EIGHTH 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, 2006 - December 31, 2006

REPORT SUMMARY

This is the eighth 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. The data and analyses presented allow readers to gauge how well the OIA system is meeting its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. The factors listed below help readers understand what happened in 2006 and relate directly to the system's fairness, speed, or cost.

Developments in 2006

The arbitration system has been stable, especially with meeting deadlines. The Arbitration Oversight Board (AOB) made a change in one of the Rules. Additionally, last year's review by independent certified public accountants of portions of the OIA's processes and statistics provides independent verification of the system's operation. Following a suggestion in an earlier year's review, the OIA now has a software program that generates statistics.

1. **Rules Amended.** The AOB amended Rule 54 to clarify to pro per claimants when they can have assistance during arbitrations. See page 5 and Exhibit B.

2 **Independent Review Confirms Accuracy of OIA Work.** An independent accounting firm reviewed the OIA's paper files and statistics contained in the seventh 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." See page 4 and Exhibit C.

3. **The AOB Extends OIA Contract**. The AOB extended its contract with Ms. Oxborough to act as the Independent Administrator for another two years, through March 29, 2011. See page 5.

4. **New Software Developed to Generate Statistics for Annual Report.** Following discussion by the AOB, an independent company developed a software program that generates statistics used in the annual report. These statistics had previously been generated by Excel. See page 4.

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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.

Status of Arbitration Demands

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

5. **Fewer Demands for Arbitration.** In 2006, the OIA received 825 demands for arbitration. This is 15 fewer than the 840 demands it received in 2005. See pages 10, 45.

6. **Most Cases Medical Malpractice.** Approximately 91% of the cases the OIA administered in 2006 involved claims of medical malpractice. Only 1% presented benefit and coverage issues. The remaining 8% are based on premises liability, other torts or lien. See page 12.

7. **Number of Claimants Without Attorneys is Essentially Unchanged.** Slightly more than 20% of claimants were not represented in 2006. See pages 13, 46.

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.

8. **Three-Quarters of Cases Closed by the Parties' Action.** During 2006, 42% of the closed cases settled. The claimants withdrew another 28% and abandoned another 5% by failing to pay the filing fee or to get the fee waived. See pages 28 - 29.

9. **One-Quarter Closed by Decision of Neutral Arbitrator.** Eight percent were closed through summary judgment, 3% were dismissed by neutral arbitrators, and 13% of cases closed after an arbitration hearing. In the cases that went to arbitration hearing, claimants prevailed in 37%. The average award was $448,436. The second largest award in OIA's history – $4,084,637 – was made in 2006. See page 30.

10. **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 eight of the awards made after a hearing in 2006 - about seven percent. A single neutral decided the other 105. See page 22.

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 to 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.

11. **Slightly More than Half of Neutral Selections Proceeded with No Delay; the Other Neutral Selections Included Delays Chosen by Claimants.** Slightly more than half (53%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (43%), a neutral arbitrator was disqualified (2%), or both (2%). As in prior years, claimants requested 99% of the postponements. They also made 83% 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 16% the first year of operation to 45% in 2006. See pages 47 - 48.

12. **Overall Average of Time to Select Neutral Arbitrator Decreased Four Days; Length of Time to Select Neutral Arbitrators When There Was No Delay Increased by a Day and Stayed the Same or Decreased for the Rest.** The average time to select a neutral arbitrator was 66 days. This is four days less than the prior year and more than ten times faster than that described by the *Engalla* case. Considered by category, the time to select a neutral arbitrator stayed the same in the cases with only a postponement (111 days) and dropped in the four percent of cases with a disqualification (59 days) or a disqualification and postponement (171 days). It increased to 25 days for cases with no postponements or disqualifications. The 66 days to select a neutral arbitrator in 2006 is more than ten times faster than that described by the *Engalla* case. See pages 19 - 22, 49.

13. **Cases Closed on Time, Though Length of Time Continued to Increase.** In 2006, the cases closed, on average, in 342 days, or 11 months, up from 330 days in 2005. Only six 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 26 - 27.

14. **Hearings Completed Within Eighteen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 533 days (less than 18 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 a neutral arbitrator made an award in 413 days, or less than 14 months. See pages 27, 50.

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. Neutral arbitrators serve after making large awards against Kaiser. 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 jointly select are in the OIA pool.

15. **Large Neutral Arbitrator Pool.** The OIA has 326 neutral arbitrators in its pool. Almost 40% of them, or 121, are retired judges. Both the Independent Administrator and the Director spoke at events, in part to recruit new applicants. See page 5.

16. **Applications Reveal Balanced Pool of Neutral Arbitrators.** The applications filled out by the members of the OIA pool show that 151 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 page 7.

17. **Applications Reveal Medical Malpractice Experience by Neutral Arbitrators.** Neutral arbitrators' applications and updates also show that 283 of the arbitrators have medical malpractice experience. That is nearly 90%. See page 7.

18. **Large Percentage of Arbitrators Served on Arbitrations and Heard Cases.** Fifty-seven percent of the neutral arbitrators in the OIA pool served on a case in 2006. Arbitrators averaged two assignments each in 2006. Eighty-one different neutrals, including arbitrators not in the OIA pool, decided the 113 awards made in 2006. See page 8.

19. **Neutral Arbitrators Continue to be Selected After Making Awards of $500,000 or more.** Thirty-nine neutral arbitrators have made 48 different awards of $500,000 or more. Since they made their awards, these neutral arbitrators have served 348 times, 168 times because they were jointly selected. Some of the neutral arbitrators have left the pool and some were not members of it. Of the 19 who were members of the pool and made awards prior to 2006, only four have not served again. See pages 8 - 9.

20. **Seventy percent of Neutral Arbitrators Selected by Strike and Rank.** In 2006, the parties chose 70% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 30%. More than 80% of the arbitrators jointly selected were members of the OIA pool. In less than 20% (39 cases) the parties chose a neutral arbitrator who was not a member of the OIA pool. See page 15.

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 87% of Cases Closed in 2006.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2006, Kaiser paid the entire fee for the neutral arbitrators in 87% of those cases that had fees. See page 37.

22. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from $100/hour to $660/hour, with an average of $343. For the 629 cases that closed in 2006 and for which the OIA has information, the average total fee charged by neutral arbitrators is $5,006. In some cases, neutral arbitrators reported that they charged no fees. Of those cases where fees were charged, the average is $5,593. See page 37.

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 2006, both claimants and counsel for both sides reported that they would recommend their neutral arbitrator to another individual with a similar case. See page 39.

24. **Positive Evaluations of the OIA.** Neutral arbitrators continue to evaluate OIA procedures positively. More than 40% said that the OIA experience was better than a court system, and 57.7% said it was about the same. Only 1.6% said the OIA experience was worse. See pages 41 - 42.

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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 eighth 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 eighth annual report focuses on what happened in the arbitration system during 2006, while the last section compares that activity with earlier years. The last section 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 January 1, 2007 (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, a California nonprofit public benefit corporation.

[3]The *Rules* are also available from our website. Exhibit B has been "redlined" to show the change made in 2006. 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 the Rules require in most cases is displayed on the next page. Details about each step in the process are discussed in the body of this report.

A. Goals of the Arbitration System Between Members and Kaiser Permanente

The system administered by 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 2006. The next sections look at the OIA's pool of neutral arbitrators, and the number and types of cases the OIA received in 2006. 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 2006 and compare 2006 to prior years.

