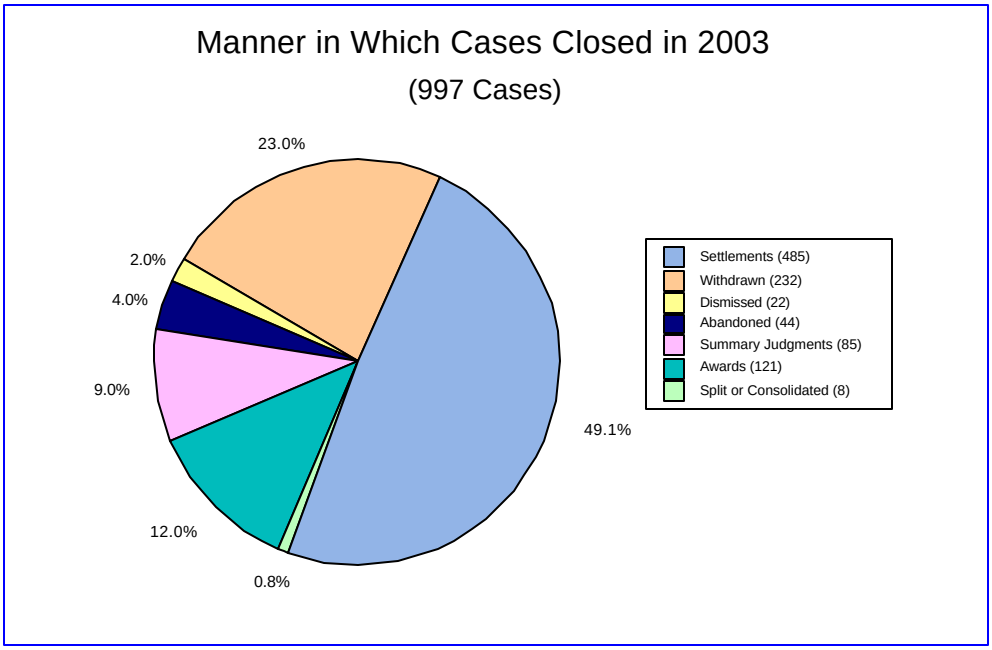
Under the *Rules*, most cases must be completed within eighteen months of the date the fee is either paid or waived.[57] In 2003, 997 cases in the OIA system closed. Of the cases that closed in 2003, eight did not close within the time allowed by the *Rules*. That is less than one percent.

The following sub-sections discuss the various ways in which cases have closed, and the length of time it took to close them based upon type of closure. In cases that closed by summary judgment, we detail the reason summary judgment was granted. The chart on the next page displays how cases closed, while the graph on page 30 shows the length of time, again by manner of closure.[58] The number of cases that closed and the days to closures include cases that have

[57]Exceptions to this deadline are found in Rules 24, 28, and 33. Those cases are discussed in this report at Section VII.H.

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

been designated complex, extraordinary, or expedited, or that have received a Rule 28 extension. These special groups of cases are discussed individually after the average for all cases.



A. Settlements – 49% of Closures

During 2003, 485 of the 997 cases settled, which represents 49% of the cases closed during the year. The average time to settlement was 317 days, or about ten and a half months. The median was 312; the mode was 286 and the range was 1 to 1485 days.[59] In 48 settled cases, the claimant was in *pro per*.[60]

B. Withdrawn Cases – 23% of Closures

In 2003, the OIA received notice that 232 claimants had withdrawn their claims. In 89 of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons, but the OIA has only anecdotal information on this point. We categorize a case as withdrawn when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice from the parties. When we receive a "dismissal with prejudice," we call the parties to ask whether the case

[59]The case that took 1485 days had been designated extraordinary by the arbitrator. The case entered the system in the first months of the OIA's operation and settled in June 2003. The claimant was represented by counsel.

[60]The parties are not required to provide information as to how cases settle. Some forms, however, will state that the case was "dismissed for a waiver of costs." These are treated as settlements.

was "withdrawn," meaning voluntarily dismissed, or "settled" and enter the closure accordingly. About 23% of closed cases have been withdrawn.

The average time to withdrawal of a claim in 2003 is 231 days. The median is 212 days. The mode is 74 days, and the range is 9 to 903 days.[61]

C. Dismissed or Abandoned Cases – 6% of Closures

In 2003, neutral arbitrators dismissed 22 cases, about 2% of the closed cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Fourteen of these closed cases involved *pro pers*.

Forty-four of 979 closed cases, about 4 percent, were deemed abandoned for claimant's failure to pay the filing fee or obtain a fee waiver.[62] Claimants in 27 the 49 cases were in *pro per*. Before claimants are excluded from this system for not paying the filing fee, they receive four notices from our office and are offered the opportunity to apply for fee waivers. Those excluded have either refused to apply or have failed to qualify. No one who applied for a waiver in 2003 was denied.

D. Summary Judgment – 9% of Closures

In 2003, 85 cases were decided by summary judgments granted to the respondent. This represents 9% of cases closed in 2003. In 65 of these cases, the claimant was in *pro per*.

OIA attorneys track the reasons given by the neutrals in their written decisions for the grant of summary judgment. Of the total, 27, or 32%, were granted because claimant had not obtained an expert witness, a requirement in a California medical malpractice case in nearly all instances. Another 38**,** or 45%, were granted because claimant filed no opposition. In four cases, or 4%, summary judgment was granted because the case was beyond the statute of limitations, that is, the claimant brought the case too late. In one case, or one percent, the claimant failed to show causation. In 15 cases, 18%, the neutral held that there was no triable issue of fact without being more specific. These reasons parallel those for grant of summary judgment in the courts, although in a court they might be closed by a different procedural mechanism such as a motion to dismiss or a demurrer, which would not happen in arbitration.

