SEVENTH 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, 2005 - December 31, 2005

REPORT SUMMARY

This is the seventh time the Office of the Independent Administrator (OIA) has reported on the arbitration system between Kaiser Foundation Health Plan (Kaiser) and its members.[1] Since 1999, the OIA has administered such arbitrations. Sharon Oxborough is the Independent Administrator. This report allows readers to gauge how well the OIA system is meeting its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. The factors listed below either help readers understand what happened in 2005 or relate directly to the system's fairness, speed, or cost.

Developments in 2005

The arbitration system is a stable system. The Arbitration Oversight Board (AOB) and the OIA made small improvements to the Rules and neutral arbitrator qualifications as the system progresses. Additionally, last year's review by independent certified public accountants of portions of the OIA's processes and statistics allows the public to have even more confidence and suggests possible refinements.

1. **Independent Review Confirms Accuracy of OIA Work.** An independent accounting firm reviewed the OIA's paper files and statistics contained in the sixth annual report. It "did not identify any significant weaknesses in the OIA's management of arbitration cases, statistical reporting to the AOB, or data processing controls." In response to its recommendations, the OIA modified its procedure for closing cases and for storing its backup tapes. See page 4 and Exhibit C.

2. **Rules Amended.** The AOB amended the Rules to simplify the information given to *pro per* claimants and to clarify that section 998 of the California Code of Civil Procedure applies. (Section 998 provides for the payment of certain costs if a party makes an offer of settlement that is not accepted and the party making the offer obtains a better result from the arbitration or litigation.) See page 5 and Exhibit 3.

3. **New Software to Generate Statistics for Annual Reports.** In response to a recommendation made in last year's review, the AOB continues to discuss possible software to generate statistics for the annual reports. See page 45.

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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 members' claims.

4. **The AOB Renews OIA Contract**. The AOB renewed its contract with Ms. Oxborough to act as the Independent Administrator for another three years, through March 29, 2009. See page 4.

OIA's Pool of Neutral Arbitrators

A large and balanced pool of neutral arbitrators, among whom work is distributed, is a crucial ingredient to a fair system because it prevents the appearance and reality of a captive pool of neutral arbitrators, beholden to Kaiser for their livelihood. If neutral arbitrators still serve after making large awards against Kaiser, it shows that they are not punished for such awards. Finally, the two methods of selecting a neutral arbitrator allow parties the freedom to select anyone they collectively want. The vast majority of neutral arbitrators the parties select are in the OIA pool. This demonstrates of the quality and composition of the pool.

5. **Large Neutral Arbitrator Pool.** The OIA has 306 neutral arbitrators in its pool. Almost 40% of them, or 119, are retired judges. See pages 5 - 6.

6. **Applications Reveal Balanced Pool of Neutral Arbitrators.** The applications filled out by the members of the OIA pool show that 141 arbitrators, or more than 45%, spend all of their time acting in a neutral capacity. The remaining members divide their time almost equally between claimants' side and respondents' side work. See pages 7 - 8.

7. **Applications Reveal Medical Malpractice Experience by Neutral Arbitrators.** Neutral arbitrators' applications and updates also show that 268 of the arbitrators have medical malpractice experience. That is nearly 90%. See page 8.

8. **Large Percentage of Arbitrators Served on Arbitrations and Heard Cases.** Fifty-nine percent of the neutral arbitrators in the OIA pool served on a case in 2005. Arbitrators averaged two assignments each in 2005. Eighty-eight different neutrals, including arbitrators not in the OIA pool, decided the 127 awards made in 2005. See pages 8 - 9.

9. **Neutral Arbitrators Continue to be Selected After Making Awards of $500,000 or more.** All but three of the 28 neutral arbitrators who are members of the OIA pool and who have made awards of $500,000 or more before 2005 were selected to serve again in 2005. Five neutral arbitrators made six such awards in 2005. While two of these neutrals have left the pool, the others have all served again. See page 9.

10. **More than 70% of Neutral Arbitrators Selected by Strike and Rank.** In 2005, the parties chose 71.5% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 28.5%. Seventy-four percent of the arbitrators jointly selected were members of the OIA pool. In the remaining 26% of jointly selected neutral arbitrators (56 cases), the parties jointly selected a neutral arbitrator who was not a member of the OIA pool. See page 15.

Status of Arbitration Demands

Most aspects of the system have been stable over the years, including the types of cases. One notable exception is that the number of demands made against Kaiser has dropped significantly over the past three years.

11. **Fewer Demands for Arbitration.** In 2005, the OIA received 840 demands for arbitration. This is 21 (2%) fewer than the 861 demands it received in 2004. As last year's report stated, the number of demands decreased 128 (13%) between 2003 and 2004. See pages 11, 46-47.

12. **Most Cases Medical Malpractice.** Approximately 92% of the cases the OIA administered in 2005 involved claims of medical malpractice. Only 2.4% presented benefit and coverage issues. The remaining 5.6% are based on premises liability, other torts, lien, or unknown claims. See page 12.

13. **Number of Claimants Without Attorneys is Stable.** Slightly less than 20% of claimants were not represented in 2005. While it increased slightly from 2004, it stayed below 20%. See pages 13, 47.

How Cases Closed

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

14. **Nearly Three-Quarters of Cases Closed by the Parties' Action.** During 2005, 40% of the closed cases settled. The claimants withdrew another 27% and abandoned another 4.5% by failing to pay the filing fee. See pages 27, 29 - 30.

15. **One-Quarter Closed by Decision of Neutral Arbitrator.** Nine percent were closed through summary judgment, 2% were dismissed by neutral arbitrators, and 16% of cases closed after an arbitration hearing. In the cases that went to arbitration hearing, claimants prevailed in 42.5%. The average award was $287,000. See pages 30 - 31.

16. **Nearly All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** Most hearings involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. A panel of three arbitrators signed only ten of the awards made after a hearing in 2005 - about eight percent. A single neutral decided the other 117. See pages 22 - 23.

System Meeting Deadlines

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

17. **Almost Half of Neutral Selections Proceeded with No Delay; The Other Neutral Selections Included Delays Chosen by Claimants.** Not quite half (49%) of the neutral arbitrators were selected without the parties exercising options that delay the process. The others either postponed the deadline (45%), disqualified the neutral arbitrator (2.3%), or both (3.7%). As in prior years, claimants requested 99% of the postponements and made 90% of the disqualifications. See pages 16, 18, 19. The percentage of cases in which the parties chose to postpone the deadline has increased over the years from 15% the first year of operation to 49% in 2005. See pages 48 - 49.

18. **Length of Time to Select Most Neutral Arbitrators Stayed the Same but Increased Overall and When a Neutral Arbitrator Has Been Disqualified.** The average time to select a neutral arbitrator was 70 days. This is nine days more than the prior year. While the time to select a neutral arbitrator stayed the same in the two largest categories – no delays (24 days) and only a postponement (111 days) – it increased in the six percent of cases with a disqualification (68 days) or a disqualification and postponement (173 days). Seventy days to select a neutral arbitrator in 2005 is almost ten times faster than that described by the *Engalla* case. See pages 19 - 22, 49.

19. **Cases Closed on Time, Though Length of Time Continued to Increase.** In 2005, the cases closed, on average, in 330 days, or 11 months. Only three cases failed to close on time. Ninety percent of the cases closed within 18 months (the deadline for most cases) and 65% closed in a year or less. See pages 27 - 32.

20. **Hearings Completed Within Sixteen Months.** Cases that were decided by an award after a hearing closed on average in 470 days (less than 16 months). This average includes cases that were designated complex or extraordinary or that received

a Rule 28 extension because they needed extra time. Regular cases closed after an award in 377 days, or less than 13 months. Claimants prevailed in 42.5% of the cases decided by an award. The average award was $287,000. See pages 28, 31.

Neutral Arbitrator Fees

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

21. **Kaiser Paid the Neutral Arbitrator's Fees in 81% of Cases Closed in 2005.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2005, Kaiser paid the entire fee for the neutral arbitrators in 81% of those cases that had fees. See page 37.

22. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from $100/hour to $600/hour, with an average of $330. For the 653 cases that closed in 2005 and for which the OIA has information, the average total fee charged by neutral arbitrators is $4,488, with a range of $0 to $59,062.50. If we exclude the 77 cases where neutral arbitrators charged no fee, the average is $5,088. See page 38.

Evaluations

The parties continue to give their neutral arbitrators positive evaluations. Similarly, the neutral arbitrators report that the system itself works well.

23. **Positive Evaluations of Neutral Arbitrators.** In 2005, both claimants and counsel for both sides reported that they would recommend their neutral arbitrator to another individual with a similar case. Evaluations by pro per claimants were particularly positive: On three questions, pro per claimants gave a higher average response than either group of attorneys. Compared with 2004, their response rose to an average of 4.8 from 3.6. See pages 39 - 40, 51.

24. **Positive Evaluations of the OIA.** Neutral arbitrators continue to evaluate OIA procedures positively. Forty-four percent said that the OIA experience was better than a court system, and 54% said it was about the same. Only two percent said the OIA experience was worse. See pages 41 - 43.

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Exhibits

Charts & Tables

A Note About Numbers

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

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

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

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

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

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

I. INTRODUCTION & OVERVIEW

This is the seventh annual report issued by the Office of the Independent Administrator (OIA).[1] It describes an arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (Kaiser) or its affiliates.[2] Sharon Oxborough, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board (AOB), the OIA maintains a pool of neutral arbitrators to hear Kaiser cases and independently administers arbitration cases brought by Kaiser members. The contract also requires that Ms. Oxborough write an annual report describing the arbitration system. The report describes the goals of the system, the actions being taken to achieve them, and the degree to which they are being met. The majority of the seventh annual report focuses on what happened in the arbitration system during 2005, while the last section compares that activity with earlier years. The conclusion finds that the system is continuing to achieve its goals.

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

The arbitrations are controlled by the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of July 1, 2005 (Rules)*. The *Rules* consist of 54 rules in a 20 page booklet and are available in English, Spanish, and Chinese. The English version is attached as Exhibit B.[3] Some important features they contain include:

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

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

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[1]The OIA has a website, www.oia-kaiserarb.com where this report can be downloaded, along with the prior annual reports, the *Rules*, various forms, and much other information, including organizational disclosures. A description of the OIA's staff is attached as Exhibit A. The OIA can be reached from its website, by calling 213.637.9847, or faxing it at 213.637.8658.

[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]The *Rules* are also available from our website. Exhibit B has been "redlined" to show the changes made in 2005. See Section II.B.

[4]Exhibit B, Rules 16 and 18.

[5]Exhibit B, Rule 24.

Procedures to shorten or lengthen time for cases that require either less or more than 18 months;[6] and

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

The 18 month timeline that applies to most cases is displayed on the next page. Details about each part of the process are discussed in the body of this report.

A. Goals of the OIA System

The OIA offers 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.

B. Format of This Report[8]

The report first discusses developments in 2005: the renewal of the OIA's contract, the audit that occurred, and Rule and qualification changes. The next sections look at the OIA's pool of neutral arbitrators, and the number and types of cases the OIA received in 2005. The parties' selection of neutral arbitrators is next discussed. That is followed by a short section on the monitoring of open cases, and a longer analysis of how cases are closed and the length of time to closure. The next section discusses the cost of arbitration in the system. The parties' evaluations of their neutral arbitrators and the neutral arbitrators' evaluations of the OIA system are highlighted in the following sections. The report ends with two sections that describe the AOB's activities during 2005 and compare 2005 to prior years.

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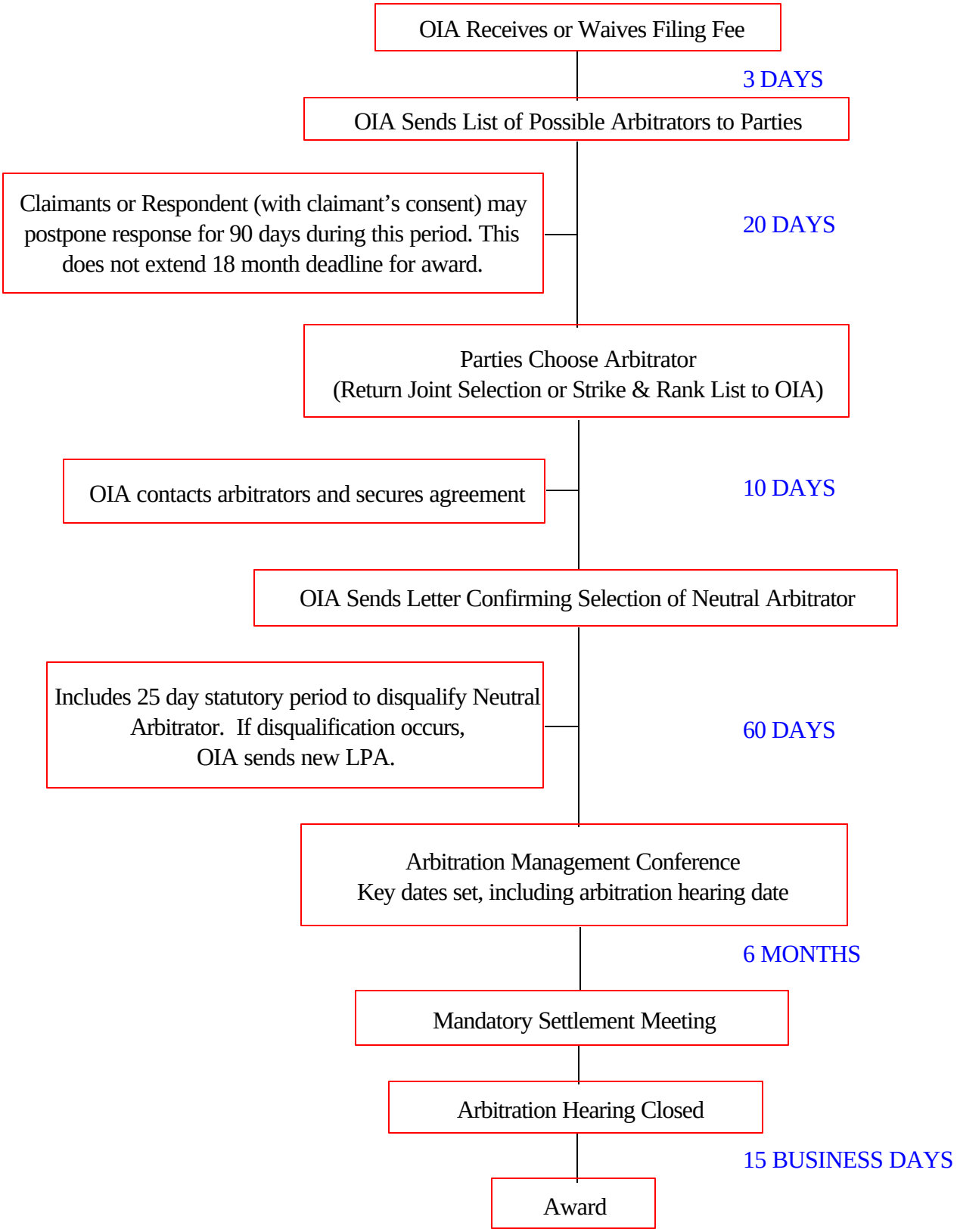
[6] Exhibit B, Rules 24, 28 and 33.