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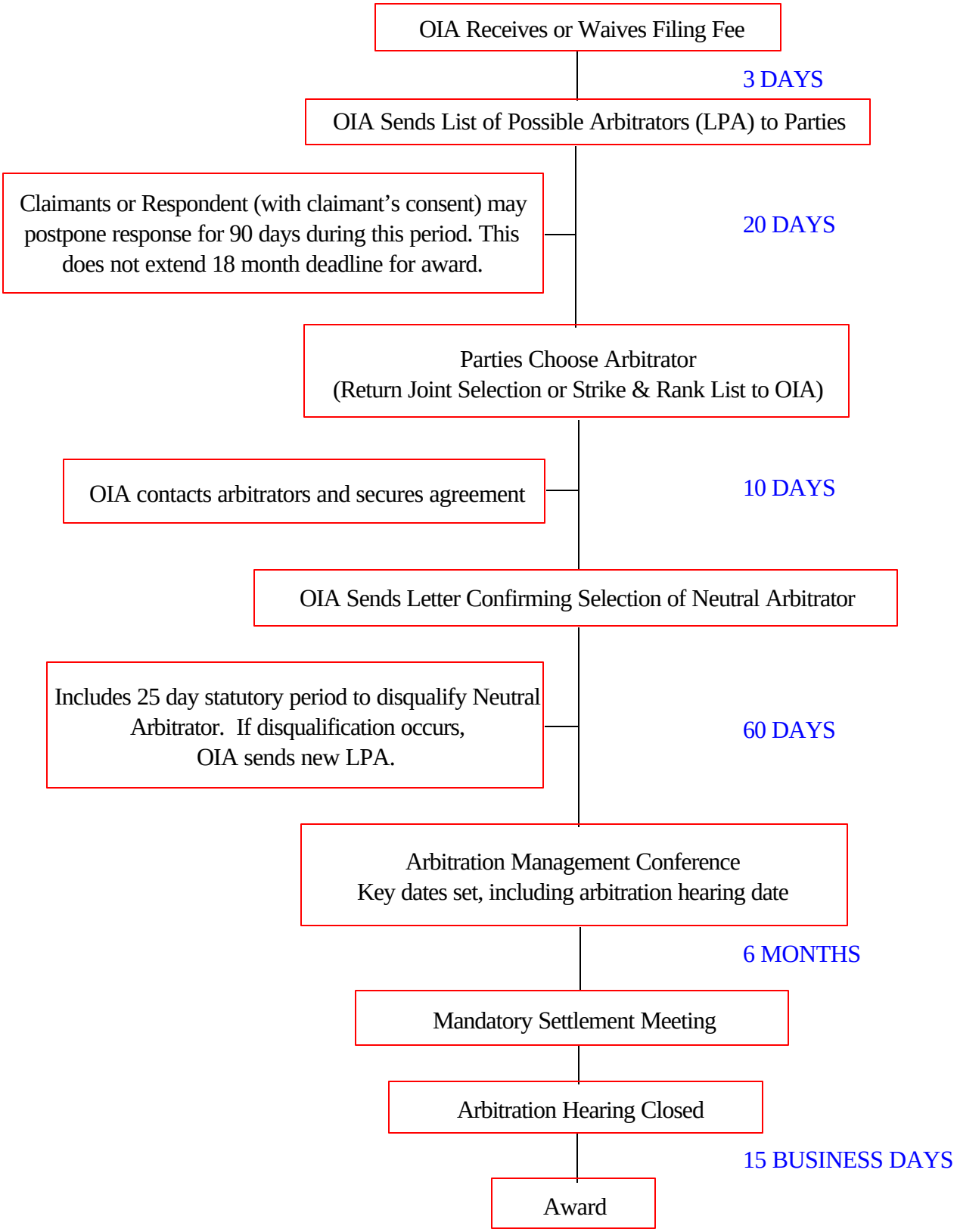
[6]Exhibit B, Rules 24, 28 and 33.

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

Timeline for Arbitrations Using Regular Procedures



II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2006

Once again, 2006 was a stable year. The OIA's record keeping and annual report were reviewed again, with successful results. The AOB also approved a change in the *Rules* which modified the handout given to claimants who are not represented by attorneys.

A. Independent Review of the OIA

In 2006, 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 seventh 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 2005 and neutral arbitrator files. The review also checked the most important statistics published in the seventh 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 instituted further checks on the packets sent out with the List of Possible Arbitrators. The AOB has acquired software for the OIA to use to generate statistics. The latter is discussed more fully in Section X.

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

B. New Software System

As reported previously, the AOB discussed the creation of a new software program which would automatically generate some of the statistics used in the annual reports that had been generated by exporting data from Abacus into Excel. In 2006, a company selected by the AOB, using the techniques employed by the OIA, created the software. The queries were tested. The software was used for this report.

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[9] Michael Roll & Associates is a firm of certified public accountants. It includes accountants who performed the 2004 and 2005 reviews.

[10] See letter attached as Exhibit C.

[11] The complete procedures are set out in Exhibit C, pages 81 - 86.

C. Change in OIA Rules

The AOB amended Rule 54 of the *Rules* in 2006. As discussed in last year's report; Rule 54 contains a "*pro per* handout," which is written to answer frequently asked questions and sent to all *pro pers* when the OIA receives their demands for arbitration. It is in a question and answer form. A portion of it was revised to say:

> **May I ask a friend or relative to assist me in the case?**
>
> You may only be represented by a lawyer. This is true both in arbitration and in court. However, an unpaid friend or family member may accompany and assist you, if in the judgment of the Arbitrator, your personal circumstances warrant such assistance.

D. The AOB Extends Ms. Oxborough's Contract

The AOB extended its contract with Ms. Oxborough to act as the Independent Administrator for two years, through March 29, 2011. The contract contains an option for renewal.

III. POOL OF NEUTRAL ARBITRATORS

A. Turnover in 2006 and the Size of the Pool at the End of 2006

On December 31, 2006, there were 326 people in the OIA's pool of possible arbitrators. Of those, 121 were former judges, or 37%.[12]

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.

[12]The qualifications for neutral arbitrators are attached as Exhibit D.

Number of Neutral Arbitrators by Region

Total Number of Arbitrators in the OIA Pool:	**326**
Southern California Total:	**181**
Northern California Total:	**130**
San Diego Total:	**60**

***The three regions total 371 because 39 arbitrators are in more than one panel; 26 in So. Cal & San Diego, 7 in No. Cal & So. Cal, and 6 in all three panels.**

On January 1, 2006, the OIA had 306 people in its pool of possible arbitrators. During the year, 21 people left the pool and 33 people were added to the pool.[13] In addition, as of December 31, 2006, the OIA was waiting for final paper work from two applicants. The OIA rejected six applicants in 2006 because they failed to meet the qualifications.[14]

During 2006, the Independent Administrator met with attorneys to explain the system, answer questions, and solicit new members to the pool.

B. Qualifications

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

[13]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.

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

- Arbitrators must not have served as attorneys of record or party arbitrators either for or against Kaiser within the last three years.[15]

In order to make the panel as large as desirable, 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. As discussed in the next section, most do.

C. Composition of the Pool

OIA applications request that the applicants allocate the amount of their practice spent in various endeavors. Based on these responses, the "average" neutral arbitrator in the OIA pool spends 60% 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, 14% as a respondent (or defense) attorney, 11% as a claimant (or plaintiff) attorney, less than 1% as an expert, and 12% in other forms of employment, including non-litigation legal work, teaching, mediating, etc. One of the interesting facts about the "average" member of the OIA pool is that the amount of plaintiff work and defense work is closely balanced.

There is, of course, no such "average" neutral arbitrator, in part because a very substantial percentage of the pool spends 100% of their practice acting as neutral arbitrators. More than 46% of the pool, 151 members, reported that they spend 100% of their time that way.[16] The remainder are distributed between 0% and 99%.

Percent of Practice Spent As a Neutral Arbitrator

Percent of Time	0%	1 - 25%	26 - 50%	51 - 75%	76 - 99%	100%
Number of NAs	**15**	**106**	**32**	**6**	**16**	**151**

[15] 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.

[16] This is not surprising as 121 members of the OIA pool are retired judges.

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%	**229**	**231**
1 - 25%	**37**	**24**
26 - 50%	**42**	**37**
51 - 75%	**8**	**15**
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 or updated their applications, 283 reported that they had such experience, while 43 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.[17]

D. How Many in the Pool of Arbitrators Have Served?[18]

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 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 arbitrators from both within and outside the pool are the two main factors which allow us to meet these objectives.

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[17]Of the 43 who reported no medical malpractice experience in their applications, all but 10 of them have served as a neutral arbitrator in an OIA case. (One neutral arbitrator has been selected 13 times.) Twelve of these neutral arbitrators have decided one or two cases. While some of these could have been decided on purely procedural grounds, it is likely that their reports of medical malpractice experience are outdated.

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

1. The Number Who Have Served in 2006

In 2006, 204 different neutral arbitrators were selected to serve as neutral arbitrators in 703 OIA cases. One-hundred-eighty-six (186) of these were members of the OIA pool. Thus, in 2006, 57% 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 2006 is 0 to 47. The neutral arbitrator at the highest end was jointly selected 37 times. The average number of appointments for members of the pool in 2006 is 2, the median is 1, and the mode is 0.

2. The Number Who Wrote Awards in 2006

The number of neutral arbitrators deciding awards after hearing is similarly diverse. The 113 awards made in 2006 were decided by 81 different neutral arbitrators. Sixty of the arbitrators made a single award, while thirteen decided two. Six other neutral arbitrators decided three cases each, one decided four cases, and one decided five cases. Only two of these eight neutral arbitrators made awards only for one side, one only finding in favor of claimants and one only finding in favor of respondents.[19]

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

Critics have claimed that Kaiser will not allow neutral arbitrators who have made large awards to serve in subsequent arbitrations; its attorneys accomplishing this result by striking them from LPAs or disqualifying them if selected. The last two annual reports have looked at what has happened to neutral arbitrators after making an award of $500,000 or more.

Since the OIA has existed, 39 different neutral arbitrators have made 48 awards of $500,000 or more in favor of claimants.[20] The awards have ranged from $500,000 to $5,594,605. Since they made their awards, they have served 348 times, 168 times because the parties jointly selected.

Of the 39 neutral arbitrators, 6 were not members of the OIA pool and 7 have died or resigned from the pool. Thus, at the end of 2006, there were 26 neutral arbitrators in the pool who have made awards of $500,000 or more. Eight of these neutral arbitrators made awards in 2006.[21] In addition, one neutral arbitrator who was not a member of the pool, made one such award. Two of the eight, as

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

[20] Seven neutral arbitrators have made more than one such award. Five of these neutral arbitrators made such awards in different years.