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[61]The case that was withdrawn after 903 days had been designated complex by the arbitrator. It entered the OIA system in March 2001. The neutral arbitrator served supplemental disclosures in January of 2003, which led to his disqualification. A new neutral arbitrator was selected, but the claim was withdrawn in August 2003. The claimant was represented by counsel

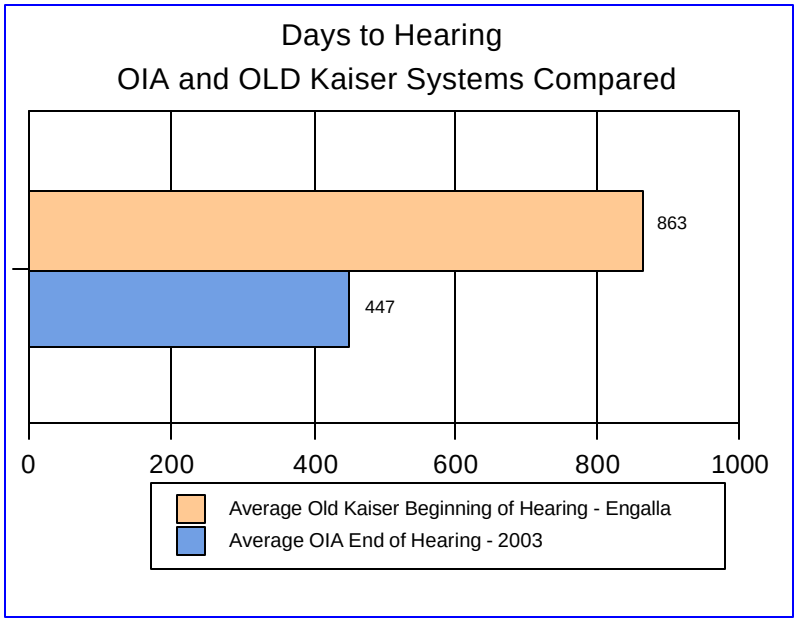
[62]The arbitration filing fee is a uniform $150 irrespective of how many claimants there may be in a single case. This is significantly lower than court filing fees except for small claims court. If a Kaiser member's claim is below the small claims ceiling amount of $5,000, the member is free to go there. Both the OIA and Kaiser inform these claimants of their right to go to small claims court.

The average number of days to closure of a case by summary judgment in 2003 was 233 days. The median was 309 days. The mode was 287. The range was 147 to 871 days.[63]

E. Cases Decided After Hearing – 12% of Closures

About 12% of all cases closed in 2003 (121 of 997) have proceeded through a full hearing to an award. Judgment was for Kaiser in 74 of these cases, or 61%. In seven of these cases, the claimant was in *pro per*. The claimant prevailed in 39% percent of the cases decided by hearing (47 of 121). In three of these cases, the claimant was in *pro per*.

In the cases that went to hearing in 2003 at the OIA, it took an average of 447 days from the time the case entered the system until the end of the hearing. The California Supreme Court in *Engalla* noted that under the old Kaiser system, the hearing did not begin until 863 days, on average, after a case entered the system. The Court noted as well that thereafter the hearing was often conducted over a lengthy period with the taking of evidence being interrupted by lengthy periods. OIA hearings are usually held continuously.[64] The following chart illustrates the difference in days to hearing between the old Kaiser system and the OIA.



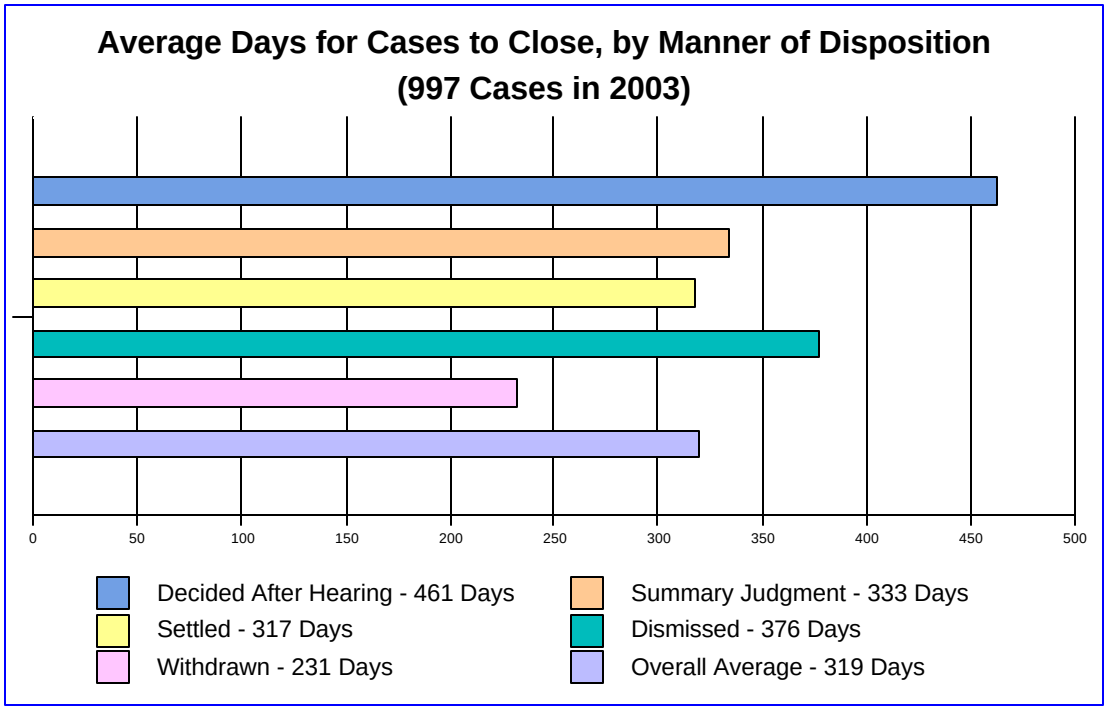
[63]The case that closed after 871 days was one which the OIA had been told had settled in July 2002. That settlement apparently came undone and the case was re-opened in January 2003. The claimant's attorney was given permission to withdraw at the end of April 2003. It took another six months for respondent's counsel to file a motion for summary judgment, which was not opposed.

[64]See Exhibit B, page 54.