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

[8] For a discussion of the history and development of the OIA and its arbitration system, please see prior reports. The OIA was created in response to the recommendation of a Blue Ribbon Panel (BRP). The Law Offices of Sharon Lybeck Hartmann served as the OIA from its inception until March 28, 2003. Sharon Oxborough has served as the Independent Administrator since then. To streamline this report, it does not include an exhibit listing all of the BRP's recommendations and their status. As those exhibits in prior reports showed, the OIA met all of the recommendations that pertain to it since its first operating year. A full copy of the BRP report is available from the OIA. A copy of the recommendations is available from the OIA website.

Timeline for Arbitrations Using Regular Procedures



II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2005

Once again, 2005 was a stable year. The OIA's record keeping and annual report were reviewed again, with successful results. The AOB also approved changes in the *Rules* which simplified the handout given to claimants who are not represented by attorneys and clarified that the state's Civil Procedure Section 998 applies in OIA arbitrations. The qualifications for neutral arbitrators were also changed.

A. The AOB Renews Ms. Oxborough's Contract

The AOB renewed its contract with Ms. Oxborough to act as the Independent Administrator for another three years, through March 29, 2009. The contract contains an option for renewal. In addition, the contract provides the AOB with a license to use the OIA's operating software program for administering arbitrations at the end of their relationship.

B. Independent Review of the OIA

In 2005, Michael Roll & Associates[9] reviewed OIA records and files. The "overall objectives were to identify control weaknesses, if any, that may exist in the operation and application processing of the OIA case management system and to test their compliance with the amended rules for Kaiser related arbitration cases, and such control procedures to provide an overall assessment of the control environment, information processing system and control procedures."[10] The review checked that information published in the sixth annual report was accurate and that the OIA had administered the arbitrations in a manner consistent with the *Rules*. The auditors reviewed a random selection of files open in 2004 and neutral arbitrator files. The review also checked the most important statistics published in the sixth annual report.[11] The review "did not identify any significant weaknesses in the OIA's management of arbitration cases, statistical reporting to the AOB, or data processing controls." Exhibit C.

The AOB and OIA have had several discussions about the results, and the AOB accepted the OIA's response to the review. The OIA has modified its procedures for closing cases and has changed how it stores its back up tapes. The AOB is continuing to explore further software changes based on the review. This is discussed more fully in Section X.

A copy of the entire review can be obtained by contacting the OIA at 213.637.9847 or oia@oia-kaiserarb.com. We will convey the request to the AOB.

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[9]Michael Roll & Associates is a firm of certified public accountants that includes accountants who performed the 2004 review.

[10]See letter attached as Exhibit C.

[11]The complete procedures are set out in Exhibit C, pages 82 - 86.

C. Changes in OIA Rules

The AOB amended two of the *Rules* in 2005. A redlined copy of the amended *Rules* are attached as Exhibit B. There were two different reasons for the amendments.

First, the AOB has had a continuing interest in making it easier for unrepresented claimants to navigate the system. The most direct method to address them is through the "*pro per* handout," which was written to answer frequently asked questions. The OIA sends this to all *pro pers* when it receives their demands for arbitration. The handout is also part of Rule 54. The AOB spent considerable time trying to simplify the handout. Some additional information was also added about party arbitrators.

Second, the AOB added Rule 26.c. This clarifies that California Code of Civil Procedure § 998[12] applies to OIA arbitrations.

D. Change in OIA Neutral Arbitrator Qualifications

The OIA qualifications, written in 1999, required that neutral arbitrators had not acted as an attorney or party arbitrator in a case involving Kaiser Permanente for the past five years. Since the time that the qualifications were written, California has promulgated the Ethics Standards for Neutral Arbitrators, strengthening the disclosure requirements. In addition, people's familiarity with, and confidence in, the OIA arbitration system has increased. Given this, the OIA felt it appropriate to shorten the time period to three years. The AOB agreed with this change.[13]

III. POOL OF NEUTRAL ARBITRATORS

A. Activity in 2005 and the Pool at the End of 2005

On December 31, 2005, there were 306 people in the OIA's pool of possible arbitrators. Of those, 119 were former judges, or 39%.

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

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[12]This section provides for the payment of certain costs if a party makes an offer of settlement which is not accepted and the party making the offer obtains a better result from an arbitration or litigation.

[13]The qualifications are attached as Exhibit D. Neutral arbitrators would, of course, disclose this information and the parties could either strike, rank low, or disqualify such neutral arbitrators if they wanted someone without such activity. Once a neutral arbitrator is a member of the OIA pool, he or she cannot participate in any partisan activity.

Number of Neutral Arbitrators by Region

Total Number of Arbitrators in the OIA Pool:	**306***
Southern California Total:	**172**
Northern California Total:	**118**
San Diego Total:	**59**

***The three regions total 349 because 40 arbitrators are in more than one panel; 31 in So. Cal & SD, 6 in No. Cal & So. Cal, and 3 in all three panels.**

On January 1, 2005, the OIA had 309 people in its pool of possible arbitrators. During the year, 45 people left the pool. Eighteen of the neutral arbitrators who were terminated left because they failed to update their applications, which is required every two years. Most of the 18 had served only a few times and not recently, and therefore did not believe it was worth their while to remain in the OIA pool.

To replace those who left, 35 people were added to the pool.[14] In addition, as of December 31, 2005, the OIA was waiting for final paper work from nine applicants. The OIA rejected 14 applicants in 2005 because they failed to meet the qualifications.[15]

The OIA advertised in the *California Bar Journal*, the State Bar's publication that is sent to all California attorneys, and the *Bar Bulletin*, which is sent to all members of the Fresno County Bar Association. In addition to the advertising, the OIA also contacted 82 local, minority, and women's bars to invite their members to apply to the OIA pool. Many said they passed the information on to their members. Finally, handouts soliciting neutral arbitrators were distributed at a Corporate Connections job networking conference held by the California Minority Counsel Program.[16]

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[14]The application can be obtained by calling the OIA or by downloading it from our website. If the application is accessed from the OIA website, it can also be filled in on-line rather than by hand or typewriter. This is something applicants have requested for many years.

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

[16]A copy of the handout is attached as Exhibit F.

B. Qualifications

As discussed above, the OIA changed the qualifications for neutral arbitrators in 2005. They are attached as Exhibit D and are available from the OIA website. This is the second time qualifications were changed since the system was created in 1999.

The qualifications are broad and designed to recruit an experienced, diverse, and unbiased panel. They include the following:

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

- 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 either for or against Kaiser within the last three years.[17]

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 require 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

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 59% of his or her time acting as a neutral arbitrator, less than 1% acting as a respondent's party arbitrator, or a claimant's party arbitrator, 15% as a respondent (or defense) attorney, 12% as a claimant (or plaintiff) attorney, less than 1% as an expert, and 12% 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 plaintiff work and defense work is very close.

There is, of course, no such "average" neutral arbitrator, in part because a very substantial percentage of the pool spends 100% of their practice acting as neutral arbitrators. More than 45% of the pool, 141 members, reported that they spend 100% of their time that way.[18] The remainder are distributed between 0% and 99%.

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[17] 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. Prior to the change, the wait was five years.

[18] This is not surprising as 119 members of the OIA pool are retired judges.

Percent of Practice Spent As a Neutral Arbitrator

Percent of Time	0%	1 - 25%	26 - 50%	51 - 75%	76 - 99%	100%
Number of NAs	**15**	**102**	**29**	**4**	**15**	**141**

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

Percent of Practice Spent As an Advocate

Percent of Practice	Number of NAs Reporting Claimant Counsel Experience	Number of NAs Reporting Respondent Counsel Experience
0%	**210**	**214**
1 - 25%	**36**	**23**
26 - 50%	**41**	**36**
51 - 75%	**9**	**14**
76 - 100%	**10**	**19**

Finally, while the qualifications do not require that members of the OIA pool have medical malpractice experience, almost 90% of them do. At the time they filled out their applications, 268 reported that they had such experience, while 38 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.[19]

D. How Many in the Pool of Arbitrators Have Served?[20]

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. Moreover, if the pool from which neutral arbitrators are drawn is small, some arbitrators could become dependent on the defense for their livelihood. A large pool of people

[19]Of the 38 who reported no medical malpractice experience in their applications, all but 6 of them have served as a neutral arbitrator in an OIA case. (One neutral arbitrator has been selected 10 times.) Nineteen of these neutral arbitrators have decided at least 1, and as many as 3 cases. While some of these could have been decided on purely procedural grounds, it is likely that the report of medical malpractice experience is outdated. The OIA asked neutral arbitrators to update this information when they updated their applications in 2005.

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

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. Thus, the size of the OIA pool from which the OIA randomly compiles the Lists of Possible Arbitrators (LPA) and the ability for parties to jointly select persons outside the pool are the two main factors which allow us to meet these objectives.

1. The Number Who Have Served in 2005

In 2005, 210 different neutral arbitrators were selected to serve as neutral arbitrators in 757 OIA cases. One-hundred-eighty (180) of these were members of the OIA pool. Thus, in 2005, 59% of the OIA pool were selected to serve in a case. The range in number of times parties selected a neutral in the OIA pool in 2005 is 0 to 24. The neutral arbitrator at the highest end was jointly selected nine times. The average number of appointments for members of the pool in 2005 is 2, the median is 1, and the mode is 0.

2. The Number Who Wrote Awards in 2005

The number of neutral arbitrators deciding awards after hearing is similarly diverse. The 127 awards made in 2005 were decided by 88 different neutral arbitrators. Sixty-four of the arbitrators made a single award, while sixteen decided two. Three other neutral arbitrators decided three cases each, three decided four cases, and two decided five cases. Only one of these eight neutral arbitrators made awards only for one side.[21]

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

Critics have claimed that Kaiser will not allow neutral arbitrators who made large awards to be chosen in subsequent arbitrations, but will either strike them from the LPA or disqualify them. Last year's report discussed that there were 33 awards for $500,000 or more from 1999 through 2004. These awards were made by 28 different neutral arbitrators. As the OIA reported last year, sixteen of the 28 neutral arbitrators had been selected to serve as a neutral arbitrator on subsequent cases.

Nineteen of these 28 neutral arbitrators were members of the pool in 2005. All but three of the 19 neutral arbitrators served as neutral arbitrators in 2005. One person was selected 20 times; 16 by joint selection. The three neutral arbitrators who have not served made their $500,000 in 2004 and have not served since doing so.

In 2005, five neutral arbitrators made a total of six awards for more than $500,000. One of them had also made such an award before 2005 and is included in the group of 28 neutral arbitrators.

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[21] As described later in Section V.A., this information would be included in the packet sent to the parties, including redacted copies of awards, when they are asked to select their neutral arbitrators.

All were members of the pool when they made their awards, but one subsequently died and another resigned. Those who remain have all served after making their award.

4. The Number Named on a List of Possible Arbitrators in 2005

Almost all of the neutral arbitrators in the OIA pool have been named at least once on an LPA sent to the parties by the OIA in 2005. The average number of Northern California arbitrators appearing on an LPA is 42, the median number is 46, and the mode is 44. The range of appearances is from 0 to 72 times.[22] In Southern California, the average number of appearances is 23, the median is 23, and the mode is 23. The range is from 1 to 40. In San Diego, the range of appearances is from 0 to 21. The average is 9, the median is 11, and the mode is 11. Eight members of the pool, who joined between October 11 and December 20, 2005, have not been named on an LPA.

E. "One Case Neutral Arbitrators"

Standard 12 of California's Ethics Standards for Neutral Arbitrators requires that neutral arbitrators disclose whether they will accept additional work from the parties or attorneys in the case while the case remains open. If a neutral arbitrator fails to disclose that he or she will accept such work, that neutral arbitrator is barred from doing so until the case closes or the neutral arbitrator resigns from it. Moreover, this particular disclosure must be made timely – a late disclosure is the same as no disclosure. A neutral arbitrator may also inform the parties that he or she will not accept any future work from the parties or attorneys while the present case remains open and some do. Neutral arbitrators who either fail to serve timely Standard 12 disclosures or who state that they will not accept such future while the case is open are considered "one case neutral arbitrators."[23]

The OIA tracks Standard 12 disclosures and removes "one case neutral arbitrators" from the pool while their cases are open. During 2005, 13 neutral arbitrators were "one case neutral arbitrators" for part of the year. At the end of 2005, seven remained "one case neutral arbitrators."

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[22] In addition to chance, the range is affected by how long a given arbitrator has been in the pool, the number of members in each panel, and the number of demands for arbitration submitted in a geographical area. Some have been here since we started, one joined December 20, 2005, a few days before the end date for this report. The number of times an arbitrator is selected also depends on whether the individual will hear cases where the claimant has no attorney (*pro per* cases). Almost 20% of the pool will not.