[21] One of the eight neutral arbitrators had previously made such an award in 2005.

well as the non-pool neutral arbitrator, were subsequently selected as a neutral arbitrator. The other six have not.[22]

Of the 19 neutral arbitrators who are still in the pool who made awards prior to 2006, only 4 neutral arbitrators have not served again.

4. The Number Named on a List of Possible Arbitrators in 2006

All but one 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 2006. The average number of Northern California arbitrators appearing on an LPA is 39, the median number is 40, and the mode is 36. The range of appearances is from 7 to 61 times.[23] In Southern California, the average number of appearances is 21, the median is 21, and the mode is 21. The range is from 0 to 37. In San Diego, the average is 10, the median is 10, and the mode is 10. The range of appearances is from 0 to 18. One member of the pool, who joined two different panels on November 13, 2006, has 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 work while the case is open are considered "one case neutral arbitrators."[24]

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[22]The awards were made between May 18, 2006 and November 22, 2006. This may not be enough time to judge whether they will be selected again.

[23]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, two joined November 13, 2006, six weeks before the end date for this report. (One of the latest arrivals was listed on an LPA.) 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). Slightly more than 20% of the pool will not.

[24]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 available from our website, and we send it to anyone who requests it. See Exhibit F.

The OIA tracks Standard 12 disclosures and removes "one case neutral arbitrators" from the pool while their cases are open. During 2006, 16 neutral arbitrators were "one case neutral arbitrators" for part of the year. At the end of 2006, seven remained "one case neutral arbitrators."

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 825 demands for arbitration in 2006. Geographically, 442 demands for arbitration came from Northern California, 329 came from Southern California, and 54 came from San Diego.[25]

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.[26] 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.[27] In 2006, the average length of time that Kaiser has taken to submit demands to the OIA is 3 days. The mode is one. This means that usually Kaiser sent the OIA a demand on the day after Kaiser received it. The median is three days. The range is 0 to 78 days.

There were nine cases in 2006 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 27 days, the median is 18 and the mode is 11 days. Six of these cases were brought in Southern California or San Diego. None of the "late" cases from Northern California were more than five days late.

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[25]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.

[26]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.

[27]Exhibit B, Rule 11.

The 2004 review focused attention upon late submissions, which numbered 115 that year. This has been largely corrected. Immediately thereafter, the number of cases began to decline. As that year's report predicted, the number of "late" cases dropped overwhelmingly from 2004, when there were 115 such cases.

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. Cases involving such disputes are considered "mandatory." Of the 825 demands for arbitration the OIA received in 2006, 796 were mandatory and 29 were opt in. At the end of 2006, 97% of the open cases were mandatory and 3% were opt in.

C. Opt In Cases

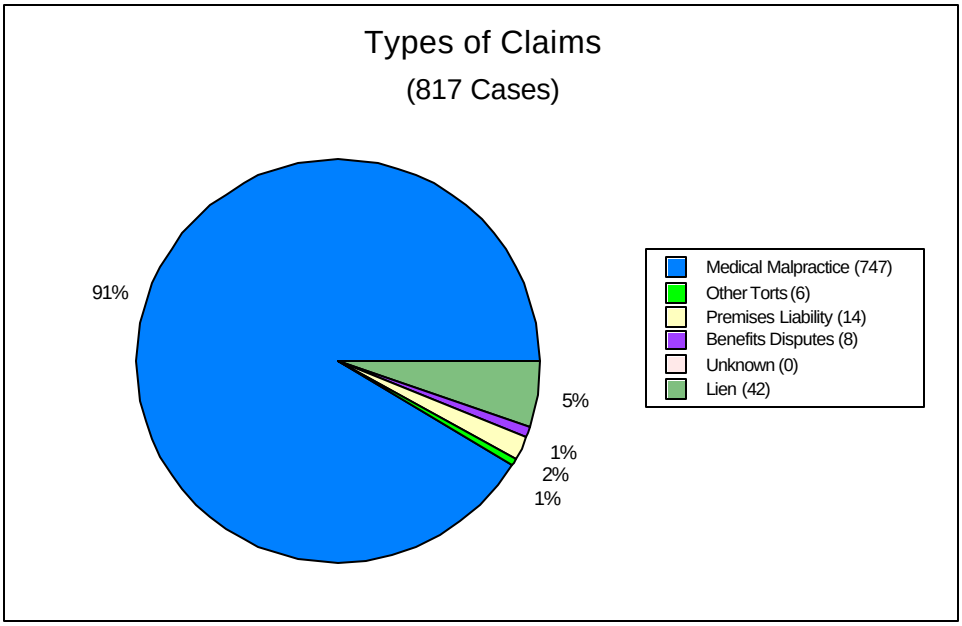
If a case is an "opt in," the OIA can administer it only if the claimant expressly agrees in writing. Therefore, when the OIA receives an opt in case from Kaiser, it asks the claimant to agree. Without agreement, Kaiser administers it.

Of the 29 opt in demands the OIA received in 2006, 21 claimants decided to have the OIA administer their claims. None affirmatively opted out of the OIA. In one instance, the deadline had not occurred by the end of the year. The remaining seven were returned to Kaiser because the claimants did not affirmatively opt in to the OIA.

D. Types of Claims

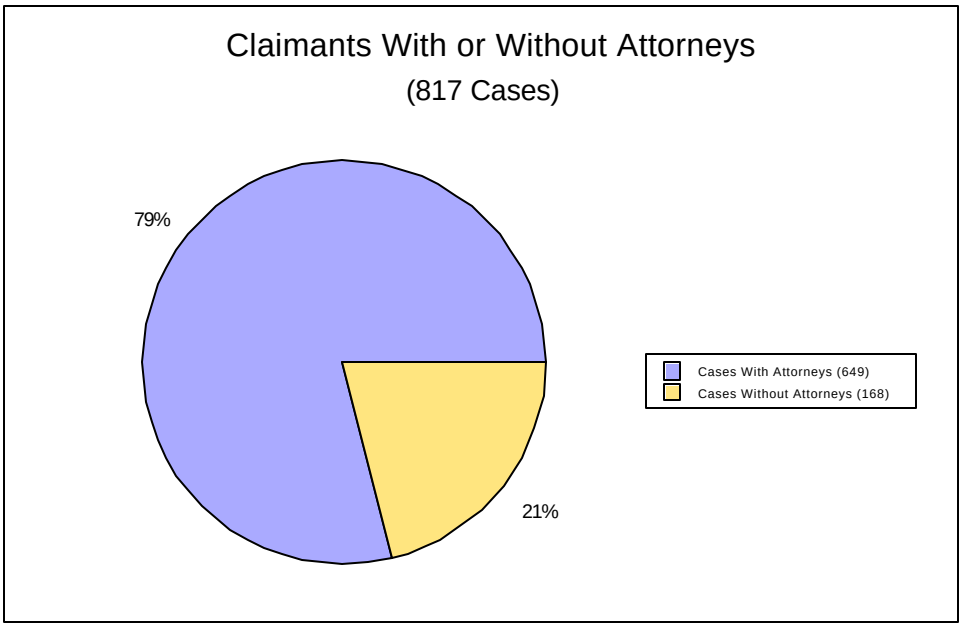
In 2006, the OIA administered 817 cases. The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage cases. Medical malpractice cases were the most common, making up 91% (747 cases) in the OIA system. Benefits and coverage cases represent less than one percent of the system (8 cases).

The chart on the next page shows the types of claims the OIA administered during 2006.



E. Claimants With and Without Attorneys

Claimants were represented by counsel in 79% of the cases the OIA administered in 2006 (649 of 817). In the other 21% of cases, the claimants represented themselves (or acted in *pro per*).



V. SELECTION OF NEUTRAL ARBITRATORS

One of the most important steps of the arbitration process occurs at the beginning: the selection of the neutral arbitrator. This section of the report first describes the selection process in general. The next four sub-sections discuss different aspects of the selection process in detail: 1) the manner in which the parties selected the neutral arbitrator – jointly agreeing or based upon their separate responses to the 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[28] 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.[29] 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 previous parties have submitted about the neutral and

2) redacted copies of any awards or decisions granting summary judgment the neutral has prepared.

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

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

The parties have 20 days to respond to the LPA.[30] 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.[31] Provided the person agrees to follow the OIA *Rules*, the parties can jointly select anyone they want to serve as neutral arbitrator.

On the other hand, if the parties do not jointly select a neutral arbitrator, each side submits a response to the LPA, striking up to four names and ranking the rest, with "1" as the top choice. When the OIA receives the LPAs, the OIA eliminates any names who have been stricken by either side and then totals the scores of the names that remain. The person with the 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 2006, 94 cases either settled (45) or were withdrawn (49) without a neutral arbitrator in place.[32] 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 703 neutral arbitrators selected in 2006, 211 were jointly selected by the parties (30%) and 491 (70%) 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, 172, or 81.5%, were members of the OIA pool, though not necessarily on the LPA sent to the parties. In 39 cases, the parties selected a neutral arbitrator who was not a member of the pool.