The 121 total cases that have proceeded to a hearing in 2003, on average, closed in 461 days. The median is 418 days. The mode is 322 days. The range is 154 to 1092 days.[65]

F. The Average Time for Cases to Close in 2003

On average, the cases that closed in 2003 did so in 319 days, or 10 months. The median is 308 days. The mode is 286 days. The range is 1 to 1485 days.



G. Amounts of Awards

Of the 121 cases that went to hearing in 2003, 47 resulted in awards to claimants, which is 39% of such cases. One claimant was awarded $1.3 million. The average amount of an award was $273,000. The median was $160,000. The mode was $15,000. The range was $1 to $1.3 million.[66]

[65]The case that closed in 1092 days after a hearing was decided in favor of the respondent in March 2003. The neutral arbitrator had previously denied a motion for summary judgment in December 2001 and granted the claimant's motion under Rule 28 to extend the hearing date. The claimant was represented.

[66]The claimant who was awarded one dollar in damages was represented by counsel.

A list of all awards in chronological order is attached as Exhibit J. The awards for 2003 begin on page 159.

H Cases Using Special Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expedition include a claimant's illness or condition raising substantial medical doubt of survival, a claimant's need for a drug or medical procedure, or other good cause.[67] The *Rules* also include provisions for cases which need more than 18 months to resolution. They are called complex and extraordinary cases. Complex cases need 24 to 30 months for resolution, while extraordinary cases are those that need more than 30 months for resolution.[68] This section discusses those cases.

1. Expedited Procedures

In 2003, three claimants requested that their cases be resolved in less than the standard eighteen months. All received such status. The OIA received two of those requests from claimants before a neutral was selected in the case. In such cases, under Rule 34, the OIA makes the decision. The OIA granted both. Kaiser objected to neither request for expedited status. A neutral arbitrator received the other request and granted it. Of the three cases which received expedited status in 2003, the neutral arbitrator in two of them revoked that status as the circumstances changed.

We had two open expedited cases on January 1, 2003. Two expedited cases settled during the year. They remained open 65 days and 349 days. One expedited case was open at the end of the year.[69] Although originally designed in part to decide benefits questions quickly, none of the expedited cases in 2003 involved benefits or coverage issues.

2. Complex Procedures

In 2003, neutral arbitrators notified the OIA in 13 cases that they designated the cases as complex and therefore that the cases would be resolved in 24 to 30 months. The designation does not have to occur at the beginning of a case. It may be made as the case proceeds and the parties get a better sense of the information that is needed. At the beginning of 2003, there were 13 open cases designated as complex. Eighteen complex cases closed in

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[67] Exhibit C, Rules 33-36 (expedited cases).

[68] Exhibit C, Rule 24(b) (complex cases), and Rule 24(c) (extraordinary cases).

[69] This case closed on January 4, 2004, with an award for the claimant in the amount of $1.2 million. It closed in 202 days.

2003. The average length of time for complex matters to close in 2003 was 690 days, about 23 months. The median was 654 days. There is no mode. The range was from 339 to 1,004 days.[70]

Considering the cases designated as complex in 2003, seven cases had been designated as complex medical issues; four had complex discovery; and two were designated by order of the neutral. Complex medical issues include cases where multiple liability issues exist, or the nature or amount of damages is difficult to ascertain. Complex discovery includes cases involving large document productions, many depositions, or extensive travel to complete discovery.

3. Extraordinary Procedures

The OIA received notice in 2003 that six cases had been designated as extraordinary and therefore would take more than 30 months to resolve. Two were so designated in 2001, and one was so designated in 2002. Four of these cases closed in 2003. The average number of days for an extraordinary case to close was 977 days, or 32 months. The range was 489 to 1,485 days. Three of them settled, and the other was dismissed by the neutral arbitrator.

4. Rule 28 Extensions of Time to Close Cases

Rule 28 allows neutral arbitrators to extend the deadline for a case to close past the eighteen month (or thirty-month) deadline if there are "extraordinary circumstances" that warrant it. In 2003, the neutral arbitrators had made Rule 28 determinations of "extraordinary circumstances" in 77 cases and extended these cases beyond their limit. In addition, there were 35 such cases open at the beginning of 2003. Of these 112 cases, 47 remain open, and 65 closed in 2003. Considering only those cases that received a Rule 28 extension in 2003, 34 closed and 43 remain open. Regardless of when the extension was made, the average time in 2003 to close cases with a Rule 28 order was 679 days, about 23 months. The median was 647 days. There mode is 585. The range was 471 to 1,092 days.[71]

Since July 2002, Rule 28.b.ii has required a written order which states the reason for the decision, who requested it, and if there was opposition. According to these orders, respondent attorneys requested 5 extensions, claimants attorneys/claimants requested 14, and the parties stipulated 8 times. Extensions were ordered ten times over the respondent

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[70]The complex case that closed in 1004 days - 87 days more than 30 months -- had also received a Rule 28 extension, required by the claimant's need for surgery. It closed after a hearing which found in favor of the respondents.

[71]The case that closed in 1092 days had seven different hearing dates scheduled, beginning in February 2001. The hearing did not occur until March 2003. The Rule 28 order was granted in July 2001. A motion for summary judgment was denied in December 2001, and the parties and neutral had difficulties scheduling a hearing in 2002.

attorney's objection and once over the claimant attorney's objection. Four orders noted that the respondent attorney did not object.

We have information as to the reasons for a Rule 28 extension, but it is not complete. Twenty orders merely recited there was good cause or extraordinary circumstances. The most common reason was procedural difficulties of some sort (ten cases), including a pending criminal action, the need to publicize in Texas for potential heirs, the need to re-do service for a dispositive motion, and reopening a case that had been closed as settled. Seven orders referred to multiple neutral arbitrators; the death or illness of a party, an attorney, or neutral arbitrator; or the withdrawal or substitution of the claimant attorney, for a total of 21 cases. Five orders attributed the extension to the unexpected trial schedule of one or both counsel. Four orders were based on problems with medical experts. Three extensions were based on discovery problems. One case was continued due to the designation of a party arbitrator and one because an attorney was called up to the Marine Corps.