[23] Because we consider this to be a very important disclosure, we have prepared a sample Standard 12 disclosure form that neutral arbitrators can use. It is also available from our website, and we send it to anyone who requests it. See Exhibit G.

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 840 demands for arbitration in 2005. Geographically, 417 demands for arbitration came from Northern California, 358 came from Southern California, and 65 came from San Diego.[24]

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.[25] We then discuss the composition of the cases we administer, based on the claims made 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.[26] In 2005, the average length of time that Kaiser has taken to submit demands to the OIA is 3.6 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 three days. The range is 0 to 91 days.

There were 14 cases in 2005 in which Kaiser took more than ten days to submit the demand to the OIA. If only these "late" cases are considered, the average is 29 days, the median is 17 and the mode is 12 days. Ten of these cases were brought in Southern California or San Diego.

The 2004 review focused attention upon these cases. Immediately thereafter, the number of cases began to decline. As last year's report predicted, the number of "late" cases dropped overwhelmingly from 2004, when there were 115 such cases.

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

[25]The demands are initially treated differently depending on whether they are mandatory or opt ins. **Mandatory cases** are those which arose under contracts dated or amended after December 31, 2000, when all Kaiser arbitration clauses were changed to require the use of the OIA. A few contracts had been amended before this date. 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 have Kaiser administer 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 for administration if he or she does not opt in.

[26]Exhibit B, Rule 11.

B. Mandatory Cases

All Kaiser disputes with its members arising from events that occur after December 31, 2000 are subject to administration by the OIA. Of the 840 demands for arbitration the OIA received in 2005, 811 were mandatory and 29 were opt in. At the end of 2005, 98% of the open cases were mandatory and 2% were opt in.

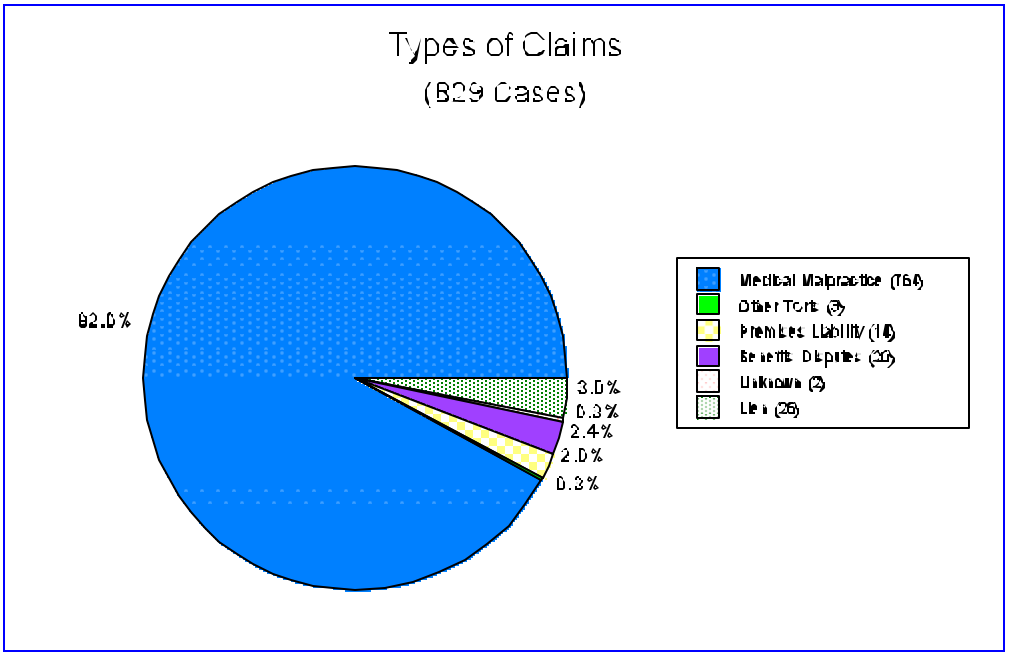
C. Opt In Cases

Of the 29 opt in demands the OIA received in 2005, 18 claimants decided to have the OIA administer their claims. Only two affirmatively opted out of the OIA. In one instance, the deadline had not occurred by the end of the year. The remaining eight were returned to Kaiser because the claimants did not affirmatively opt in to the OIA.

D. Types of Claims

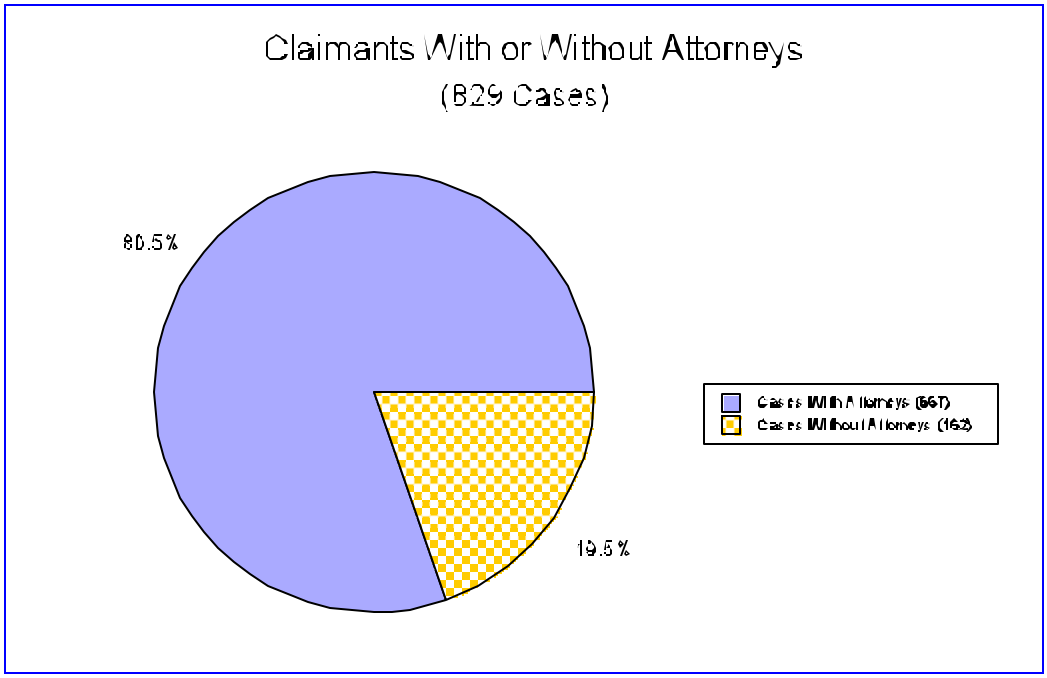
In 2005, the OIA administered 829 cases. The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage cases. In addition, cases are categorized as unknown when the demand for arbitration does not describe the claim. Medical malpractice cases were the most common, making up 92% (764 cases) in the OIA system. Benefits and coverage cases represent 2.4% of the system (20 cases).

The chart below shows the types of claims the OIA administered during 2005.



E. Claimants With and Without Attorneys

Claimants were represented by counsel in 80.5% of the cases the OIA administered in 2005 (667 of 829). In the remaining 19.5% of cases, the claimants represented themselves (or acted in *pro per*).



V. SELECTION OF NEUTRAL ARBITRATORS

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: 1) the manner in which the parties selected the neutral arbitrator – jointly agreeing or based upon their separate responses to the LPA; 2) the cases in which the parties - almost always the claimant - decided to delay the selection of the neutral; 3) the cases in which the parties - again, usually the claimant – disqualified a neutral arbitrator; and 4) the amount of time it took the parties to select the neutral arbitrator. Finally, the report examines cases in which parties have selected party arbitrators.

A. How Neutral Arbitrators Are Selected

The process for selecting the neutral arbitrator begins after a demand has entered the OIA system[27] and a claimant has either paid the $150 arbitration fee or received a waiver of that fee. The OIA sends both parties in the case an LPA. This LPA contains the names of 12 members of the appropriate panel from the OIA pool of neutral arbitrators.[28] The names are generated randomly by computer.

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

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

2) subsequent updates.

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

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

2) redacted copies of any awards the neutral has prepared.

The parties have 20 days to respond to the LPA.[29] Parties can respond in one of two ways. First, both sides can jointly decide on the person they wish to be the neutral arbitrator. Such a neutral arbitrator does not have to be one of the names included in the LPA, be in the OIA pool, or meet the OIA qualifications.[30] Provided the person agrees to follow the OIA *Rules*, the parties can jointly select anyone they want to serve as neutral arbitrator.

On the other hand, if the parties do not jointly select a neutral arbitrator, each side submits a response to the LPA, striking up to four names and ranking the rest, with "1" as the top

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[27]"Entered the OIA system" means that the case is mandatory or the claimant has opted-in. This office can take no action in a non-mandatory case before a claimant has opted in except to return it to Kaiser for arbitration.

[28]The OIA has two versions of each of the three geographically based panels based on whether the neutral arbitrators will accept *pro per* cases.

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

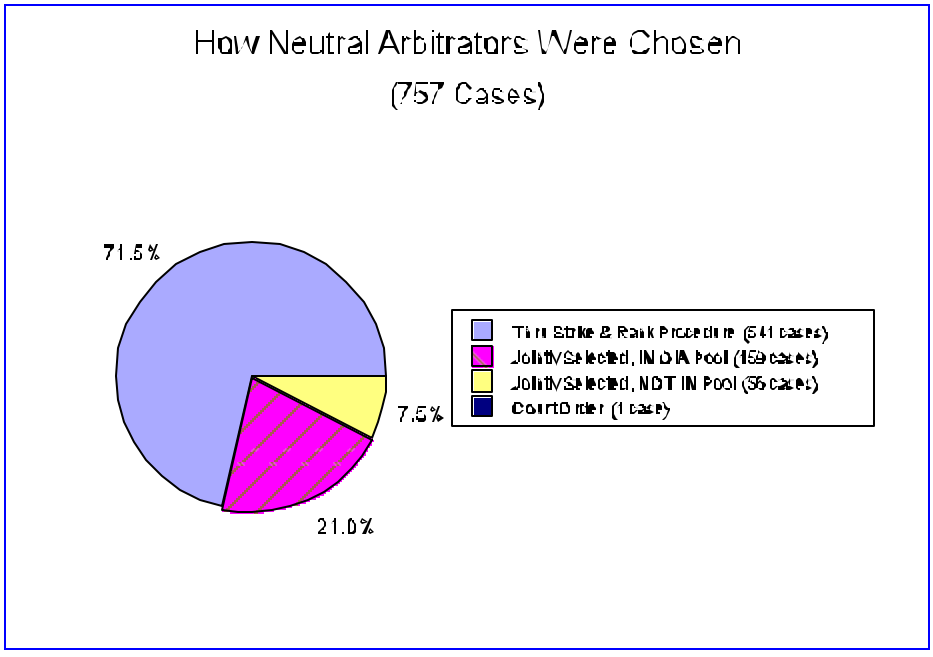
[30]Some neutral arbitrators who do not meet our qualifications – for example, they might have served as a party arbitrator in the past three years for either side in a Kaiser arbitration – do serve as jointly selected neutral arbitrators. There is, however, one exception: If a neutral arbitrator is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

choice. When the OIA receives the LPAs, the OIA eliminates 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. This is called the "strike and rank" procedure.

A significant number of OIA administered cases close before a neutral arbitrator is selected, and even before that process is begun. In 2005, 74 cases either settled (33) or were withdrawn (41) without a neutral arbitrator in place.[31] Before a neutral has been selected, the parties can request a postponement of the LPA deadline under Rule 21. In addition, after the neutral arbitrator is selected, but before he or she actually begins to serve, California law allows either party to disqualify the neutral arbitrator.

B. Joint Selections vs. Strike and Rank Selections

Of the 757 neutral arbitrators selected in 2005, 215 were jointly selected by the parties (28.5%) and 541 (71.5%) 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, 159, or 74%, were members of the OIA pool, though not necessarily on the LPA sent to the parties. In 56 cases, the parties selected a neutral arbitrator who was not a member of the pool.



[31] These 74 cases included both cases with attorneys and cases where the claimant was in *pro per*. The disposition varied however. In the 21 *pro per* cases that closed without a neutral arbitrator selected, 3 settled and 18 were withdrawn. In the 53 cases with an attorney, 30 settled and 23 were withdrawn.

C. Cases with Postponements of Time to Select Neutral Arbitrators

Under Rule 21, a claimant has a unilateral right to a 90 day postponement of the deadline to respond to the LPA. If a claimant has not requested one, the respondent may request such a postponement, but only if the claimant agrees in writing. The parties can request only one postponement in a case – they cannot, for example, get a 40 day postponement at one point and 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[32] – though it may be longer if based on the claimant's medical condition or a related case that is being tried in court.

Claimants do not have to give a reason for why they want a 90 day postponement under Rule 21, though there must be a reason for a Rule 28 extension. The reasons for a Rule 28 extension are often the same as claimants volunteer for why they use Rule 21. In some cases, the parties are seeking to settle the case or to select a neutral arbitrator jointly. Some claimants or attorneys want a little more time to evaluate the case before incurring the expense of a neutral arbitrator. As noted above, parties in 74 cases either settled or withdrew them before a neutral arbitrator was put in place. Some claimants who do not have an attorney want time to find one. Occasionally the OIA has discovered at the deadline that an attorney no longer represents a claimant. There are also some unrepresented claimants who 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.