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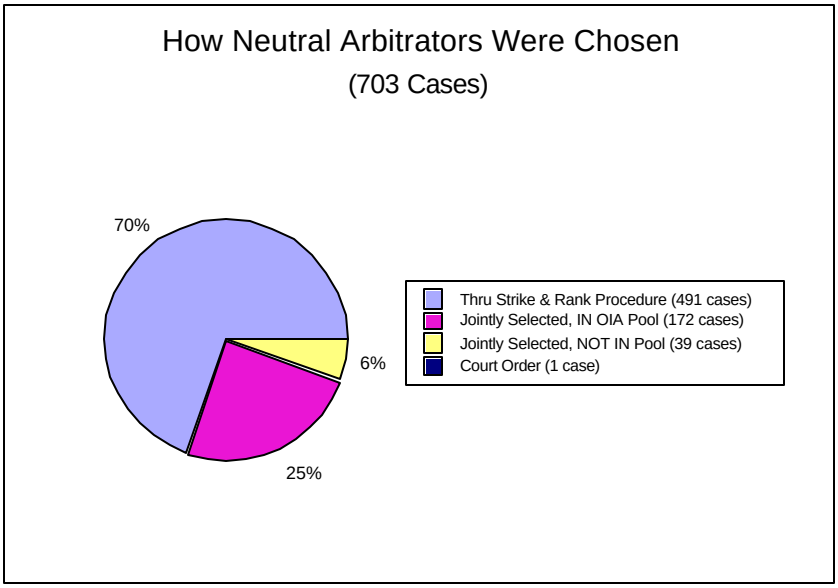
[30] A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

[31] 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, the OIA would not allow the person to serve as a neutral arbitrator in a subsequent case. Section III.E explains "one case neutral arbitrators."

[32] These 94 cases included both cases with attorneys and cases where the claimant was in *pro per*. The disposition varied however. In the 31 *pro per* cases that closed without a neutral arbitrator selected, 10 settled and 21 were withdrawn. In the 63 cases with an attorney, 35 settled and 28 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 a 50 day postponement later on. The postponement, however, does not have to be 90 days; it can be shorter, and many are. In addition to Rule 21, Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines. The OIA has used this power occasionally to extend the deadline to respond to the LPA. Generally, parties must use a 90 day postponement under Rule 21 before the OIA will extend the deadline under Rule 28. A Rule 28 extension is generally short – two weeks if the parties say that they have settled or the case is being withdrawn[33] – though it may be longer if based on the claimant's medical condition or a related case that should be decided first is being tried in court.

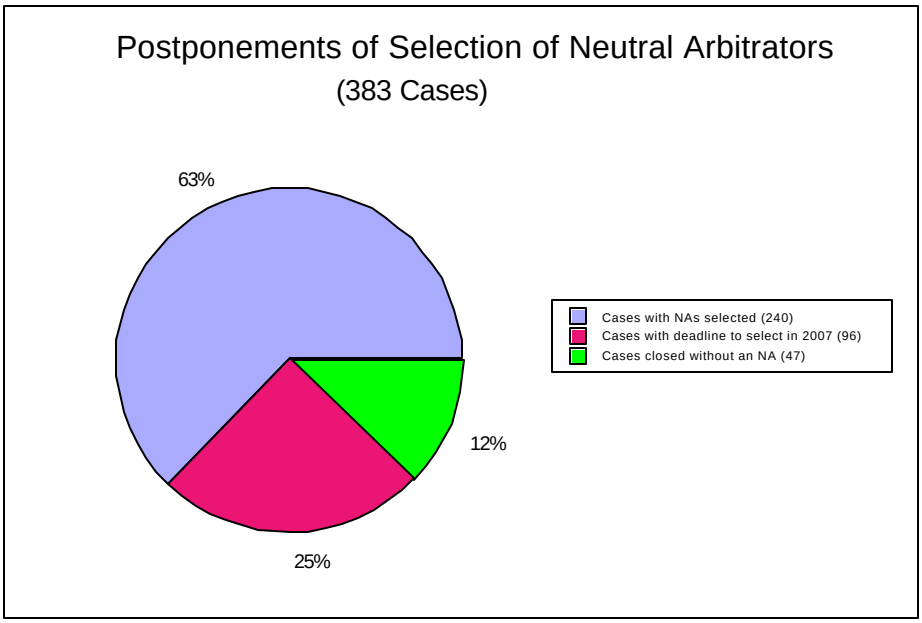
Claimants do not have to give a reason for why they want a 90 day postponement under Rule 21, though there must be a reason for a Rule 28 extension. The reasons for a Rule 28 extension are often the same as claimants volunteer for why they use Rule 21. In some cases, the parties are seeking to settle the case or to select a neutral arbitrator jointly. Some claimants or attorneys want a little more

[33]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.

time to evaluate the case before incurring the expense of a neutral arbitrator. As noted above, parties in 94 cases either settled or withdrew them before a neutral arbitrator was put in place. Some claimants who do not have an attorney want time to find one. Occasionally the OIA has discovered at the deadline that an attorney no longer represents a claimant. There are also some unrepresented claimants who request more time for health reasons. One reason for Rule 21 postponements that does not justify a Rule 28 extension is that the claimants or their attorneys simply want more time to submit their LPA responses.

There were 383 cases in 2006 where the parties requested either a Rule 21 postponement, a Rule 28 extension of the time to return their responses to the LPA, or both. Almost all of these – 372 – were Rule 21 postponements. Claimants made the request in 370 cases. Respondents did so only in two cases. Requests for a Rule 28 postponements were made in 19 cases. In only one of these cases had there not been a prior request under Rule 21.[34]

The following chart shows what has happened in those 383 cases. Two-hundred-forty (240) of them (63%) now have a neutral arbitrator in place. Forty-seven of them closed before a neutral arbitrator was ever selected. For the remaining 96 cases, the deadline to select a neutral arbitrator is after December 31, 2006.



[34]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 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.[35] Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.[36] After they make these disclosures, the parties have 15 days to serve a disqualification of the neutral arbitrator. Additionally, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can disqualify neutral arbitrators in a given case.[37]

Multiple disqualifications occur infrequently. In 2006, neutral arbitrators were disqualified in 33 cases. Twenty-five cases had a single disqualification. Two cases had two disqualifications, three cases had three, one case had four disqualifications, one case had five disqualifications, and one case had seven disqualifications.[38] In 27 cases with a disqualification, a neutral arbitrator had been selected at the end of 2006. In four cases with a disqualification, the time for the neutral arbitrator selection had not expired by the end of the year. Two cases closed by the parties after a neutral arbitrator was disqualified.

Because of multiple disqualifications, these 33 cases represent 54 neutral arbitrators who were disqualified in 2006. The neutrals were disqualified by the claimants' side 45 times, and by the respondents' side 9 times.

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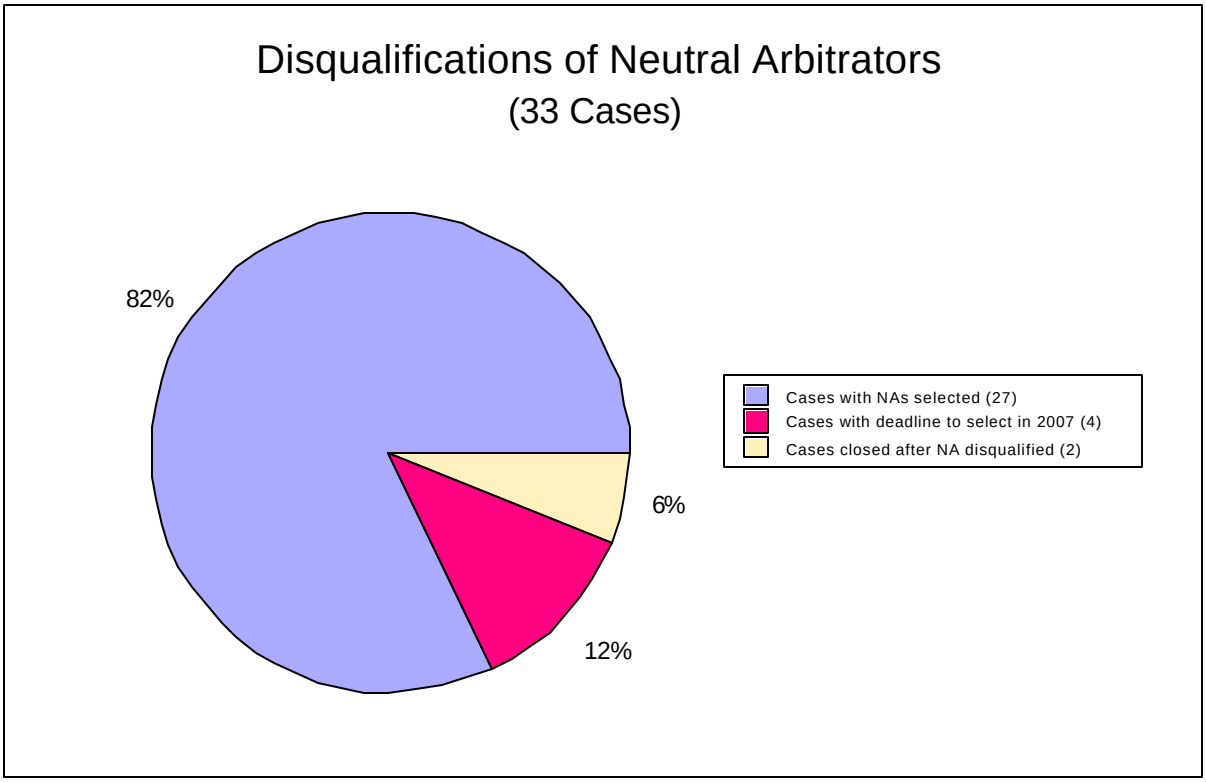
[35]California Code of Civil Procedure § 1281.91; see also Exhibit B, Rule 20.