VIII. THE COST OF ARBITRATIONS IN THE OIA SYSTEM

A. What Fees Exist in OIA Arbitrations

Whether a claimant is in court or in private arbitration, a claimant faces certain fees. In an OIA arbitration, in addition to attorney's fees and fees for expert witnesses, a claimant must pay a $150 arbitration filing fee and half of the neutral arbitrator's fees. State law provides that neutral arbitrator's fees should be divided equally between the claimant and the respondent.[72] In addition, state law provides that if the claim is for more than $200,000, the arbitration panel will consist of three arbitrators – a single neutral arbitrator and two party arbitrators,[73] one selected by each side.

The OIA system provides mechanisms for a claimant to request a waiver of both or either the $150 arbitration filing fee and the claimant's portion of the neutral arbitrator's fees and expenses. These provisions are discussed below. When claimants ask for waiver information, the OIA sends information about all the forms of waiver, and all possible forms. The claimants can thus choose which they want to submit.[74]

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[72]California Code of Civil Procedure § 1284.2.

[73]Party arbitrators are not expected to be neutral, although they can be. Party arbitrators are not covered by the *Ethics Standards*.

[74]Exhibit I contains the packet we send to those who ask for it. This contains a general explanation, the forms, and instructions on how to fill them out. In addition, the System Description, which is sent to all claimants in our first letter to them, contains the same explanation of the different types of waivers. Exhibit I, page 154.

B. Mechanisms Claimants Have to Avoid These Fees

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

1. Avoiding Only the $150 Arbitrations Filing Fee

This waiver is available to individuals whose gross monthly income is less than three times the national poverty standards. If granted, the OIA's $150 arbitration fee is waived. We inform claimants of the existence of this waiver in the first letter we send to them. They have 75 days to submit the form, from the date the OIA receives their demands for arbitration. This waiver is new, although the OIA discussed it in the fourth annual report. It was created in 2003 in response to a law passed in 2002 by the California Legislature.[75] According to statute and Rule 12, this completed form is confidential and only the claimant and claimant's attorney know if a request for the waiver was made or granted.

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

This type of fee waiver, which has existed for the past five years, depends upon the claimants' ability to afford the cost of the arbitration fee and neutral arbitrator. Claimants must disclose certain information about their income and expenses. If this waiver is granted, the claimant does not have to pay either the neutral arbitrator's fee or the OIA $150 arbitration filing fee. This waiver form is the same as that used by the state court to allow a plaintiff to proceed *in forma pauperis*. According to the *Rules*, the form is served on both the OIA and Kaiser. Kaiser has the opportunity to object before the OIA decides whether to grant the waiver.[76]

3. Avoiding Only the Neutral Arbitrator's Fees and Expenses.

As discussed above, the *Rules* contain provisions to shift the cost to Kaiser for the full payment of neutral arbitrators' fees and expenses. The procedures are simple and voluntary. They rely entirely on the claimant's choice.[77] For claims under $200,000, the claimant must agree in writing not to object later that the arbitration was unfair because Kaiser paid the neutral arbitrator. For claims over $200,000, the claimant must also agree not to use a party

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[75] California Code of Civil Procedure §1284.3; Exhibit C, Rule 12. A copy of this waiver form is at Exhibit I, page 143.

[76] See Exhibit C, Rule 13. A copy of this waiver form is at Exhibit I, pages 144-150.

[77] See Exhibit C, Rules 14 and 15. The forms are contained in Exhibit I, pages 151-152.

arbitrator.[78] No financial information is required. These forms are served on Kaiser, the neutral arbitrator, and the OIA.

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

1. The $150 Arbitration Filing Fee

In 2003, we received 46 completed forms asking for the waiver of the $150 filing fee. The OIA granted all of them. Twenty-seven of these claimants received both a waiver of the $150 arbitration filing fee and the waiver of both the filing fee and neutral arbitrator's fees and expenses. By obtaining the waiver of the $150 fee, the neutral arbitrator selection process can begin immediately, without waiting for the second waiver to be granted.

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

In 2003, we received 79 completed fee waiver applications. The OIA granted 75 waivers of the arbitration fees and neutral arbitration fees We did not deny any. There were three requests for waivers of the fees and neutral fees pending at the end of the year. The claimant in the remaining case withdrew the claim before the OIA could decide the application. Kaiser did not object to any application.

3. The Neutral Arbitrators' Fees and Expenses.

In 2003, 444 cases submitted the waiver forms to have Kaiser pay the neutral's fees. In 92 of these cases (about 21%), the claimant was in *pro per*. For the reasons discussed in prior reports, the fact that we have waiver forms for 444 cases does not mean that claimants are paying the neutral arbitrators' fees in the other cases. We now have more accurate information about the allocation of fees.

Part of the information that arbitration providers must now disclose involves neutral arbitrators' fees and fee allocation.[79] The OIA therefore has information regarding fee allocation from neutral arbitrators in the closed cases that we received after January 1, 2003. Of the 97 cases that fall into this category, 32 reported no fees were charged and gave no further information about allocation.[80] Fifty-one reported that fees were allocated 100% to Kaiser. One of these cases had no fees. Fourteen reported that the fees were split 50/50, with

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

[79]California Code of Civil Procedure §1281.9, see discussion at II.C, *supra*.

[80]As prior reports have speculated, these cases all settled or were withdrawn.

2 cases having no fees. Thus, of the 50 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 81% of the cases.

D. The Fees Charged by Neutral Arbitrators

Members of the OIA pool set their own fees. They are allowed to raise their fees once a year, but not in cases on which they have begun to serve. We have often been asked about the fees. They range from $75/hour to $600/hour. The average hourly fee is $306, the median is $300, and the mode is $350.[81] Neutral Arbitrators also often offer a daily fee. This ranges from $500/day to $6,000/day. The average daily fee is $2,141, the median is $1,820, and the mode is $1,000.