There were 414 cases in 2005 where the parties requested either a Rule 21 postponement or a Rule 28 extension of the time to return their responses to the LPA, or requested both. Most of these – 404 – were Rule 21 postponements. Claimants made the request in 403 cases. Respondents did so only in one case. Requests for a Rule 28 postponements were made in 23 cases. In only one of these cases had there not been a prior request under Rule 21.[33]

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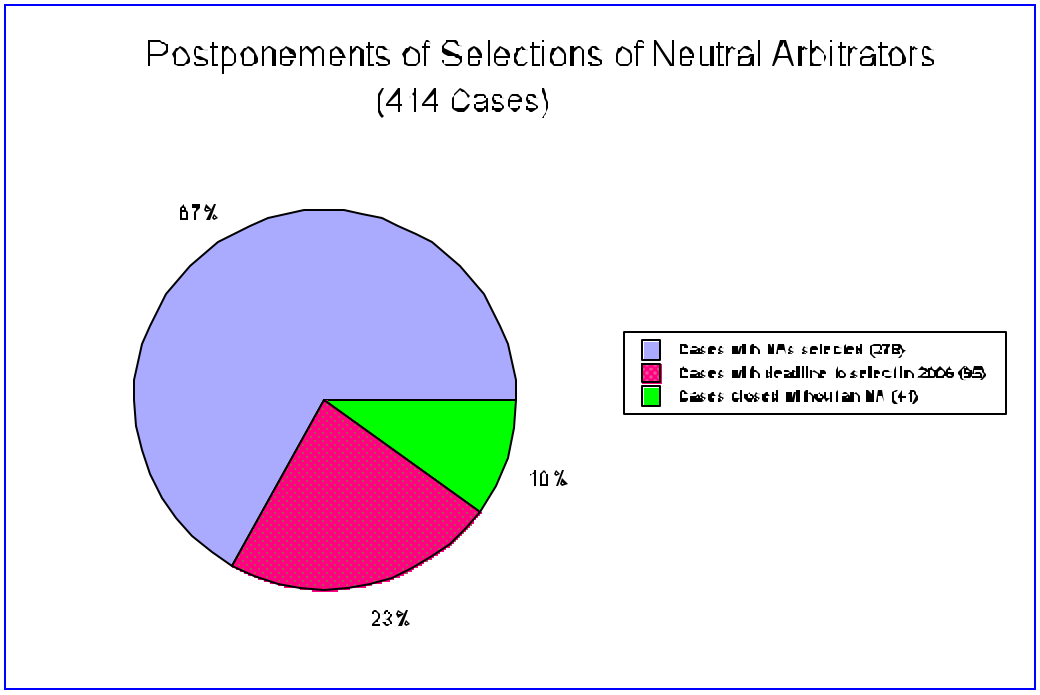
[32]The extension allows the claimant to send in a written notice of settlement or withdrawal without a neutral arbitrator being selected and sending out disclosure forms, reducing expenses generally.

[33]The numbers do not total because in most of the cases where a Rule 28 extension was requested, the Rule 21 postponement had been made in 2004.

The following chart shows what has happened in those 414 cases. Two-hundred-seventy-eight (278) of them (67%) now have a neutral arbitrator in place. Forty-one of them closed before a neutral arbitrator was ever selected. For the remaining 95 cases, the deadline to select a neutral arbitrator is after December 31, 2005.



D. Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators at the start of a case.[34] Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.[35] After they make these disclosures, the parties have 15 days to serve a disqualification on the neutral arbitrator. Additionally, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can disqualify neutral arbitrators in a given case.[36]

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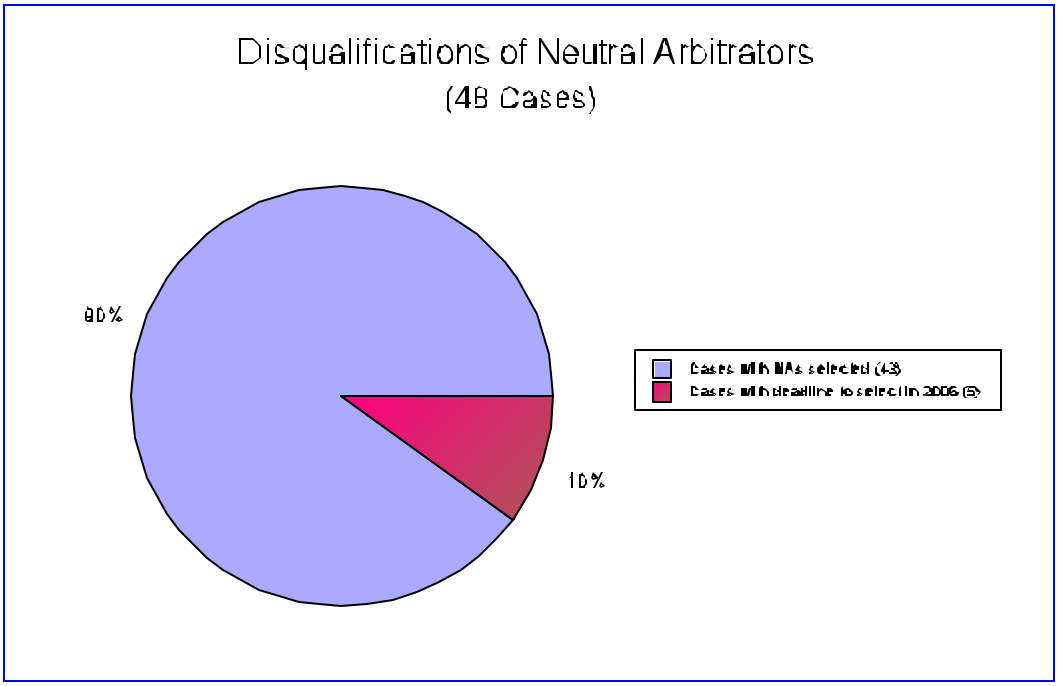
[34]California Code of Civil Procedure § 1281.91 and Exhibit B, Rule 20.

[35]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.

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

Multiple disqualifications occur infrequently. In 2005, neutral arbitrators were disqualified in 48 cases. Thirty-seven cases had a single disqualification. Six cases had two disqualifications, one case had three, one case had four disqualifications, and three cases had five disqualifications.[37] In 43 cases with a disqualification, a neutral arbitrator had been selected at the end of 2005. In five cases with a disqualification, the time for the neutral arbitration selection had not expired by the end of the year.

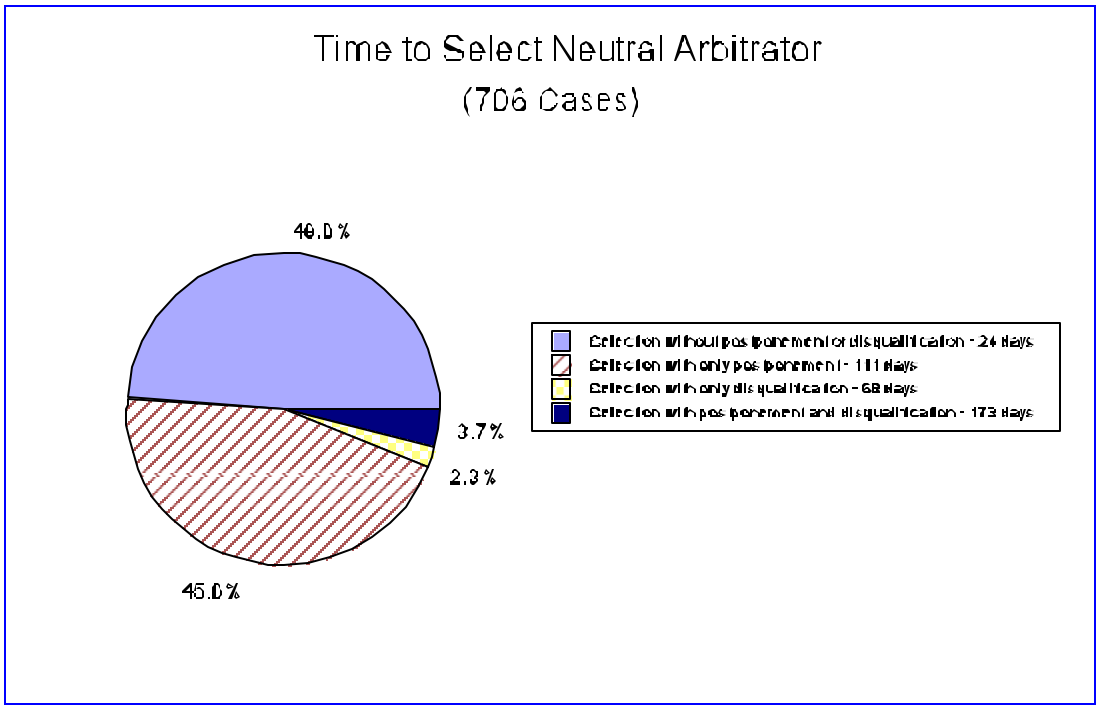
Because of multiple disqualifications, these 48 cases represent 71 neutral arbitrators who were disqualified in 2005. The neutrals were disqualified by the claimants' side 64 times, and by the respondents' side 7 times.



[37] In cases with multiple disqualifications, one of the parties may petition the California Superior Court to select a neutral arbitrator. If the court grants the petition, a party is only permitted to disqualify one neutral arbitrator without cause; subsequent disqualifications must be based on cause. California Code of Civil Procedure §1281.9.

E. Length of Time Taken to Select a Neutral Arbitrator

This section considers the 706 cases in which a neutral arbitrator was selected in 2005.[38] Because parties can postpone the deadline and disqualify a neutral arbitrator, the report divides the selections into four categories when discussing the length of time to select a neutral arbitrator. The first is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was extended, generally because the claimant 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 706 cases. The four categories are displayed in the chart below.



[38] Fifty-one cases in which a neutral arbitrator was selected in 2005 are not included in this one section. In 46 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. These include cases where a neutral arbitrator died or became seriously ill, was made a judge, moved, etc. In addition, four neutral arbitrators were disqualified after making disclosures in the middle of cases, because of some event occurring after the initial disclosure. In one case, the claimant sought and obtained an eighteen month extension of the time to select a neutral arbitrator so he could complete his medical treatment without any additional and possibly dangerous stress. Because we count time from the first day that the case entered the OIA system, those cases are not included in these computations of length of time to select a neutral arbitrator.

1. Cases with No Delays

There were 346 cases where a neutral arbitrator was selected in 2005 in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator in those cases is 24 days, the mode is 22 days, the median is 23 days, and the range is 3-46 days.[39] Even though it no longer represents a majority, at 49% , this category is still the most common manner in which the parties selected a neutral arbitrator in 2005.

2. Cases with Postponements

There were 318 cases where a neutral arbitrator was selected in 2005 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 2004, but the neutral arbitrator was actually selected in 2005. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in those cases is 111 days, the mode is 113 days, the median is 114 days, and the range is 29-232 days.[40] This category represents 45% of all cases which selected a neutral arbitrator in 2005.

3. Cases with Disqualifications

There were 16 cases where a neutral arbitrator was selected in 2005 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 2004. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96, if there is only one disqualification.[41] The average number of days to select a neutral

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[39] In the case that took 46 days to select a neutral arbitrator, the claimant attorney informed an OIA staff member that he had not received the LPA packet when he was called about the due date. The packet was resent and 20 additional days given because the first address was incorrect.

[40] In the case that took 232 days to select a neutral arbitrator, the member's attorney received both a 90 day postponement and a subsequent postponement of the date to select the neutral arbitrator. It was used to resolve a dispute whether the OIA had jurisdiction over a lien claim, which the member's attorney claimed as preempted by a federal statute called ERISA. A neutral arbitrator was selected in December. At the February 2006 arbitration management conference, a June hearing date was set.

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

arbitrator in the 16 cases is 68 days, the median is 65 days, the range is 32-124 days,[42] and the mode is 57 days. Disqualification only cases represent 2.3% of all cases which selected a neutral arbitrator in 2005.

4. Cases with Postponements and Disqualifications

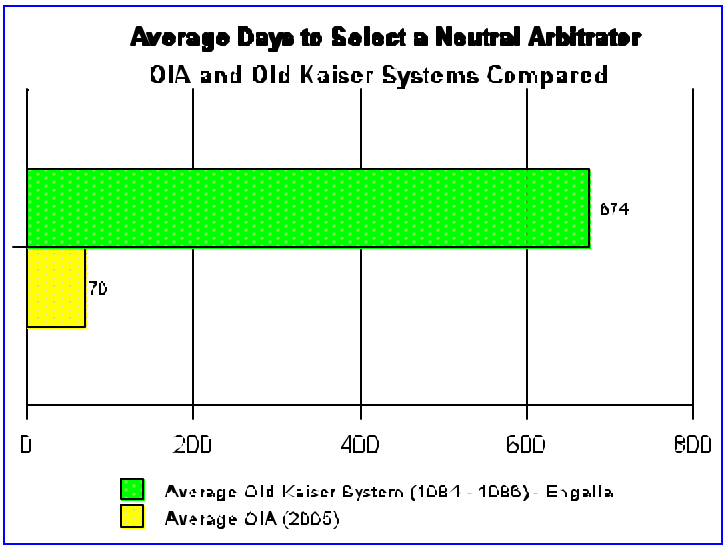
There were 26 cases where a neutral arbitrator was selected in 2005 after a postponement and the disqualification of a neutral arbitrator. Again, this includes cases where the postponement or disqualification was made in 2004. Under the *Rules*, the maximum number of days to select a neutral arbitrator 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 173 days, the mode is 154 days, the median is 154 days, and the range is 126-380 days.[43] These cases represent 3.7% of all cases which selected a neutral arbitrator in 2005.

[42]The case that took 124 days to select a neutral arbitrator was also a lien case. The OIA sent an LPA to the address for the member's attorney that was listed on the proof of service. It was returned, so the OIA gave the claimant additional time and mailed the list to her. After a first neutral arbitrator was selected, the member's attorney made an appearance, resulting in additional disclosures by the neutral arbitrator. The member's attorney then disqualified the neutral arbitrator. A second neutral arbitrator was selected, an AMC was held, and the hearing is scheduled for early 2006.

[43]In the case which that took 380 days to select a neutral arbitrator, the claimant disqualified five neutral arbitrators in 2004 after obtaining a 90 day postponement. The respondent attorney then requested a stay under Rule 28 so he could file an action to have the court appoint a neutral arbitrator. At the February 2005 hearing, the court selected a neutral arbitrator who is a member of the OIA pool. The case was closed in August 2005.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases in 2005 is 70 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*[44] that the old Kaiser system averaged 674 days to select a neutral arbitrator over a period of two years in the 1980's. Thus, in 2005, the OIA system was almost 10 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.[45] The parties may waive this right. The Blue Ribbon Panel (BRP) that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with two more participants in the arbitration process. The BRP therefore suggested that the system create incentives for cases to proceed with one neutral arbitrator, by having Kaiser pay the neutral arbitrators' fees if the arbitration proceeds with a single neutral arbitrator.