[36]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.

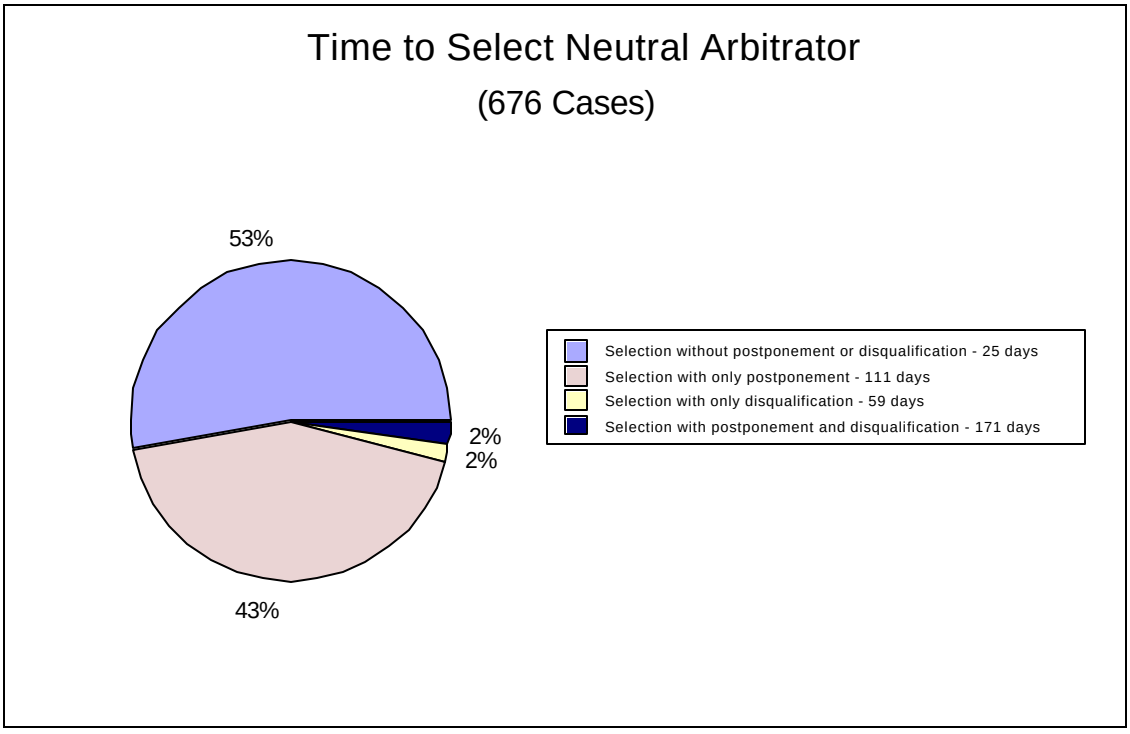
[37]Under Rule 18.f, after two neutral arbitrators have been disqualified, the OIA randomly selects subsequent neutral arbitrators, rather than continuing to send out new LPAs.

[38]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.


Disqualifications of Neutral Arbitrators
(33 Cases)
82%
6%
12%
Cases with NAs selected (27)
Cases with deadline to select in 2007 (4)
Cases closed after NA disqualified (2)

E. Length of Time to Select a Neutral Arbitrator

This section considers 676 cases in which a neutral arbitrator was selected in 2006.[39] 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 requested a 90 day postponement before selecting a neutral arbitrator. The third category is those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator was selected. The fourth category is those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. Finally, we give the overall average for the 676 cases. The four categories are displayed in the chart below.



[39] Twenty-seven cases in which a neutral arbitrator was selected in 2006 are not included in this section. In 25 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, one neutral arbitrator made disclosures in the middle of a case, because of some event occurring after the initial disclosure, and was disqualified. In one case, in addition to the 90 day extension, the deadline to select the neutral arbitrator was continued 12 months because the claimant filed a case against a third party that had to be decided first. 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 355 cases where a neutral arbitrator was selected in 2006 in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator in those cases is 25 days, the mode is 22 days, the median is 24 days, and the range is 4-47 days.[40] This category once again represents a slim majority, at 53%, after slipping below 50% in 2005.

2. Cases with Postponements

There were 293 cases where a neutral arbitrator was selected in 2006 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 2005, but the neutral arbitrator was actually selected in 2006. 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 23-210 days.[41] This category represents 43% of all cases which selected a neutral arbitrator in 2006.

3. Cases with Disqualifications

There were 14 cases where a neutral arbitrator was selected in 2006 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 2005. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96, if there is only one disqualification.[42] The average number of days to select a neutral arbitrator in the 14 cases is 59 days, the median is 56 days, the range is 24-117 days,[43] and the mode is 56 days. Disqualification only cases represent 2% of all cases which selected a neutral arbitrator in 2006.

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[40]In the case that took 47 days to select a neutral arbitrator, Kaiser had originally reported that the case was a Southern California case when it transmitted the demand to the OIA. When the OIA called the parties to remind them of the deadline to return their LPAs, Kaiser informed the OIA that it was actually a San Diego case. The OIA changed its records and sent new LPA packets. The parties were given an additional 20 days.

[41]In the case that took 210 days to select a neutral arbitrator, the member's attorney received a 90 day postponement and then subsequent short postponements of the date to select the neutral arbitrator. The claimant's attorney kept reporting that they were very close to settling and just needed a little additional time to finalize terms, complete paperwork, obtain signatures. After finally giving the parties the last extension, a neutral arbitrator was selected. The parties completed the settlement less than a week later.

[42]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.

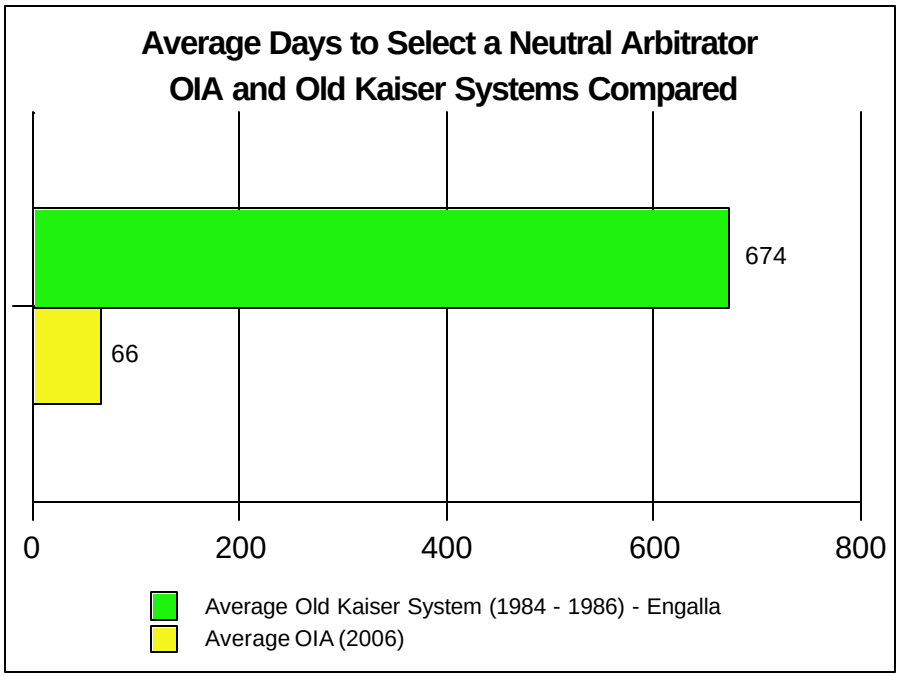
[43]The claimant's attorney disqualified three neutral arbitrators in the case that took 117 days to select a neutral arbitrator.