IX. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

At the end of cases, the OIA sends forms to the parties or the attorneys in the cases where a neutral arbitrator has been selected to allow them to evaluate the neutral arbitrators. We also send forms to neutral arbitrators that ask their opinion about the OIA systems, suggestions for improvement, and comparison between the OIA and the court system. This section discusses the highlights of the forms we have received in 2003 from the parties and the neutrals. The complete statistics and copies of the forms are set out in Exhibits K and L, respectively.

A. The Parties or Their Counsel Evaluate the Neutral Arbitrators

Under Rule 49, at the close of an arbitration in which a neutral arbitrator has been appointed and held an arbitration management conference, the OIA sends an evaluation form to each attorney. If the claimant did not have an attorney, we send an evaluation to the claimant. The form asks them to evaluate their experience with the neutral appointed in the matter in eleven different categories including fairness, impartiality, respect shown for all parties, timely response to communications, understanding of the law and facts of the case, and fees charged. Most important, they are asked whether they would recommend this neutral to another person with a similar case. The inquiries appear in the form of statements, and all responses appear on a scale of agreement to disagreement with 5 being agreement and 1 disagreement. The questionnaires are anonymous, though the people filling it out are asked to identify themselves by category and to say how the case ended.

[81] According to the *Los Angeles County Bar Association's County Bar Update*, the average billing rate for the attorneys in the firms surveyed in the 2003 RBZ Law Firm compensation Survey for Southern California was $353/hour.

During 2003, the OIA sent out 1438 evaluations and received 633 responses in return. Two hundred-thirty-four identified themselves as claimants (35) or claimants' counsel (199), and 376 identified themselves as respondent's counsel. Twenty-three did not specify a side.[82]

The responses have been quite positive overall, and they are encouragingly similar for both claimants and respondents.

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

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

The average of all 2003 responses is 4.8 out of a possible maximum of 5. Claimants counsel averaged 4.7. *Pro pers* averaged 4.2. Respondents counsel averaged 4.9.[83] The median and the mode in all three groups is 5.[84]

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

The average of 2003 responses was 4.6 with the median and the mode both at 5. Claimants counsel averaged 4.4. *Pro pers* averaged 4.1. Respondents counsel averaged 4.8. The median and the mode was 5 in all three subgroups.

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

The average of 2003 responses was 4.5 with the median and mode both at 5. Claimants counsel averaged 4.2. *Pro pers* averaged 3.5. Respondents counsel averaged 4.7. The median and the mode were 5 for both claimants and respondents counsel. *Pro pers* had a median of 4 and a mode of 5.

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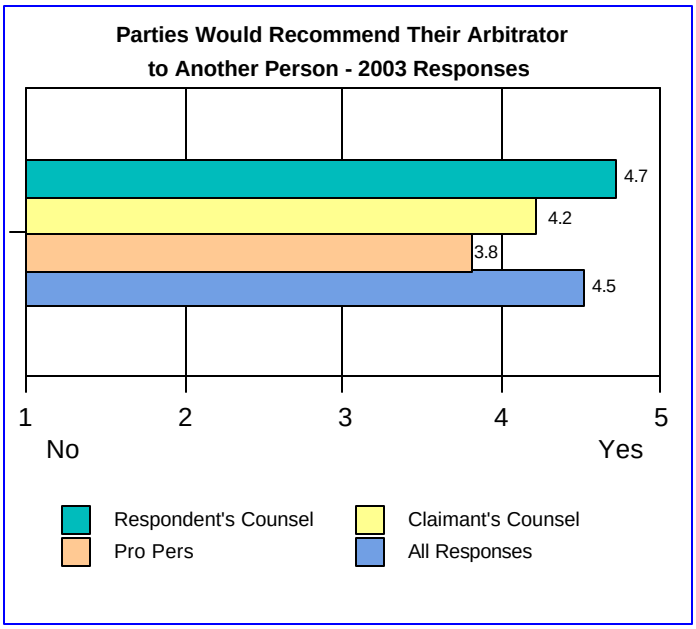
[82]Their responses are included only in the overall averages.

[83]The responses from *pro pers*, while positive, are lower than those from attorneys on either side. This is consistent with the results for the past four years. We believe that this lower score arises from a lesser understanding of the process – how it will work and what is possible within it. *Pro pers* are also less likely to win at their hearing or to settle their cases, so they are also less likely to be satisfied with the result of the arbitration than lawyers. Finally, some *pro pers* sometimes tell us that they want an opportunity to tell their account of what happened, regardless of the neutral arbitrator's decision in the case. Arbitration is poorly suited to such a goal.

[84]When the median and mode are both five, it means that a large number of people responding gave that number as their answer. It was our highest score. This is another measure of satisfaction with our neutral arbitrators.

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

The average on 2003 responses to this question was 4.5. Both the median and mode were 5. Claimant attorneys gave an average response of 4.2. *Pro pers* averaged 3.8. Respondents counsel averaged 4.7. The median and the mode in all subgroups was 5.



B. The Neutral Arbitrators Evaluate the OIA System

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and improve the system. The OIA designed this form with input from Kaiser and the AOB predecessor, and began using it during 2000. During 2003, we sent out the questionnaire in 719 closed cases and we received 576 responses, for a response rate of 80%.[85] The results continue to show a high degree of approval of, and satisfaction with, the *Rules* and the OIA.

[85]The total number of closed cases, 997, is higher. The number in the text is of those cases to which we mailed questionnaires. The OIA does not send arbitrator questionnaires to closed cases where a neutral was never appointed, or where the case was closed before an arbitration management conference was held. This eliminates cases that settle early or are withdrawn shortly after the arbitrator is selected. This policy took effect after our first year of mailing them when large numbers of questionnaires were returned blank with a note from the neutral saying s/he had never met with the parties and had nothing to say about the case. The actual number returned in 2003 was 599; however, 23 were blank. They are not included in the following discussion.

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

The neutrals averaged 4.8 in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses averaged 4.9 in saying that based on this experience they would participate in another arbitration in the OIA system. They averaged 4.9 in saying that the OIA had accommodated their own questions and concerns in the specific case. The median and the mode for each of these three responses was five.