Rules 14 and 15 provide such an incentive. Kaiser pays the full cost of the neutral arbitrator if the claimant waives the statutory right to a party arbitrator, as well as any court challenge to the arbitrator on the basis that Kaiser paid him/her. If both Kaiser and the claimant

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[44] 15 Cal. 4th 951, 64 Cal. Rptr. 2d 843, 938 P.2d 903. The California Supreme Court's criticism of the then self-administered Kaiser arbitration system lead to the creation of the BRP.

[45] California Health & Safety Code §1373.19.

waive party arbitrators, the case proceeds with a single neutral arbitrator. Thus far, in all the cases where claimant has waived, Kaiser has also waived.

Few party arbitrators are being used in our system. In 2005, party arbitrators signed the award in only 10 of the 127 cases in which the OIA received an award. The remaining 117 cases were decided by a single arbitrator. These 10 cases closed in an average of 560 days, with a range from 282 to 999 days.[46] Three of the ten cases found for the claimant, awarding from $250,525 to $582,692.

Of the 805 cases that remained open at the end of 2005, party arbitrators had been designated in 23 of them. In 16 of those, the OIA had designations from both parties.

VI. MAINTAINING THE CASE TIMETABLE

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

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

In addition, through its software, the OIA tracks whether the key events set out in the *Rules* – service of the arbitrator's disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – occur on time. If arbitrators fail to notify us that a key event has taken place by its deadline, the OIA contacts them by phone, letter, or e-mail and asks for confirmation that it has occurred. In most cases, it has and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In some cases, the OIA sends a second letter and/or makes a phone call asking for confirmation. The second letter and/or phone call warns arbitrators that, if they do not provide confirmation that the event took place, the OIA will remove their names from the OIA panel until confirmation is received.

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[46]Cases with party arbitrators take longer to have the arbitration hearing. The average for all cases is 470 days, versus 560 for cases with party arbitrators. They are also more likely to use either the complex designation or a Rule 28 extension to continue the 18 month deadline. (See generally Section VII.B)

In a few cases, neutral arbitrators have not responded to a second communication. In those cases, the OIA removes the neutral arbitrators' names from the OIA panel until they take the necessary action. As detailed in the following sections, 10 different neutral arbitrators were suspended 16 times in 13 cases in 2005. Three neutral arbitrators were still suspended at the end of the year.

A. Neutral Arbitrator's Disclosure Statement

As discussed, once neutral arbitrators have been selected, they must make written disclosures to the parties within ten days. The *Rules* require neutral arbitrators to serve the OIA with a copy of these disclosures. The OIA monitors all cases to ensure that timely disclosures are made. In 2005, no neutral arbitrator was suspended for this reason.

B. Arbitration Management Conference

The *Rules* require the neutral arbitrator to hold an arbitration management conference (AMC) within 60 days of his or her selection.[47] It was the feature of the OIA system that neutral arbitrators rated most highly in their questionnaire responses. (See Section IX.B.)

The neutral returns the AMC form to the OIA within five days after the conference. The schedule set forth on the form controls dates for the rest of the case. It also 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. Only three neutrals were suspended for failing to return an AMC form in 2005. One remained suspended at the end of 2005, but has since complied

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[47]Exhibit B, Rule 25.

C. Mandatory Settlement Meeting

The *Rules* instruct the parties to hold a mandatory settlement meeting (MSM) within six months of the AMC.[48] The *Rules* state that the neutral arbitrator is not present at this meeting.[49] The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. The OIA received notice from the parties in 377 cases that they have held an MSM. Twenty-four of them reported that the case had settled at the MSM. One of these cases involved a *pro per* claimant. On the other hand, in 118 cases neither party returned the MSM form to the OIA despite requests in 2005.

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 five neutral arbitrators for failing to set a hearing date, generally after one was cancelled, or setting a date that violated the *Rules*. One remains out of compliance. Seven neutrals were suspended for failing to serve their awards within the Rules' time limits. All were reinstated when the awards were served.

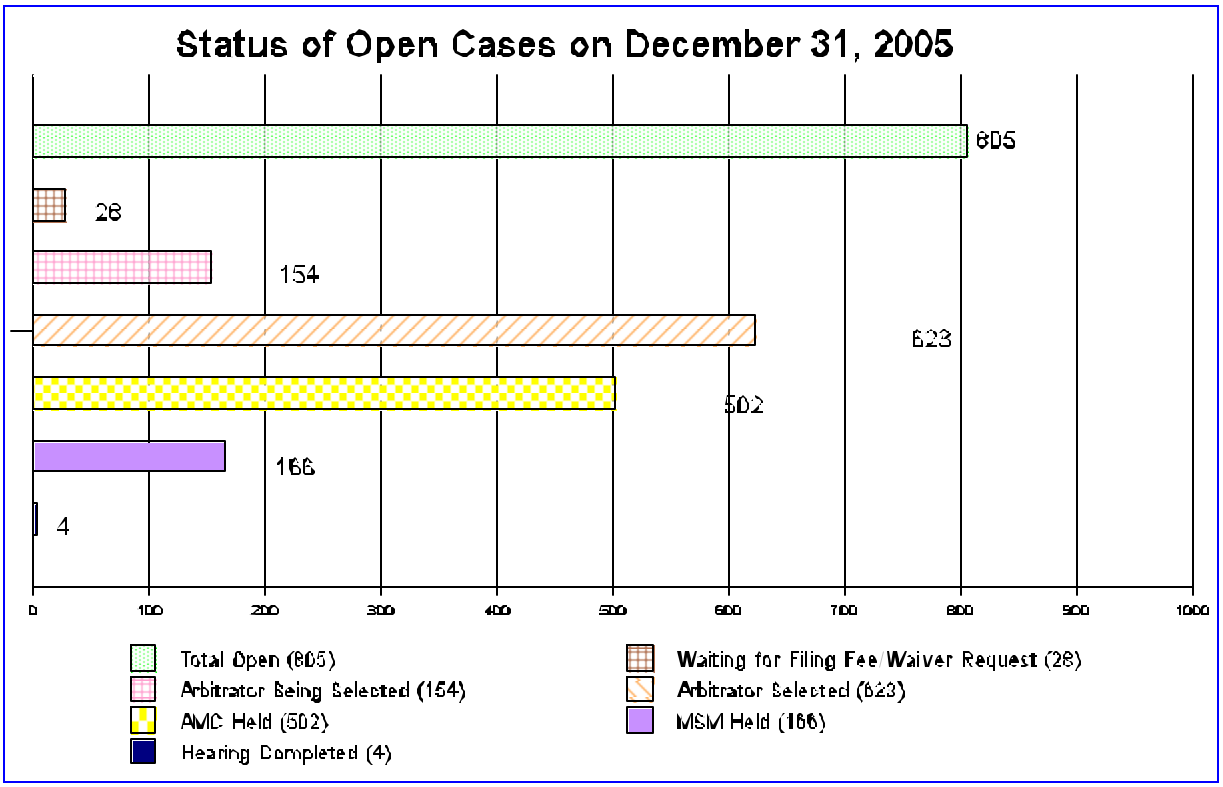
The OIA suspended one neutral arbitrator for failing to provide the fee and fee allocation information required by California Code of Civil Procedure § 1281.96. He was in compliance at the end of 2005.

[48] Exhibit B, Rule 26.

[49] 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.

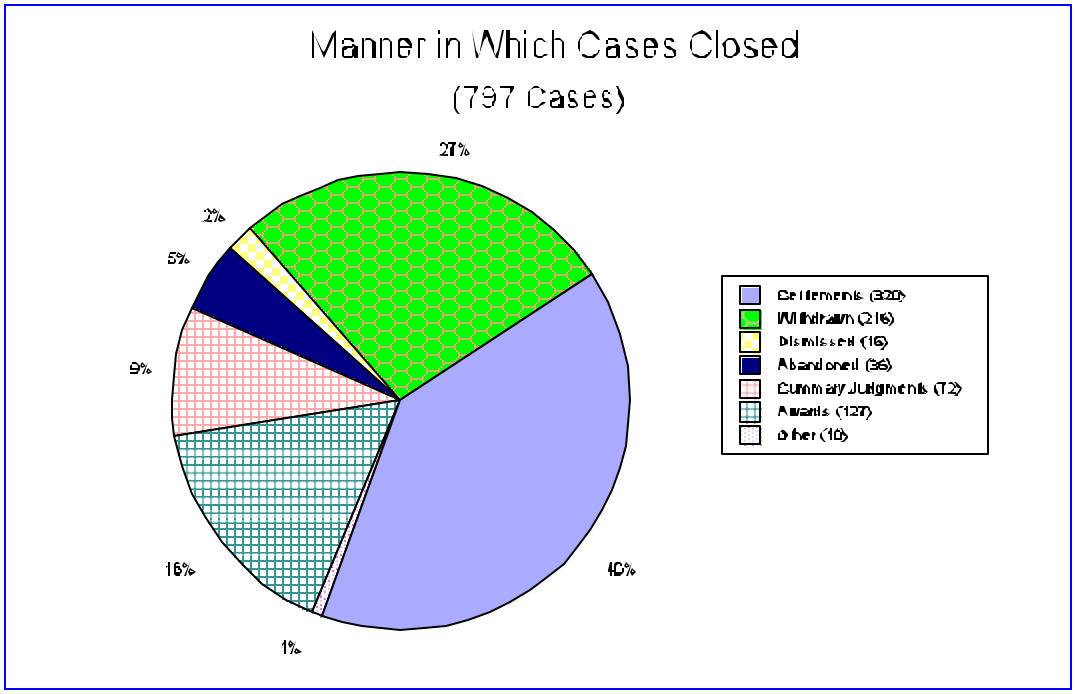
E. Status of Open Cases Administered by the OIA on December 31, 2005

As of December 31, 2005, there were 805 open cases in the OIA system. In 28 of these cases, the claimant had not yet sent in either the payment of the filing fee or the paperwork to waive it so the LPA could be sent. In 154 cases, the parties were in the process of selecting a neutral arbitrator. In 623 cases, a neutral arbitrator had been selected. Of these, an arbitration management conference had been held in 502. This is 62% of all open cases. In 166 cases, the parties had held the mandatory settlement meeting. In four cases, the hearing had been held but the OIA had not yet been served with the decision. The following graph illustrates the status of open cases.



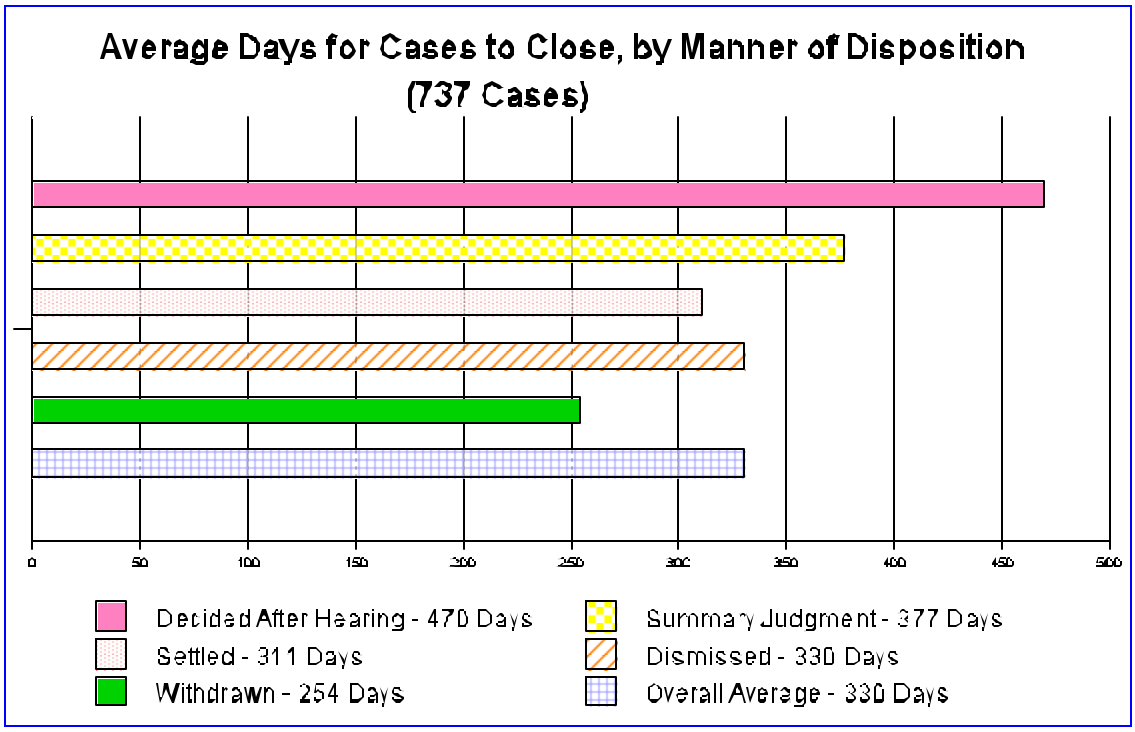
VII. THE CASES THAT CLOSED

In 2005, 797 cases in the OIA system closed. Cases close either because of action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of fees), or by action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). The first half of this section looks at each of these methods, how many closed, and how long it took. The discussion of cases that closed after a hearing also includes the results: who won and who lost. The following chart displays how cases closed, while the graph on page 28 shows the length of time to close, again by manner of closure.[50]