4. Cases with Postponements and Disqualifications

There were 14 cases where a neutral arbitrator was selected in 2006 after a postponement and the disqualification of a neutral arbitrator. Again, this includes cases where a postponement or disqualification was made in 2005. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is both a 90 day postponement and a single disqualification is 186 days. The average number of days to select a neutral arbitrator in these cases is 171 days, the mode is 148 days, the median is 148 days, and the range is 124-291 days.[44] These cases represent 2% of all cases which selected a neutral arbitrator in 2006.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 66 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*[45] 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 2006, the OIA system was 10 times faster.



[44]The case that took 291 days to select a neutral arbitrator was another case in which the claimant attorney requested both a 90 day postponement and further postponements in an attempt to settle the case at the start. A neutral arbitrator was selected and then was disqualified by the respondent attorney. After the second neutral arbitrator was selected, the case settled two months later.

[45]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.

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.[46] 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 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 2006, party arbitrators signed the award in only 8 of the 113 cases in which the OIA received an award.[47] The remaining 105 cases were decided by a single arbitrator. These 8 cases closed in an average of 649 days, with a range from 358 to 1,134 days.[48] Four of the 8 cases found for the claimant, awarding from $750,000 to $4,084,637.

Of the 753 cases that remained open at the end of 2006, party arbitrators had been designated in 12 of them. In 7 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

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[46]California Health & Safety Code §1373.19.

[47]In addition, one case that was closed by summary judgment also had party arbitrators.

[48]Cases with party arbitrators take longer to have the arbitration hearing. The average for all cases is 533 days, versus 649 for cases with party arbitrators. (See generally Section VII.B)

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.

In a few cases, neutral arbitrators have not responded to a second communication. In those cases, the OIA removes the neutral arbitrators' names from the OIA panel until they take the necessary action. Thus, a neutral is not listed on any LPA when he or she is suspended and cannot be jointly selected by the parties. As detailed in the following sections, seven different neutral arbitrators were suspended ten times in ten cases in 2006. No neutral arbitrator was 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 2006, one neutral arbitrator was suspended in two different cases until he made his disclosures. He was reinstated.

B. Arbitration Management Conference

The *Rules* require the neutral arbitrator to hold an arbitration management conference (AMC) within 60 days of his or her selection.[49] 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 establishes the deadlines for the rest of the case. It also allows the OIA

[49]Exhibit B, Rule 25.

to see that the case has been scheduled to finish 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 2006. All were reinstated.

C. Mandatory Settlement Meeting

Rule 26 instructs the parties to hold a mandatory settlement meeting (MSM) within six months of the AMC. It states that the neutral arbitrator is not present at this meeting.[50] 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 361 cases that they have held an MSM. Thirty-two of them reported that the case had settled at the MSM. Three of these cases involved a *pro per* claimant. On the other hand, in 98 cases neither party returned the MSM form to the OIA despite requests in 2006.

D. Hearings and Awards

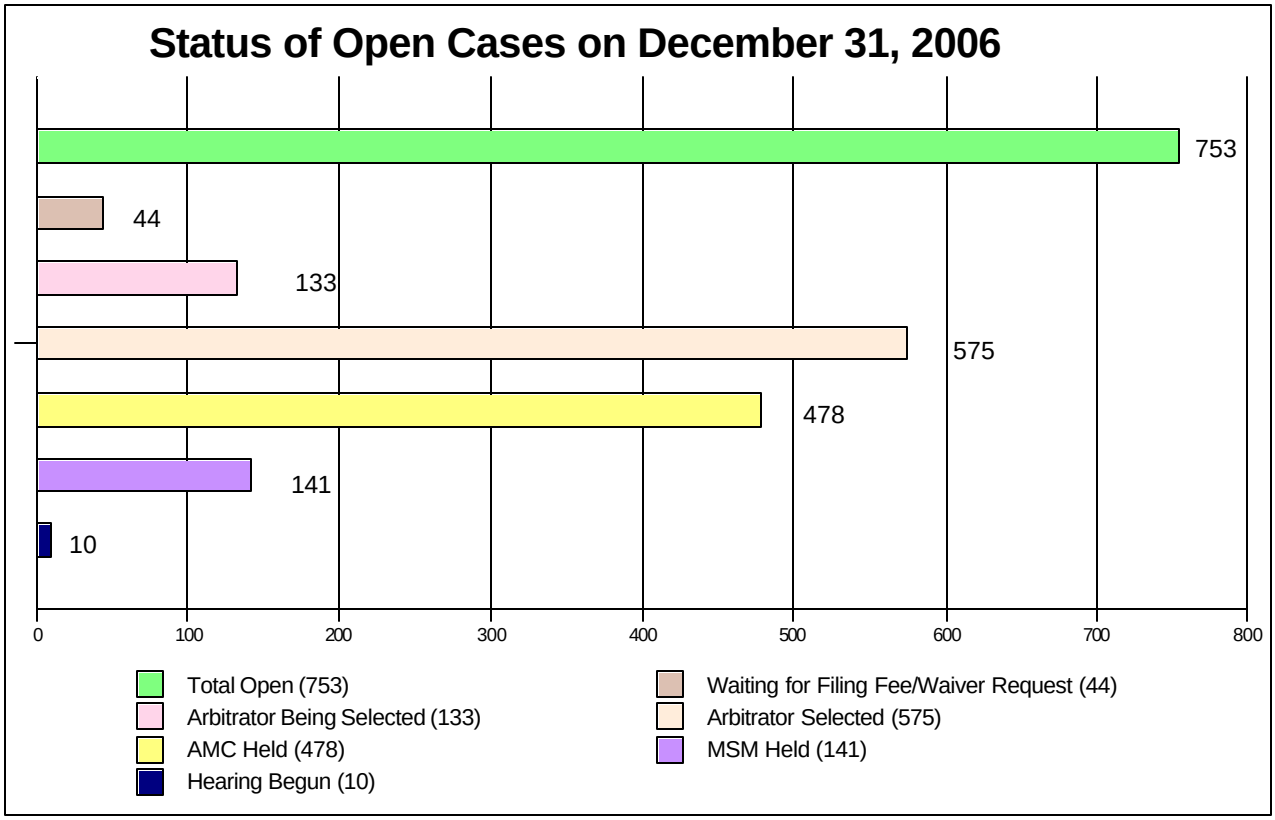
The neutral arbitrator is responsible for ensuring that the hearing occurs and an award is served within the time limits set out in the *Rules*. The OIA suspended three neutral arbitrators for failing to set a hearing date, generally after one was cancelled, or setting a date that violated the *Rules*. Two neutrals were suspended for failing to serve their awards within the *Rules*' time limits. All were reinstated when the awards were served.

No neutral arbitrator was suspended for failing to provide the fee and fee allocation information required by California Code of Civil Procedure § 1281.96.

E. Status of Open Cases Administered by the OIA on December 31, 2006

As of December 31, 2006, there were 753 open cases in the OIA system. In 44 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 133 cases, the parties were in the process of selecting a neutral arbitrator. In 575 cases, a neutral arbitrator had been selected. Of these, an arbitration management conference had been held in 478. This is 63% of all open cases. In 141 cases, the parties had held the mandatory settlement meeting. In 10 cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the decision. The following graph illustrates the status of open cases.

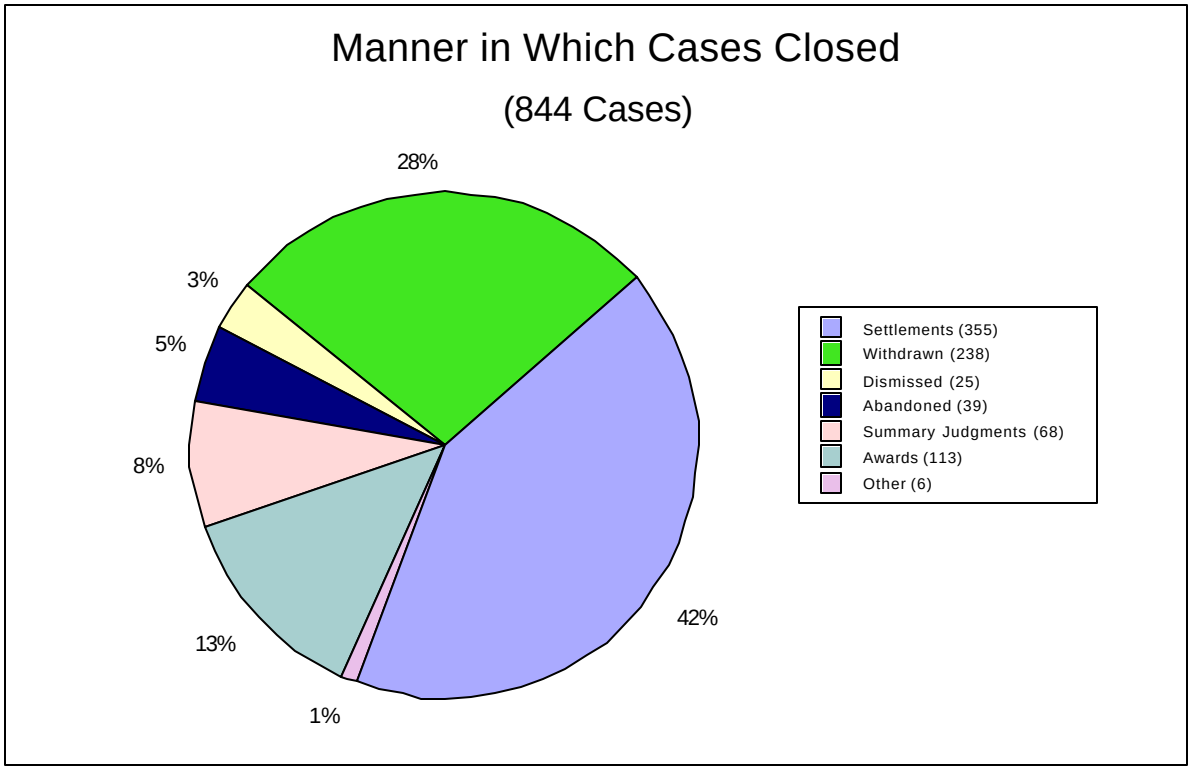
[50] As the settlement conference is supposed to be conducted without the appointed neutral and in a form agreed upon by the parties, the OIA has no real way to track whether the event has occurred except for receiving the forms from the parties. We have no power to compel them to report or to meet.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