The questionnaires also include two questions that ask arbitrators to check off features of the system which worked well or poorly in the specific case. The vast majority of those who responded were positive. While some who returned these forms left some or all of these questions blank, these are the responses of those who did not:

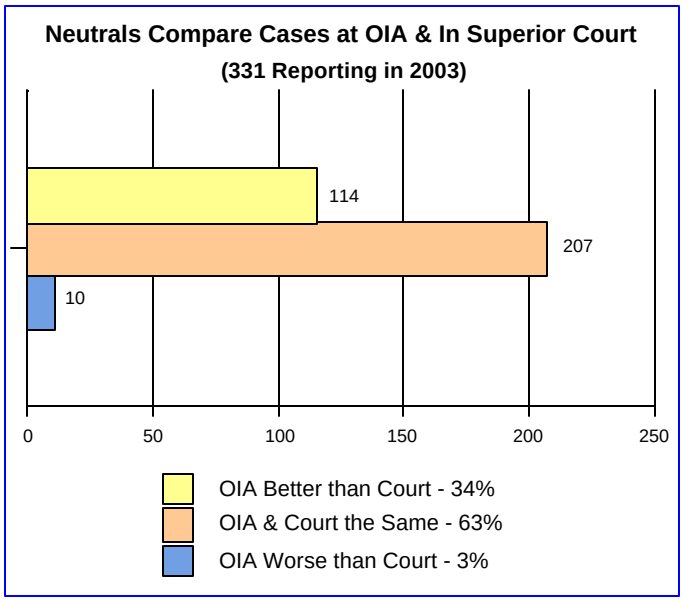
Neutral Arbitrators' Opinions Regarding OIA System

Feature of OIA System	Works Well	Needs Improvements
Manner of NA's appointment	424	9
Early Management Conference	425	6
Availability of expedited proceedings	127	5
Award w/in 15 business days of hearing closure	103	15
Claimants' ability to have Kaiser pay NA	192	19
System's rules overall	340	10
Hearing w/in 18 months	181	15
Availability of complex/extraordinary proceedings	47	3

The question about the award deadline seems to have ended. In 2002, when the deadline was 10 days after the close of the hearing, 30 responses marked it as needing improvement, while 84 said it worked well. With the change to 15 business days,[86] the numbers are 15 to 103, respectively.

[86]For regular cases; 30 business days for complex and extraordinary.

Finally, the questionnaires asked the neutrals whether they had experienced a similar case in the Superior Court, and if so, whether they would rank the OIA experience as better, worse, or about the same. More than half of the neutral arbitrators (331) made the comparison. One hundred-fourteen, or 34%, said the OIA experience was better. Two hundred-seven, or 63%, said it was about the same. Only ten — 3% of those responding – said the OIA experience was worse.



The majority of the neutral arbitrators' comments were compliments on how well the system or the OIA staff works or assurances that no changes need to be made. Those comments are deeply appreciated. Disregarding those comments, the largest number of comments in 2003 concerned the billing process, followed by *pro per* claimants, and then by the statutory disclosures. It may be a signal that neutral arbitrators are becoming familiar with the OIA system that there were relatively few comments about the changes to specific rules.[87]

There were at least 35 comments about the payment of fees, either decrying Kaiser (6), claimants (7), or undifferentiated parties (3) as slow to pay or wanting more specificity from the OIA about who was obligated to pay or "streamlining" of the waiver process. A few seemed to think the OIA was more involved in the billing process than we are and asked for specific

[87]Two made comments about the process for naming a party arbitrator, two thought the 18 month deadline was too short, two wanted a longer time for awards, two wanted the mandatory settlement conference earlier, two recommended mediation before or at the beginning of arbitration. Others thought attorneys should be required to inform the OIA of settlements and withdrawals. (They are.) One wanted a conference room available and another more fax lines.

information as to where bills should be sent or policies on advances. Two advocated the power to delay awards until paid – which the *Rules* do not permit, while several lamented the number of cases that settle or are continued, leaving holes in the neutral arbitrators' schedule. There is not much the OIA can do with most of these complaints other than try to ensure that neutral arbitrators and parties understand billing and waiver processes and to remind neutral arbitrators of the option to include a requirement for the advance payment of fees.

Neutral arbitrators once again made many comments about the difficulty *pro pers* have navigating a legal system, though a few wrote that the OIA system was easier for them than the court system and provided *pro pers* with more assistance. Several made specific comments about having to grant summary judgment against *pro per* claimants, and one expressed the desire that *pro pers* be better informed about the summary judgment process.[88] Unlike last year, this was the only specific recommendation concerning *pro pers*, other than the idea of helping *pro pers* determine whether their claims are viable at the beginning of the case. The OIA could not do this and maintain its neutrality.

Eight neutral arbitrators expressed concern about the confusing nature of the disclosure requirements. Most realized that the requirements are not created by the OIA (though we do enforce them to an extent) and a few thanked us for our assistance in navigating them.

X. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

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

The membership of the AOB is a distinguished one. It remained almost the same in 2003. One member, the Honorable Linda Sanchez Valentine, resigned after being elected to the United States House of Representatives. Selection of a replacement is in progress.

There are eleven board members, besides the two officers. The AOB was an outgrowth of the original Arbitration Advisory Committee which helped select the Board members. They represent various stakeholders in the system, such as Kaiser Health Plan members, employers, labor, plaintiffs bar, defense bar, physicians, and hospital staff. There are

[88] See Section X.B.

also outstanding public members. No more than four of the complete board of thirteen may be Kaiser affiliated. All will serve staggered terms. They are, in alphabetical order:

Terry Bream, R.N., M.N. Administrator, Department of Clinical Services, Southern California Permanente Group. Pasadena. (Formerly served on the AAC).

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

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

Dan Heslin, former Director of Employee Benefits at Boeing, Murrieta. (Formerly served on the AAC).

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

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

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

Kenneth Pivo, medical malpractice attorney representing respondents, Irvine. (Formerly served on the AAC).