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

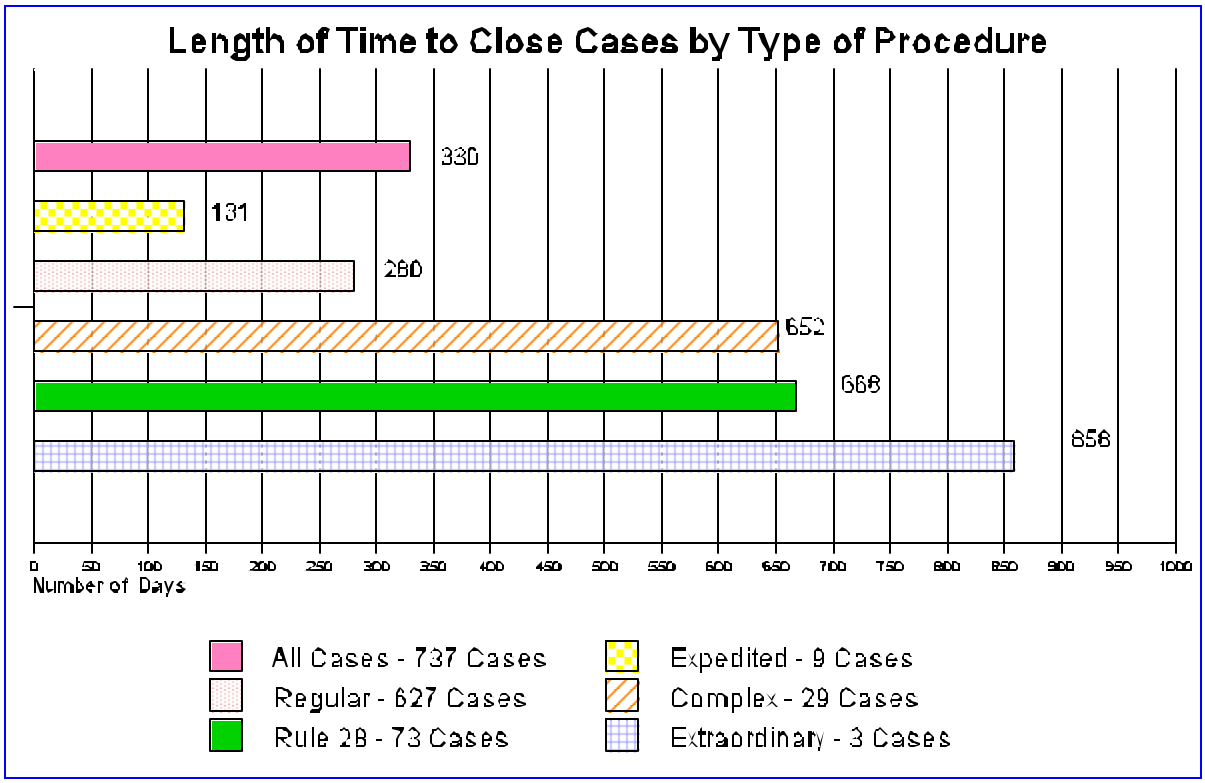
As shown on the chart below, cases closed on average in 330 days, or 11 months.[51] This includes all cases regardless of procedure: regular, expedited, complex, extraordinary, and cases whose deadlines were extended under Rule 28. The median is 311 days. The mode is 112 days. The range is 8 to 1,705 days. Only three cases closed late.



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

[51] As mentioned before, the OIA does not begin measuring the time until the fee is either paid or waived. Therefore, the next chart refers to 737 closed cases, not 797. It excludes 36 abandoned cases, 16 cases that were withdrawn or settled before the fee was paid, and 8 cases closed other ways.

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



A. How Cases Close

1. Settlements – 40% of Closures

During 2005, 320 of the 797 cases settled. This represents 40% of the cases closed during the year. The average time to settlement was 311 days, or about ten and a half months. The

median is 301, the mode is 330, and the range is 18 to 1,705 days.[52] In 11 settled cases (3%), the claimant is in *pro per*.

2. Withdrawn Cases – 27% of Closures

In 2005, the OIA received notice that 216 claimants had withdrawn their claims. In 52 (24%) of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons, but the OIA has only anecdotal information on this point. We categorize a case as withdrawn when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice from the parties. When we receive a "dismissal with prejudice," we call the parties to ask whether the case was "withdrawn," meaning voluntarily dismissed, or "settled" and enter the closure accordingly. About 27% of closed cases have been withdrawn.

The average time for a party to withdraw a claim in 2005 is 254 days. The median is 239 days. The mode is 112 days, and the range is 8 to 941 days.[53]

In absolute numbers, there were more *Pro per* claimants who withdrew their claims than the number who had their claims resolved any other way. But while it is the most common resolution for claims brought by a *pro per* claimant, most withdrawn claims do not involve *pro per* claimants. As noted above, in more than 75% of the withdrawn cases, the claimants were represented by an attorney. In addition, more than 25% of the 52 *pro per* cases that were withdrawn had originally been filed by an attorney. These cases were withdrawn by *pro per* claimants after their attorneys withdrew from the cases.

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[52]The case that took 1,705 days to settle began in 2000. Although the neutral arbitrator was jointly selected, the case was profoundly delayed when, 18 months after the case began, the claimant attorney asked the neutral arbitrator to recuse himself. (The recusal seems to have been prompted by the neutral arbitrator's request that the parties agree to a complex designation, which would have extended the time for the case to close.) After the neutral arbitrator refused, the claimant attorney went to state court to remove the neutral arbitrator, and then appealed and writted the decisions against the claimant attorney's position. This process took more than a year, during which time the neutral arbitrator stayed the hearing. A May 2004 hearing date was finally set, but the parties decided to mediate their claim. In September 2004, the OIA was informed orally that the claim had been settled, but a minor's compromise was needed. The first claimant attorney was also replaced by a second claimant attorney. Filing the minor's compromise was delayed because the original claimant attorney refused to produce the file to the new claimant attorney. After it was filed, it had to be amended because it lacked certain information. Ultimately, the minor's compromise was approved by the court and the claimant attorney informed the OIA in May 2005 in writing that the claim was settled.

[53]The case that took 941 days to be dismissed had been designated extraordinary because it involved a minor's injuries. After a 90 day postponement, the parties jointly selected a neutral arbitrator in late 2002. The neutral arbitrator set a hearing date for late 2004 and continued it to Spring 2005. In February 2005, however, the claimant attorney withdrew the case without prejudice for a waiver of costs.

3. Abandoned Cases – 5% of Closures

Claimants failed to either pay the filing fee or obtain a waiver in 36 cases.[54] These were therefore deemed abandoned. In 19 of the 36 cases (53%), the claimants 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 failed to pay or to apply for a waiver. We denied three applications for various forms of waivers in 2005, but these claimants paid the $150 fee and continued with their arbitrations.

4. Dismissed Cases - 2% of Closures

In 2005, neutral arbitrators dismissed 16 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Ten of these closed cases (62.5%) involved *pro pers.*

5. Summary Judgment – 9% of Closures

In 2005, 72 cases were decided by summary judgments granted to the respondent. In 49 of these cases (68%), the claimant was in *pro per*. Failing to have an expert witness (26 cases), failing to file an opposition (25 cases), exceeding the statute of limitations (9 cases), and no triable issue of fact (9 cases) were most common reasons given by the neutrals in their written decisions for the grant of summary judgment. The reasons parallel summary judgments granted in the courts.

The average number of days to closure of a case by summary judgment in 2005 is 377 days. The median is 364 days. The mode is 374. The range is 121 to 1,075 days.[55]

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[54]The arbitration filing fee is $150 regardless of how many claimants there may be in a single case. This is significantly lower than court filing fees except for small claims court. If a Kaiser member's claim is below the small claims ceiling amount of $7,500, the member is free to go there. Both the OIA and Kaiser inform these claimants of their right to go to small claims court.

[55]The case that took 1,075 days before summary judgment was granted was complicated by the facts that, after the neutral arbitrator was appointed but before the AMC was held, the claimant attorney wanted to be relieved from his position and the claimant needed a *guardian ad litem*. These representational issues had to be resolved before anything else could be done. It took a year for the *guardian ad litem* to be appointed, in part because the state court would not appoint one without an underlying state court action. After the *guardian ad litem* was appointed, the neutral arbitrator allowed the claimant attorney to leave. The motion for summary judgment was delayed for another six months to give the *guardian ad litem* time to try to find an attorney and by the neutral arbitrator's requirement that the respondent attorney address the question whether an expert was needed in the case. In light of these circumstances, the neutral arbitrator extended the deadline under Rule 28.

6. Cases Decided After Hearing – 16% of Closures

a. Who Won

About 16% of all cases closed in 2005 (127 of 797) proceeded through a full hearing to an award. Judgment was for Kaiser in 73 of these cases, or 57.5%. In eight of these cases, the claimant was in *pro per*. The claimant prevailed in 54 of them or 42.5%. In two of these cases (4%), the claimant was in *pro per*.

b. How Much Claimants Won

Fifty-four cases resulted in awards to claimants. One claimant was awarded more than $1.5 million. The range of relief is $1,000 to $1,538,000 million. The average amount of an award is $287,000. The median is $200,000. The mode is $100,000.

A list of all awards in chronological order is attached as Exhibit H. The awards for 2005 begin on page 104.

c. How Long It Took

The 127 total cases that proceeded to a hearing in 2005, on average, closed in 470 days. The median is 437 days. The mode is 294 days. The range is 105 to 1,208 days.[56]

B. Cases Using Special Procedures

1. Expedited Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expedition include a claimant's illness or condition raising substantial medical doubt of survival, a claimant's need for a drug or medical procedure, or other good cause.[57]

In 2005, nine claimants requested that their cases be resolved in less than the standard eighteen months. All but one received such status. The OIA received eight 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 all of them. Kaiser did not object to any of the requests. One request was made to a

[56]The case that took 1,208 days to close after a hearing began with a 90 day postponement of the deadline to select a neutral arbitrator by the claimant attorney. The neutral arbitrator was jointly selected. Extensions of the hearing dates were requested by the claimant attorney. While the neutral arbitrator eventually relied on Rule 28 to extend the 18 month deadline, the OIA suspended the neutral arbitrator several times during the case's pendency for failing to maintain its schedule.

[57]Exhibit B, Rules 33-36.

neutral arbitrator and it was denied. In an additional three cases, the state court ordered arbitration and set dates for its completion that imposed expedited status.

We had four open expedited cases on January 1, 2005. Nine expedited cases closed in 2005, including three of the cases that were open at the beginning of the year. All closed on time. Six of the cases settled, one case was withdrawn, one was closed by summary judgment, and one case went to hearing with an award for respondent. The average for the nine cases to close is 131 days (slightly more than 4 months), the median is 102 days, and the range is from 36 to 266 days. The 36 day case settled after a neutral arbitrator was selected. The 266 day case was brought by a *pro per* claimant and was closed by a summary judgment. Two expedited cases remained open at the end of 2005. Neutral arbitrators in four cases changed their status to either regular or complex as the circumstances of the cases themselves changed.

Although originally designed in part to decide benefit questions quickly, none of the expedited cases in 2005 involved benefit or coverage issues.

2. Complex Procedures

The *Rules* also include provisions for cases that need more time. In complex cases, the parties believe that they need 24 to 30 months.[58] In 2005, 43 cases were designated as complex. The designation does not have to occur at the beginning of a case. It may be made as the case proceeds and the parties get a better sense of what evidence they need. In addition to the 43 cases designated in 2005; at the beginning of 2005, there were 20 open cases designated as complex. Twenty-nine complex cases closed in 2005. The average length of time for complex matters to close in 2005 is 652 days, about 22 months. The median is 622 days. There is no mode. The range is from 443 to 999[59] days (about 33 months).

Considering the cases designated as complex in 2005, 7 cases were designated as complex because of medical issues; 6 had complex discovery; 21 were designated by order of the neutral; and 8 by stipulation of the parties. Complex medical issues include cases where multiple liability issues exist, or the nature or amount of damages is difficult to ascertain. Complex discovery includes cases involving large document productions, many depositions, or extensive travel to complete discovery.

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

[59] The case that took 999 days to close was designated complex because the claimant was still recovering and time was needed to assess the damages. The neutral arbitrator subsequently extended the 30 month deadline because another Kaiser arbitration, whose hearing was scheduled for 2 weeks, was taking 5 weeks, requiring this case's hearing to be rescheduled.

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.[60] Four cases were designated extraordinary in 2005. There were three extraordinary cases open at the beginning of 2005. Three cases closed this year, one settled, one was withdrawn, and the third was decided by an award in favor of the claimant. The average number of days for an extraordinary case to close is 858 days, or 28 months. The range is 645 to 989 days (33 months).

4. Rule 28 Extensions of Time to Close Cases

Rule 28 allows neutral arbitrators to extend the deadline for a case to close past the eighteen month deadline if there are "extraordinary circumstances" that warrant it.[61] In 2005, the neutral arbitrators made Rule 28 determinations of "extraordinary circumstances" in 98 cases and extended these cases beyond their limit. We reported 53 such cases open at the end of 2004.[62] Sixty remained open, and 73 closed and 2 were changed to extraordinary in 2005. The average time in 2005 to close cases with a Rule 28 order is 668 days, about 22 months. The median is 641 days. There mode is 508 days. The range is 316 to 1,208 days.[63]

According to the neutral arbitrator orders granting the extension, the respondent side requested 3 extensions, the claimant side requested 38, and the parties stipulated 18 times. The neutral arbitrator ordered it on his or her own 42 times. Extensions were ordered 28 times over the respondents' objections and once over the claimants' objection. Twenty-six orders noted that there was no objection. Thirty-two orders merely recited there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reason, the most common reason was unanticipated scheduling conflicts (25). Other reasons include discovery (13), procedural problems of some sort (adding a new party, cause of action or brief; appointing a guardian ad litem; etc.) (12), and the illness of a party or attorney (including the need for a claimant's condition to stabilize) (8). Seven orders mentioned multiple neutral arbitrators. Four orders referred to the withdrawal of the claimant attorney.

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

[61] Complex cases can also be the subject of a Rule 28 extension if it turns out the case requires more than 30 months to close. There were 19 such cases in 2005. They are also included in the discussion of prior complex cases. Four cases that closed in 2005 were both complex and the subject of a Rule 28 extension. They are included in both averages.

[62] For technical reasons, some cases received an extension in both 2004 and 2005. In addition, in two cases the OIA received notice in 2005 that cases closed in 2004. The numbers, therefore, do not add up.