VII. THE CASES THAT CLOSED

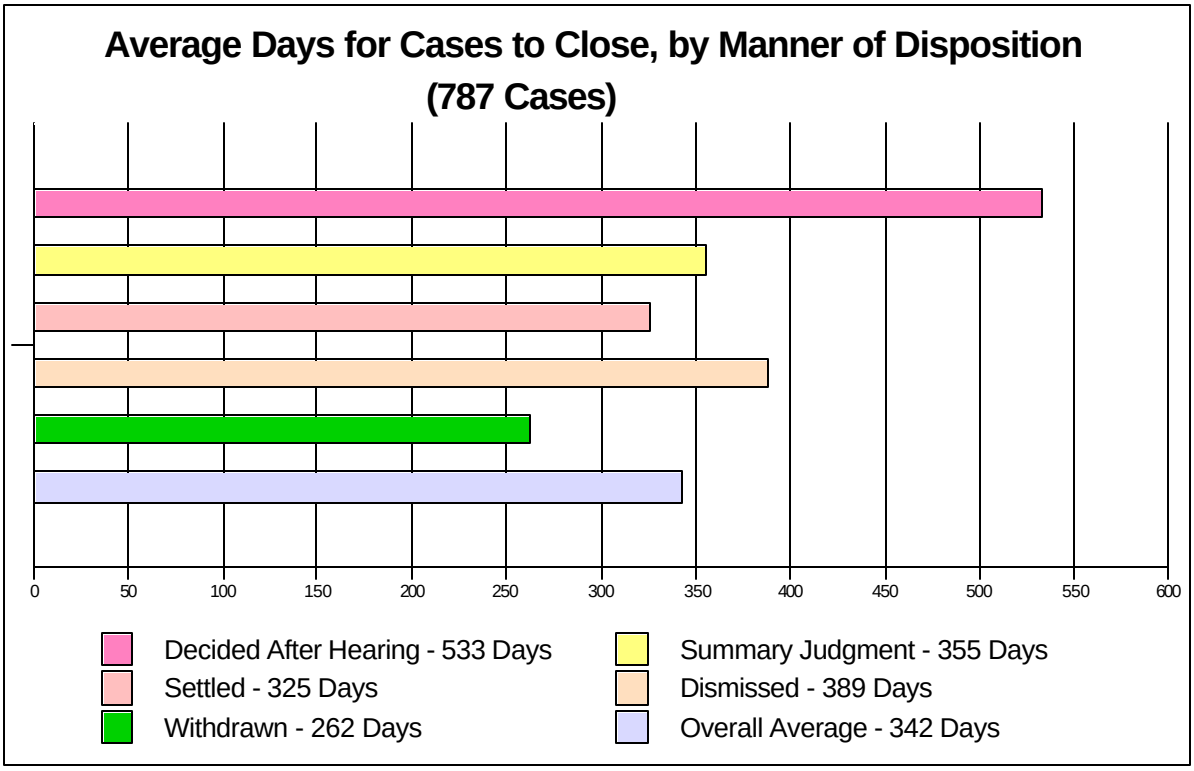
In 2006, 844 cases in the OIA system closed. Cases close either because of (1) action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of fees), or (2) action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). 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.[51]

[51] There were six 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 less than one percent of the total of all closed cases, they are not further discussed in this section.



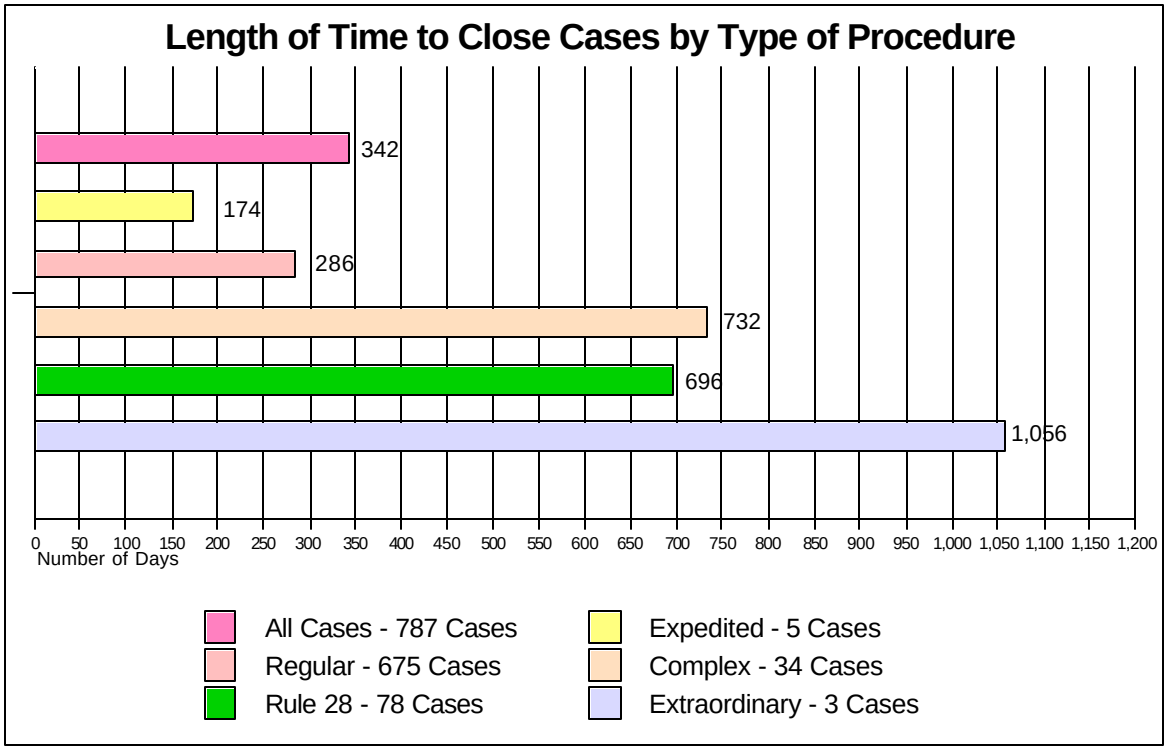
As shown on the chart on the following page, cases closed on average in 342 days, or 11 months.[52] This includes all cases regardless of procedure: regular, expedited, complex, extraordinary, and cases whose deadlines were extended under Rule 28. The median is 324 days. The mode is 205 days. The range is 0 to 1,651 days. Only six cases closed late.

[52] 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 787 closed cases, not 844. It excludes 39 abandoned cases, 14 cases that were withdrawn or settled before the fee was paid, and 4 cases closed other ways.



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 more than sixty percent (62%) 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.

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



A. How Cases Close

1. Settlements – 42% of Closures

During 2006, 355 of the 844 cases settled. This represents 42% of the cases closed during the year. The average time to settlement was 325 days, or about eleven months. The median is 313, the mode is 24, and the range is 4 to 985 days.[53] In 32 settled cases (9%), the claimant is in *pro per*.

[53]The case that took 985 days to settle involved a child who required extra time for the child's condition to stabilize so damages could be ascertained. It was designated complex. While it settled within 30 months, its hearing was set after that, due to the schedule of a party arbitrator. Therefore the neutral arbitrator also granted a Rule 28 extension.

2. Withdrawn Cases – 28% of Closures

In 2006, the OIA received notice that 238 claimants had withdrawn their claims. In 69 (29%) 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. Twenty-eight percent of closed cases have been withdrawn.

The average time for a party to withdraw a claim in 2006 is 262 days. The median is 243 days. The mode is 77 days, and the range is 0 to 1,038 days.[54]

In absolute numbers, more *pro per* claimants withdrew their claims than any other type of closure. 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 71% of the withdrawn cases, the claimants were represented by an attorney. In addition, almost 40% of the 69 *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.