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

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

B. Activities in 2003

The AOB takes an active role. It meets at least quarterly to review operation of the OIA and receive reports from OIA staff. During 2003, it also heard reports from Kaiser about programs it has instituted to resolve member problems before the arbitration stage. It had several discussions of a planned audit of the OIA, selecting the audit firm and discussing the

parameters of the audit.[89] The needs of *pro pers* in the system was a particular topic of concern, and the AOB has discussed revising Rule 52 to make the handout even easier for *pro per* claimants to understand. As noted earlier, it also discussed the qualifications for neutral arbitrators.

Officers of the AOB are in regular contact with the OIA by e-mail and by telephone. AOB officers Drs. Werdegar and Hopper and member Terry Bream visited the OIA for day long periods, met with all of its staff, and observed its operations in 2003. All members of the AOB are welcome to visit at any time and all have been invited to do so.

The AOB also reviews the draft annual report and comments upon it with particular reference to how well the OIA is achieving the goals formulated by the Blue Ribbon Panel, which is, in effect, its mission statement. Exhibit M is the AOB Review of this Report.

XI. COMPARISON OF 2003 WITH PRIOR YEARS

For the most part, 2003 was consistent with prior years. Trends that existed – such as more 90 day postponements before neutral arbitrator selections – continued; aspects that were stable – such as the length of time for Kaiser to send a demand – remained so.[90]

A. Pool of Neutral Arbitrators

The number of possible neutral arbitrators in the pool continues to decline, from a high of 349 at December 31, 2000. It is, however, only 15 less than the number at the end of 2002. The decline is primarily in Northern California; Southern California has remained more or less the same for the past three years and San Diego is at an all time high. Appendix 1, lines 1, 5-

[89] At the March 2004 AOB meeting, it approved a work plan for the audit.

[90] There were two anomalies: More neutral arbitrators were selected than any other year. There were 936 neutral arbitrators selected in the cases, which is 125 more than any other year. Appendix 1, line 16. Second, more cases closed than any other year. Nine hundred, ninety-seven cases closed, which is 150 more than 2002. Appendix 1, line 124. The second statistic may be related to the greater efforts the OIA is making to follow cases that close in more than 12 months. As discussed in Section VI, OIA attorneys meet monthly to discuss any problem cases and actively track the status of all cases that are open more than 12 months to make sure hearing dates are set and maintained. We have no explanation for the large number of neutral arbitrators selected. Together, however, these two facts mean that the OIA has been quite busy, sending out LPAs, reminding parties of the LPA deadlines, checking the disclosures, monitoring cases, and sending out and reviewing questionnaires and evaluations.

7.[91] The percentage of our pool composed of former judges is at an all time high. Appendix 1, lines 12-15.

B. How Many Neutral Arbitrators Have Served

The percent of neutral arbitrators in the OIA pool who serve in a given year also continues to increase, up to 70% for 2003 alone and 91% over the five years. Appendix 1, line 22. The number of different neutral arbitrators making awards after hearings continues to increase, from 136 to 214. Similarly, the number who have written only one award increased from 78 to 99. Fifty-nine neutral arbitrators wrote only a single award in 2003. Appendix 1, lines 161 and 162. This sort of wide-spread involvement by members of our pool should help alleviate concerns expressed by some claimants that neutral arbitrators are beholden to Kaiser for their livelihood.

C. Demands for Arbitration

The number of demands received during a year fell slightly below 1,000 for the first time (989). For some reason, the percentage of cases from Northern California has increased.[92] Appendix 1, line 42. The number of opt in demands continues to decline. We received only 49 in 2003. In 2002, it was 131. Appendix 1, line 48. Ninety-five percent of all open cases are mandatory. Appendix 1, line 123.

D. How Neutral Arbitrators are Selected

The percentage of neutral arbitrators chosen by strike and rank continues to increase (65 to 74%), while those jointly selected continues to decrease (35 to 26%). Appendix 1, lines 17 and 18. Moreover, the percent of the jointly selected neutral arbitrators who are members of the OIA pool continues to increase. In 2003, 70% of jointly selected neutral arbitrators were members of our pool. Appendix 1, lines 20 and 21. This may indicate that attorneys who use our system have a greater level of comfort with the members of our pool and familiarity with the process, and could be connected to the dispersal of cases among pool neutral arbitrators.

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[91] As mentioned at the beginning of this report, Appendix 1 contains the statistics set out in the first four reports, as well as the cumulative numbers through December 31, 2003 and for 2003 alone. References to Appendix 1 include a line number, which directs the reader to the precise row of the Appendix that sets out the statistics.

[92] Given this fact and the decline in the number of Northern California neutral arbitrators, we will continue to advertise in Northern California for applicants. Between January 1 and February 26, 2004, we have admitted 12 more neutral arbitrators to the Northern California panel.

E. Time to Select Neutral Arbitrators

The trends identified in earlier years have continued. In 2003, the percent of cases with no delays decreased to 52%. The percent of cases with a postponement increased to 43%. Cases with only a disqualification declined to 2%. Appendix 1, line 61. In absolute numbers, that means less than half the number of disqualifications in the first year, almost a third the number in 2001, and almost half the number in 2002. Appendix 1, line 78. This is good as disqualifications make extra work and expense for the parties, the neutrals, and this office. The percent of cases with both a disqualification and a postponement has remained stable.

The length of time to select a neutral arbitrator has remained stable within each category, but the overall average continues to increase as the mix of the cases includes an increasing number of cases with delays.[93] Appendix 1, line 61. Greater familiarity with the system and the OIA's practice of reminding the parties of the date to respond to the LPA may explain the increasing use of postponements and the decreasing use of disqualifications. We know of no reason that the trend in postponements will change, so the average time to select a neutral arbitrator will probably continue to increase.

Comparison of Percentage of Selections and Days to Selection of Neutral Arbitrators by Category

	1999-2000	2001	2002	2003	1999 - 2003
No delay	25 days, 79%	23 days, 66%	27 days, 56%	25 days, 52%	25 days, 63%
Only Postponement	106 days, 15%	104 days, 26%	115 days, 38%	114 days, 43%	111 days, 30%
Only Disqual.	73 days, 5%	61 days, 6%	62 days, 4%	75 days, 2%	66 days, 4%
Postponement & Disqual.	167 days, 1%	143 days, 3%	164 days, 4%	162 days, 4%	158 days, 3%
Total	41 days	50 days	67 days	69 days	56 days

[93] The one exception is cases where the only delay is disqualification. This is probably a factor of the small number of these cases, making the average highly susceptible to a few cases with multiple disqualifications skewing the result.