[63] The case that closed in 1,208 days was settled and is discussed in fn. 56.

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.[64] In addition, state law provides that if the claim is for more than $200,000, the arbitration panel will consist of three arbitrators – a single neutral arbitrator and two party arbitrators, one selected by each side. Parties may waive their right to party arbitrators.

The OIA system provides mechanisms for a claimant to request a waiver of either the $150 arbitration filing fee and/or the claimant's portion of the neutral arbitrator's fees and expenses. These provisions are discussed below. When claimants ask for waiver information, they receive information about the types of waiver and the waiver forms. The claimants can thus choose which they want to submit.[65]

B. Mechanisms Claimants Have to Avoid These Fees

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

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

This waiver is available to individuals whose gross monthly income is less than three times the national poverty 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 was created in 2003.[66] 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.

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[64]California Code of Civil Procedure § 1284.2.

[65]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.

[66]California Code of Civil Procedure §1284.3; Exhibit B, Rule 12. A copy of this waiver form is at Exhibit I, page 107.

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

This type of fee waiver, which has existed since the OIA was created, 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.[67]

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

As discussed above, the *Rules* contain provisions to shift the cost to Kaiser for the full payment of neutral arbitrators' fees and expenses. The procedures are simple and voluntary. They rely entirely on the claimant's choice.[68] 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 arbitrator.[69] 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 2005, the OIA received 45 completed forms asking for the waiver of the $150 filing fee. The OIA granted 43 and denied 2.[70] Twenty-seven of these claimants received both a waiver of the $150 arbitration filing fee and the waiver of the filing fee and neutral arbitrator's fees and expenses. No claimant who received this waiver was denied the other. 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.

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[67] See Exhibit B, Rule 13. A copy of this waiver form is at Exhibit I, pages 108 - 114.

[68] See Exhibit B, Rules 14 and 15. The forms are contained in Exhibit I, pages 115 - 116.

[69] 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.

[70] Those two paid the $150 fee and proceeded with their cases.

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

In 2005, the OIA received 44 completed fee waiver applications. The OIA granted 42 waivers of the arbitration fees and neutral arbitration fees and denied 1.[71] One request for waiver of the fees and neutral fees remained at the end of the year. Kaiser objected to two, one of which was denied and one of which was granted.

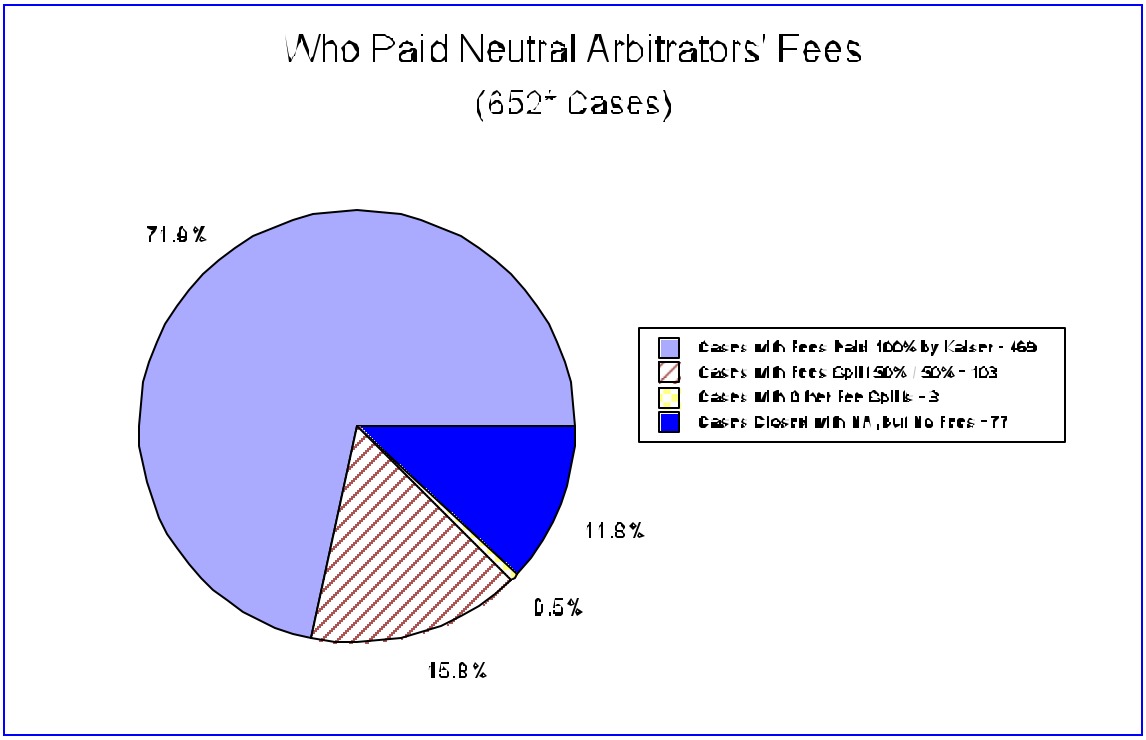
3. The Neutral Arbitrators' Fees and Expenses

Arbitration providers such as the OIA are now required to disclose neutral arbitrators' fees and fee allocation for closed cases that they received after January 1, 2003.[72] We received fee information from neutral arbitrators in 653 cases that closed in 2005.

Of these 653 cases, 77 reported no fees were charged. Four-hundred seventy (72%) reported that fees were allocated 100% to Kaiser. The claimant paid nothing in these cases. One-hundred three reported that the fees were split 50/50. Three neutrals reported other allocations, which ranged between 66 and 96 percent to Kaiser. Claimants who are not represented by counsel seem to be more likely to have Kaiser pay 100% of the neutral arbitrators' fees than claimants represented by attorneys. (93.5% vs. 61%.) Of the 576 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 81% of the cases. As shown in the chart on the next page, claimants paid neutral fees in only 16.3% of cases that closed in 2005.

[71]The claimant was represented by counsel. After the request was denied, the claimant paid the fee and has proceeded with the case.

[72]California Code of Civil Procedure §1281.9.



D. The Fees Charged by Neutral Arbitrators

Members of the OIA pool set their own fees. They are allowed to raise their fees once a year, but the increases do not affect cases on which they have begun to serve. The fees range from $100/hour to $600/hour. The average hourly fee is $330, the median is $350, and the mode is $350.[73] Neutral Arbitrators also often offer a daily fee. This ranges from $600/day to $6,000/day. The average daily fee is $2,571, the median is $2,400, and the mode is $2,000.[74]

Looking at the 576 cases, the average neutral arbitrator's fee for all the cases in which fees were charged is $5,088. The median is $1,675 and the mode is $500. That excludes the 77 cases in which there are no fees. The average for all cases, including those with no fees, is $4,488.

The prior fees include many cases where the neutral arbitrator performed very little work. If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee is $14,436, the median is $11,610, and the mode is $8,000. The range is $1,180 to $59,062.50.

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[73] 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.

[74] In addition to daily and hourly fees, neutral arbitrators may also impose deposits.

IX. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

At the end of a case where a neutral arbitrator has been selected, the OIA sends forms to its parties or attorneys to allow them to evaluate the neutral arbitrator. We also send a different form to the neutral arbitrator to ask his or her opinions about the OIA system, suggestions for improvement, and comparison between the OIA and the court system. This section discusses the highlights of the responses we received in 2005 from the parties and the neutrals. The complete statistics and copies of the forms are set out in Exhibits J and K, 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 how the case closed.

During 2005, the OIA sent out 1,012 evaluations and received 280 responses in return. One-hundred-eight identified themselves as claimants (17) or claimants' counsel (91), and 168 identified themselves as respondent's counsel. Four did not specify a side.[75]

The responses have been quite positive overall, and they are encouragingly similar for both claimants and respondents. In 2005, the mode and median for <u>all</u> of the following questions and all types of evaluators was 5. That means that the most common answer to all the questions from all classes was the most favorable response possible.

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

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

The average of all responses is 4.8 out of a possible maximum of 5. Claimants counsel average 4.6. *Pro pers* average 4.2. Respondents counsel average 4.9. The median and the mode in all three groups is 5.

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

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

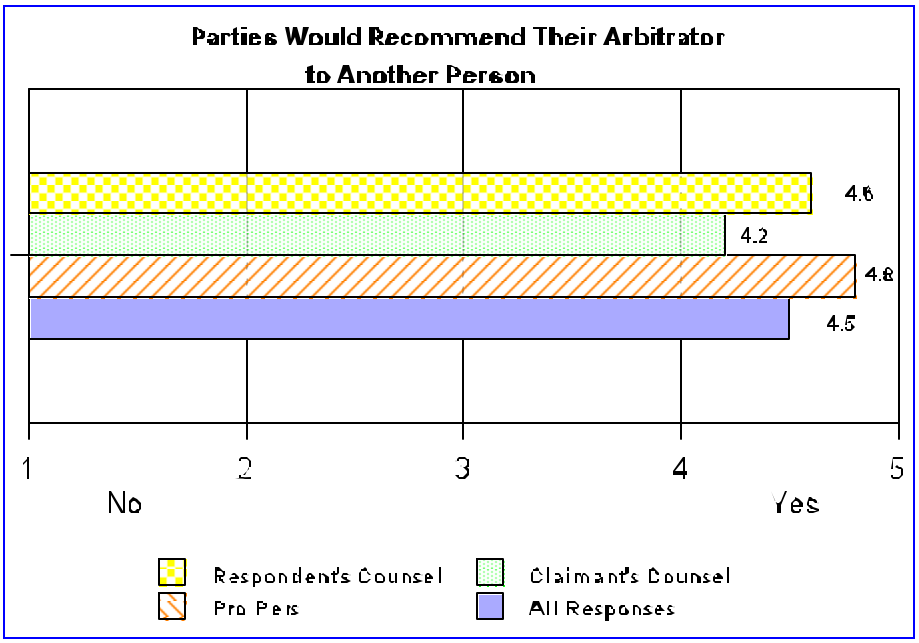
The average of all responses is 4.6. Claimants counsel average 4.5. *Pro pers* average 4.4. Respondents counsel average 4.7. The median and the mode is 5 in all three subgroups.

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

The average of all responses is 4.5. Claimants counsel average 4.3. *Pro pers* average 4.7. Respondents counsel average 4.6. The median and the mode is 5 for all groups.

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

The average on all responses to this question is 4.5. Claimant attorneys average response of 4.2. *Pro pers* average 4.8. Respondents counsel average 4.6. The median and the mode are 5 for all groups.



B. The Neutral Arbitrators Evaluate the OIA System

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and improve the system. During 2005, the OIA sent out the questionnaire in 506 closed cases and received 490 responses.[76] The results continue to show a high degree of approval of, and satisfaction with, the *Rules* and the OIA.

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

The neutrals average 4.8 in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses average 4.9 in saying that based on this experience they would participate in another arbitration in the OIA system. They average 4.9 in saying that the OIA had accommodated their own questions and concerns in the specific case. The median and the mode for each of these three responses is 5.

[76]This report has previously reported that 797 cases closed in 2005. Obviously, we do not send questionnaires if the case closed without a neutral arbitrator in place. Similarly, the OIA does not send them where the case was closed soon after 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 the first year of mailing them. Large numbers of questionnaires were returned blank with a note from the neutral saying he or she had never met with the parties and had nothing to say about the case.

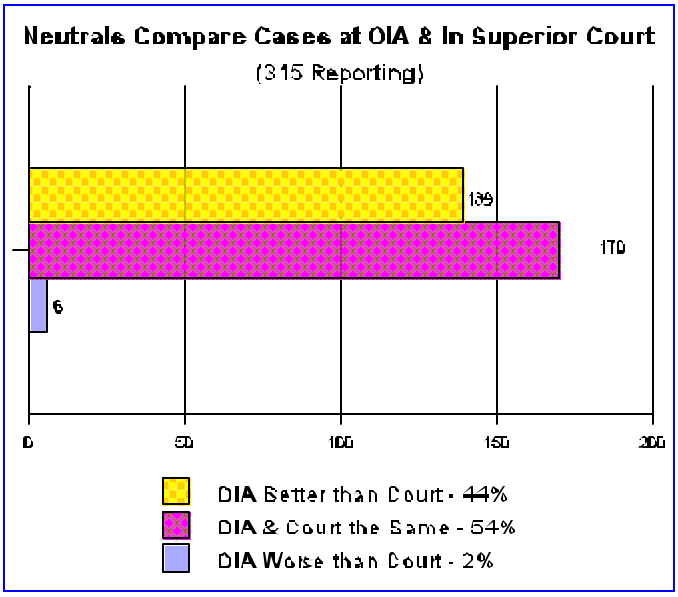
The actual number returned in 2005 was 517; however, 27 were blank. They are not included in the following discussion.

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	360	8
Early Management Conference	371	8
Availability of expedited proceedings	131	5
Award within 15 business days of hearing closure	120	13
Claimants' ability to have Kaiser pay NA	227	18
System's rules overall	301	14
Hearing within 18 months	163	11
Availability of complex/extraordinary proceedings	63	5

Finally, the questionnaires asked the neutrals whether they would rank the OIA experience as better or worse than or about the same as a case tried in court. Sixty-one percent of the neutral arbitrators (315) made the comparison. One hundred thirty-nine, or 44%, said the OIA experience was better. One-hundred-seventy, or 54%, said it was about the same. Only six -- two percent -- said the OIA experience was worse. Those who believe it was better described it generally as faster, more efficient, and less expensive than court while as fair. One person praised its flexibility, another said it handled complex issues better, one liked the early AMC, one said it has prevented cases where the claimant's attorney lost interest from lingering, and five specifically mentioned telephone conference calls. None of the neutral arbitrators who rated it worse made any other critical comments or checked off any factor as needing improvement. Rather, they gave the OIA's system and service 5's and checked off two to seven factors as working well.



The vast majority of the neutral arbitrators' comments were compliments on how well the *Rules*, system, or the OIA staff works or assurances that no changes need to be made. Those comments are deeply appreciated. Disregarding those comments, the subjects eliciting the largest number of responses in 2005 concerned difficulty in keeping cases on track. This is a new issue and elicited 12 comments. It was followed by the billing process and by *pro per* claimants (nine each). The need for more time to write awards drew six comments.

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

The members are, in alphabetical order:

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

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

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

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

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

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

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

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

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

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

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

B. Activities

The AOB takes an active role. It meets quarterly to review operation of the OIA and receive reports from OIA staff. During 2005, it heard a report from Kaiser about a program it has instituted to resolve member problems before the arbitration stage. It reviewed an analysis of withdrawn cases which it requested the OIA prepare. The AOB had several discussions concerning the results of the reviews of the OIA and the creation of a software program that would generate at least some of the statistics presented in the annual reports. A consultant reviewed both the software the OIA uses to manage its arbitrations and its process for generating statistics.

As mentioned in earlier reports, the needs of *pro pers* in the system has been a particular topic of concern. The AOB worked on revising Rule 54 to make it even easier for *pro per* claimants to understand and adopted the amended Rule this year.[77] The AOB also amended Rule 26 to state that Section 998 of the California Code of Civil Procedure applies to OIA arbitrations. They agreed to the change in the neutral arbitrator qualifications. The AOB assisted the OIA in recruiting neutral arbitrators through its members' personal and professional contacts. They also suggested that the OIA include the timeline set out on page 3 to new neutral arbitrators when they are admitted to the OIA pool. The OIA has done so.

The AOB renewed its contract with Ms. Oxborough for another three years with an option for further renewal. This contract provided the AOB with a license for it or another entity to use the OIA's program to administer Kaiser arbitration, should that be necessary.

Officers of the AOB are in regular contact with the OIA by e-mail and by telephone. AOB members Terry Bream and Cruz Reynoso visited the OIA, met with all of its staff, and observed its operations in 2005.

The AOB also reviews the draft annual report and comments upon it. Exhibit L is the AOB Comments on the Seventh Annual Report.

[77] Exhibit B, Rule 54.

XI. COMPARISON OF 2005 WITH PRIOR YEARS[78]

A. Pool of Neutral Arbitrators

The number of neutral arbitrators in the OIA pool decreased by three from last year. The Northern California panel is at an all time high. The percentage of the OIA pool composed of former judges is also at an all time high (39%).

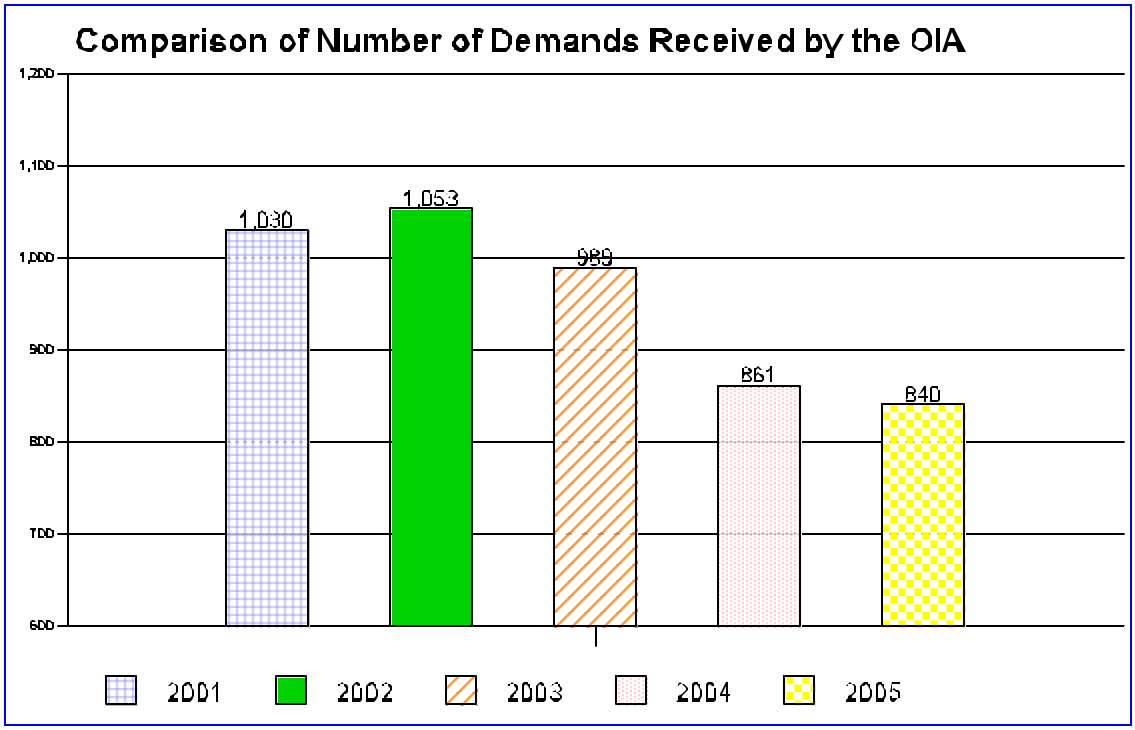
B. How Many Neutral Arbitrators Have Served

The percent of neutral arbitrators in the OIA pool who served in 2005 declined to 59%. This is a natural result of a large pool and a decreasing number of demands. But the percent of the pool which has served at any given time is 87%. The number of neutral arbitrators who have ever written an award is 269 (23 more than at the end of 2004); 88 different neutral arbitrators wrote awards in 2005. Only eight neutral arbitrators wrote more than two awards in 2005. This widespread involvement by members of the pool and corresponding lack of concentration are protections against "captive" neutrals.

C. Demands for Arbitration

The number of demands received during the year fell again in 2005, to 840, though not as significantly as in 2004. In 2002, we received 1,053 demands; in 2003, we received 989; and in 2004, we received 861. At this point and as shown on the chart on the next page, this decrease appears to be a trend, and is very probably the result of some of the actions Kaiser has discussed at AOB meetings that are designed to remedy problems when they arise. Given that the difference this year is only 21 (versus 50 and 128 in prior years), the number of demands may be stabilizing.

[78] If readers want a copy of the table that contains statistics set out in the prior reports, as well as the cumulative numbers through December 31, 2005 and for 2005 alone, it is available from the OIA website or office. It now must be printed on legal sized paper.



As predicted in last year's report, the number of cases that Kaiser sent to the OIA after more than 10 days dropped from 115 in 2004 to 14 in 2005.

D. Types of Claims

The percentage of medical malpractice claims remains stable at 92%. The percentage of benefit claims remains at 2%.

E. Claimants Without an Attorney

The percent of cases with claimants who are not represented by an attorney increased slightly in 2005, from 17% last year to 19.5% this year. It is still far below the 29% figure recorded in the first year.

F. How Neutral Arbitrators Are Selected

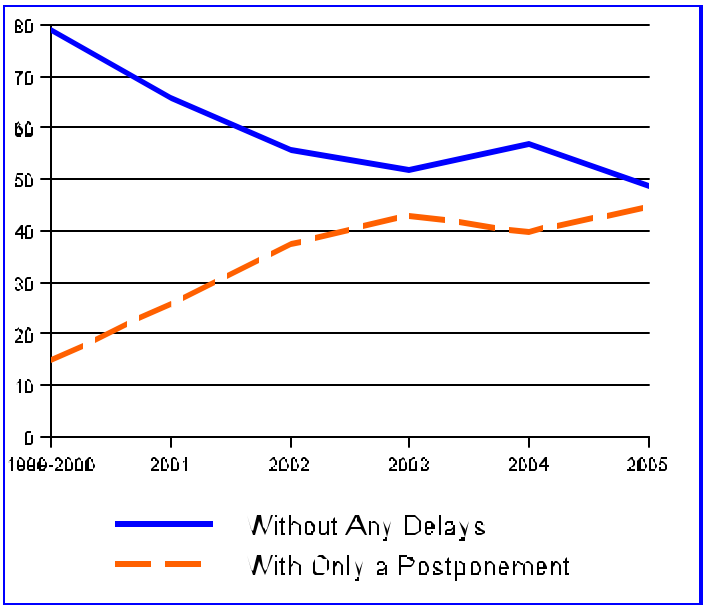
The percentage of neutral arbitrators chosen by strike and rank versus those jointly selected was stable in 2005, as was the percent of the jointly selected neutral arbitrators who are members of the OIA pool. Put another way, in 2005, as in 2004, parties chose a neutral arbitrator

who was not part of the OIA pool only 7% of the time. This indicates that attorneys who use our system have a high level of comfort with the members of the OIA pool.

G. Time to Select Neutral Arbitrators

Except for last year, the percent of cases in which a neutral arbitrator was selected without any postponement or disqualification has steadily declined. This category declined again in 2005, when it fell below 50% for the first time; down from 79% in 2000. The percent of cases with a postponement increased to 45%. These trends are graphed below:

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



Cases with only a disqualification or both a disqualification and a postponement increased to 6%. As in every other year, almost all of the disqualifications and postponements were made by the claimants side.

The length of time to select a neutral arbitrator stayed the same for those with no delay or with only a postponement. It increased for the small number of cases where neutral arbitrators were disqualified, with or without a postponement. The table on the next page compares the differing forms of selecting a neutral arbitrator since 1999.

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

	1999-2000	2001	2002	2003	2004	2005	1999 - 2005
No delay	25 days, 79%	23 days, 66%	27 days, 55.7%	25 days, 52%	24 days 57%	24 days 49%	25 days, 60.4%
Only Postponement	106 days, 15%	104 days, 26%	115 days, 37.7%	114 days, 43%	111 days 40%	111 days 45%	111 days, 33.6%
Only Disqual.	73 days, 5%	61 days, 6%	62 days, 3.6%	75 days, 2%	51 days 1.5%	68 days 2.3%	64 days, 3.3%
Postponement & Disqual.	167 days, 1%	143 days, 3%	164 days, 4%	162 days, 4%	160 days 1.5%	173 days 3.7%	158 days, 2.7%
Total	41 days	50 days	67 days	69 days	61 days	70 days	59 days

H. How Cases Close

The percentage of cases that settled in 2005 fell to 40%, the lowest percentage ever, but still only a 1% drop from last year. The percentages of how cases close are consistent with 2004. The percent of cases in which claimants prevailed after an award rose from 34% in 2004 to 42.5% in 2005.

Comparison of How Cases Closed[79]

	2001	2002	2003	2004	2005
Settlements	44 %	45 %	49 %	41%	40%
Withdrawn	20 %	23 %	23 %	27%	27%
Abandoned	5 %	3 %	4 %	4%	4.5%
Dismissed	3 %	3 %	2 %	4%	2%
Summary Judgment	14 %	11 %	9 %	8%	9%
Awards	15 %	14 %	12 %	16%	16%

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

I. Time to Close

The time to close continues to increase, except for cases that settled, which decreased by nine days. The increases in cases that were withdrawn, had a hearing, and overall average were small (7, 14 and 4 days). Summary judgment cases had greater increases (22 more days) in part because of the case, described in footnote 55, that took 1,075 days to close due to delays in state court.[80]

Comparison of Average Number of Days to Close, by Disposition

	2001	2002	2003	2004	2005
Settlements	278 days	300 days	317 days	320 days	311 days
Withdrawn	199 days	222 days	231 days	247 days	254 days
Summary Judgment	299 days	280 days	333 days	355 days	377 days
Awards	372 days	410 days	461 days	456 days	470 days
Average	281 days	296 days	319 days	326 days	330 days

As mentioned in prior reports, we considered changing the format of how we report the length of time to close cases based upon whether the case was "regular" versus one that employed special treatment – i.e., expedited, complex, extraordinary, or Rule 28. Because almost 90% of the cases are regular, there is not that much effect on the averages, except with respect to the length of time for cases to close after a hearing (377 days, 3 fewer than 2004, vs. 470 days overall) or after settlement (271 days, 20 fewer than last year, vs. 311 days overall).

J. Fees Waivers

We received fewer waivers to shift the cost of both the neutral arbitrator and arbitration fees to Kaiser than any prior year. (Forty-four in 2005 vs. a high of 79 in 2003.) We received more requests to waive just the arbitration fee. (Forty-five in 2005 vs. 35 in 2004.) The OIA continues to grant almost all of them. The percentage of cases where the neutral arbitrator reported that Kaiser paid all the fees remained exactly the same as the last two years – 81%.

[80]The increase in the length of time for cases to close by summary judgment between 2002 and 2003 is attributable in part to the statutory change in notice required.

K. Evaluations of Neutral Arbitrators and the OIA System

The responses by the parties to the evaluations remained stable or improved. On the 1-5 scale, the average response from *pro per* claimants whether they would recommend their neutral arbitrator rose from 3.6 to 4.8. On three questions, *pro per* claimants gave a higher average response than both groups of attorneys. The neutral arbitrators' evaluation of the OIA remained the same, almost uniformly positive.

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 the data is able to measure the arbitration process, 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. The fact that only one percent of cases closed after their time limit is a very good statistic.

Cost is an area the OIA now measures. The $150 filing fee is lower than court filing fees (other than small claims). Only three claimants who sought a waiver of this fee were denied one and all continued their cases. In 81% of the cases with fees that began after January 1, 2003 and ended in 2005, the neutral arbitrators were paid by Kaiser.

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

Finally, there is the question of fairness. The *Rules* promote fairness in the arbitration process and in the result in many ways. These include:

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

Second, the selections are being spread out to a large number of neutral arbitrators. This includes a large number who preside over hearings. Spreading the work among more people helps reduce the appearance and possibility of neutral arbitrators being dependent upon Kaiser for 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 OIA gives both the parties the identical information about the neutral arbitrators, – and a lot of it. The parties can jointly select anyone who agrees to follow the *Rules*, and either party can disqualify a neutral arbitrator after the selection.

Fourth, almost all of the neutral arbitrators who have made a significant award in favor of claimants have been selected to serve again.

Fifth, 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. The OIA also publishes this report, giving more detail about its arbitrations than any other arbitration program.

Last, the system is easier than a court system to access: the fee is only $150, no particular forms are required, and the neutral arbitrators' fees can and generally are paid by Kaiser.

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