F. Claimants Without an Attorney

The percent of cases with claimants who are not represented by an attorney continues to decrease. It has fallen from 29% in the first year to 22% in 2003. Appendix 1, line 99. The information provided by the OIA may have encouraged the parties who could to obtain an attorney.[94]

G. Types of Claims

The percentage of medical malpractice claims has once again increased to 94%, after dipping last year. The percentage of benefit claims remains at 2%. Appendix 1, lines 93-94.

H. Status of Cases

The OIA had 47 fewer open cases at the end of the 2003 than 2002. Appendix 1, line 116. This is a product of more cases closing and receiving slightly fewer cases. We received 64 more MSM forms in 2003 than 2002, and had fewer cases where the parties did not send in MSM forms. Appendix 1, lines 113 - 114. This may show that more parties are actually participating in these settlement discussions.

[94] Exhibit C, Rule 54.

I. How Cases Close

The percentage of cases that settled in 2003 increased to 49% from 45% in 2002. The other percentages differed no more than two percent from 2002. The percent of cases that were decided by an award after hearing has fallen from 18% in 2000 to 12% in 2003. Appendix 1, line 127. The percent of cases closed by action by the neutral arbitrator (dismissed, summary judgment, or award) has fallen from 32% to 23% over the past three years.

Comparison of How Cases Closed[95]

	2001	2002	2003
Settlements	44 %	45 %	49 %
Withdrawn	20 %	23 %	23 %
Dismissed	3 %	3 %	2 %
Abandoned	5 %	3 %	4 %
Summary Judgment	14 %	11 %	9 %
Awards	15 %	14 %	12 %

J. Time to Close

The time to close continues to increase, both by average and the median, and through all the categories. Appendix 1, line 173. Part of the reason for this may include the extra time to select the neutral arbitrator in the last half of 2002 caused by the *Ethics Standards*. Part of it may include the increasing number of cases in which there is a 90 day postponement to select a neutral arbitrator. When it takes longer to select a neutral arbitrator, it takes longer to close a case. Next year's report will probably look at the time to close cases that have not been

[95] This chart only looks at the last three years as there were not that many closed cases in the first 21 months.

awarded special treatment – i.e., expedited, complex, extraordinary, or Rule 28 – to see how long it takes "regular" cases to close.

Comparison of Average Number of Days to Close, by Category

	2001	2002	2003
Settlements	278 days	300 days	317 days
Withdrawn	199 days	222 days	231 days
Summary Judgment	299 days	280 days	333 days
Awards	372 days	410 days	461 days
Average	281 days	296 days	319 days

K. Reasons for Summary Judgment Decisions

In 2003, fewer summary judgments were based on the failure to have an expert, the statute of limitations, or no causation. More were granted because of failure to file an opposition or failure to establish a triable fact. Appendix 1, lines 146-150. If Rule 54 is revised, we will remind *pro per* claimants that the motion will almost certainly be granted if they do not file an opposition to a motion for summary judgment.

L. Fees Waivers

The percent of claimants who signed the waiver to shift the cost of the neutral arbitrator to Kaiser remains stable. Appendix 1, line 221. The number of requests for fee waiver applications fell, but more were turned in, and the OIA granted more than ever. Kaiser did not object to any and the OIA did not deny any. Appendix 1, lines 100 - 103 and 105. In addition, the OIA granted a new type of waiver of the $150 fee in 19 cases where claimants did not submit the other need-based waiver.

M. Party Evaluations of Neutral Arbitrators

The responses by the respondents' counsel and *pro per* claimants to the question of whether they would recommend their neutral arbitrator to another person improved. For *pro per* claimants, the average increased from the first four years' average of 3.2 to a 2003 average of 3.8. This is the most positive response by *pro pers* yet to this most important question.

XII. CONCLUSION

Rule 1 sets out the goals for the OIA system - a fair, timely, low cost arbitration system that protects the privacy interests of the parties. As far as this office is able to measure its outcomes, those goals are being met.

Timeliness is the easiest to measure. The time to select a neutral arbitrator and to go through the arbitration process is many times faster than the pre-OIA system, and has largely disappeared as an issue. While the overall average for both continues to increase, that is a factor of choices made by the parties – and generally the claimants – that slow down the process. That only one percent of cases closed after their time limit is a very good statistic.

Cost is an area we are beginning to be able to measure. We know that the $150 filing fee is lower than court filing fees (other than small claims) and that in 81% of the cases that began and ended in 2003, the neutral arbitrators were paid by Kaiser.

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

Last is the question of fairness. This is harder to measure. The OIA does not review decisions for fairness – indeed it could not. But indicators of fairness can be evaluated in a number of ways. First, the composition of the neutral arbitrators pool is balanced between those who have plaintiff's side experience and those who have defendant's side experience. Seventy-five percent report medical malpractice experience. Second, the selections are being spread out to a larger and larger number of neutral arbitrators. This includes a larger number who preside over hearings. Spreading the work among more people helps reduce the appearance of neutral arbitrators being dependant upon Kaiser work. Third, the *Rules* give both parties the power to determine who their neutral arbitrator will be – or at least who their neutral arbitrator will not be. The parties can jointly select anyone who agrees to follow the *Rules*, and either party can disqualify a neutral arbitrator after the selection. The decreasing number of disqualifications is a positive sign. Last, the California Legislature and the Judicial Council have decided that disclosures about organizations involved in arbitrations helps promote fairer arbitrations. The OIA has posted this information for all to see, and has helped the neutral arbitrators comply with their obligations.

Thus, the OIA is working hard to produce a fair, timely, low cost, and confidential arbitration process. It is proud of what has been accomplished so far.