3. Abandoned Cases – 5% of Closures

Claimants failed to either pay the filing fee or obtain a waiver in 39 cases.[55] These were therefore deemed abandoned for non-payment. In 22 of the 39 cases (56%), the claimants were in *pro per*. Before claimants are excluded from this system for not paying the filing fee, they receive four notices from the OIA and are offered the opportunity to apply for fee waivers. Those excluded have failed to pay or to apply for a waiver. We denied three applications for various forms of waivers in 2006, but these claimants paid the $150 fee and continued with their arbitrations.

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[54]The neutral arbitrator extended the deadline under Rule 28 in the case that the claimant's attorney withdrew after 1,038 days. The claimant attorney first sought a 90 day postponement of the time to select a neutral arbitrator. After a neutral arbitrator was selected, the hearing date was continued several times at claimant attorney's request before the case was ultimately withdrawn.

[55]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 within small claims court's jurisdiction of $7,500, the claim is not subject to arbitration. Both the OIA and Kaiser inform these claimants of their right to go to small claims court.

4. Dismissed Cases - 3% of Closures

In 2006, neutral arbitrators dismissed 25 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Sixteen of these closed cases (64%) involved *pro pers*.

5. Summary Judgment – 8% of Closures

In 2006, 68 cases were decided by summary judgments granted to the respondent. In 44 of these cases (65%), the claimant was in *pro per*. Failing to have an expert witness (20 cases), failing to file an opposition (20 cases), exceeding the statute of limitations (7 cases), and no triable issue of fact (19 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 2006 is 355 days. The median is 339 days. The mode is 349. The range is 112 to 865 days.[56]

6. Cases Decided After Hearing – 13% of Closures

a. Who Won

About 13% of all cases closed in 2006 (113 of 844) proceeded through a full hearing to an award. Judgment was for Kaiser in 71 of these cases, or 63%. In seven of these cases, the claimant was in *pro per*. The claimant prevailed in 42 of them, or 37%. None of these cases involved a *pro per* claimant.

b How Much Claimants Won

Forty-two cases resulted in awards to claimants. One claimant was awarded more than $4 million. The range of relief is $300 to $4,084,637. The average amount of an award is $448,436. The median is $246,018. The mode is $25,000.

A list of all awards in chronological order is attached as Exhibit G. The awards for 2006 begin on page 106.

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[56]The case that was decided by summary judgment after 865 days was complicated by two events. The case was designated complex because the claimant needed a transplant as a result of the alleged malpractice. Two months before the scheduled hearing date, the claimant attorney was relieved from the case. The claimant did not participate in any of the subsequently scheduled telephonic conferences, and the neutral arbitrator granted the respondent's motion for summary judgment.

c. How Long It Took

The 113 cases that proceeded to a hearing in 2006, on average, closed in 533 days. The median is 475 days. The mode is 367 days. The range is 205 to 1,651 days.[57]

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.[58]

In 2006, 10 claimants requested that their cases be resolved in less than the standard eighteen months. All but three received such status. The OIA received seven 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 five of them and denied two without prejudice so the claimant could renew the request to the neutral arbitrator.[59] Kaiser objected to one of these requests. Three requests were made to neutral arbitrators; the neutral arbitrator denied the same request that the OIA did. In one case, the state court ordered arbitration and set dates for its completion that imposed expedited status.

We had two open expedited cases on January 1, 2006. Five expedited cases closed in 2006, including the two cases that were open at the beginning of the year. All of the cases settled. The average for the nine cases to close is 174 days (almost six months), the median is 108 days, and the range is from 65 to 428 days.[60] Four expedited cases remained open at the end of 2006.

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[57]The case that took 1,651 days to close after a hearing was a remarkable case procedurally. It began with a 90 day postponement of the time to select a neutral arbitrator. The first neutral arbitrator recused himself after six months, as did the third and fourth. The claimant attorney disqualified the second, fifth, sixth and the first court selected neutral arbitrator. The second court selected neutral arbitrator began to serve at the end of December 2004. We received the neutral arbitrator's award May 30, 2006. The time to close was extended under Rule 28, given the number of neutral arbitrators.

[58]Exhibit B, Rules 33-36.

[59]If the OIA denies a request for expedited status, it is usually because the claimant failed to give a time frame to the OIA for the closure of the case.

[60]In the case that took 428 days to close, the OIA granted expedited status. The claimant attorney disqualified the first neutral arbitrator. Even so, the second neutral arbitrator set a hearing date consistent with the claimant attorney's original request. Two months before the scheduled hearing date, the parties stipulated to extend the hearing date due to scheduling problems. The neutral arbitrator granted the request. A hearing was held, the parties submitted post hearing briefs, and the neutral arbitrator served an interim award in favor of claimant and set another hearing date to consider the consortium claim. The parties settled the entire claim before that hearing occurred.

Although originally designed in part to decide benefit claims quickly, none of the expedited cases in 2006 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.[61] In 2006, 35 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 35 cases designated in 2006, at the beginning of 2006, there were 33 open cases designated as complex. Thirty-four complex cases closed in 2006 and the designation of one case was changed to extraordinary. The average length of time for complex matters to close in 2006 is 732 days, about two years. The median is 713 days. The mode is 762. The range is from 411 to 1,378[62] days (about 45 months).

Considering the cases designated as complex in 2006, 12 cases were designated as complex because of medical issues; 8 had complex discovery; two had procedural problems; 8 were designated by order of the neutral; and 5 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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[61] Exhibit B, Rule 24(b).

[62] The case that took 1,378 days to close was designated complex after the arbitration hearing revealed that a third party entity was potentially responsible for the claimant's injury. The hearing remained recessed for 18 months while issues of agency, joinder, consolidation and severance were explored and decided. The neutral arbitrator subsequently extended the 30 month deadline to accommodate the attorney's irreconcilable conflicts with trial calendars; to accommodate the addition and severance of a new party; to allow the review of 4000 + pages of testimony which included two theories of liability; and to allow the parties to submit post hearing briefs and oral arguments. The hearing finally concluded 30 months after it began.

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.[63] Seven cases were designated extraordinary in 2006. There were four extraordinary cases open at the beginning of 2006. Three cases closed this year, two settled and the third was decided by an award in favor of the respondent. The average number of days for an extraordinary case to close is 1,056 days, or 36 months. The range is 660 to 1,567 days (52 months).[64]

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.[65] In 2006, the neutral arbitrators made Rule 28 determinations of "extraordinary circumstances" in 63 cases and extended these cases beyond their limit. We reported 62 such cases open at the end of 2005. Forty-one remained open, 78 closed, and 5 were changed to either extraordinary or complex in 2006.[66] The average time in 2006 to close cases with a Rule 28 order is 696 days, about 23 months. The median is 619 days. The mode is 506 days. The range is 310 to 1,651 days.[67]

According to the neutral arbitrator orders granting the extension, the respondent side never requested an extension, the claimant side requested 21, and the parties stipulated 19 times. The neutral arbitrator ordered it on his or her own 23 times. Extensions were ordered 10 times over the respondents' objections and never over the claimants' objection. Nineteen orders noted that there was no objection. Thirty-three orders merely recited there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reason, the most common reason was unanticipated scheduling conflicts (9). Other reasons include discovery problems (5), the claimants' attorney withdrawing from

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

[64]The case that closed after 1,567 days was an opt in case that was originally returned to Kaiser. The case was reopened in November 2001 when the parties requested it be administered by the OIA. It was designated extraordinary in April 2003, because of the claimant's medical condition, the need for certain tests, and expert depositions. In January 2005, the neutral arbitrator recused himself from this case (and all his other open cases) for health reasons. A new neutral arbitrator was selected in February 2005. The hearing began on January 16, 2006 and an award was made in Kaiser's favor when, after nine days of hearing, the claimant walked out of the hearing and refused to participate further after the neutral arbitrator denied a motion the claimant attorney made.

[65]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 9 such cases in 2006. They are also included in the discussion of prior complex cases. Seven cases that closed in 2006 were both complex and the subject of a Rule 28 extension. They are included in both averages.

[66]One case received an extension in both 2005 and 2006, so the numbers do not add up.

[67]This case is discussed in footnote 57.

the case (4), procedural problems of some sort (adding a new party, cause of action or brief; appointing a guardian ad litem; etc.) (3), and the illness of a party or attorney (including the need for a claimant's condition to stabilize) (7). Two orders mentioned multiple neutral arbitrators. Four orders referred to the illness or death of a party, attorney or neutral arbitrator.

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.[68] 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.[69]

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.[70]

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[68]California Code of Civil Procedure § 1284.2.

[69]Exhibit H 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.

[70]California Code of Civil Procedure §1284.3; Exhibit B, Rule 12. A copy of this waiver form is at Exhibit H, page 109.

According to statute and Rule 12, this completed form is confidential and only the claimant and claimant's attorney know if a request for the waiver was made or granted.

2. How to Waive Both the Arbitration Filing Fee and the Neutral 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 this waiver.[71]

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.[72] 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.[73] 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 2006, the OIA received 45 completed forms asking for the waiver of the $150 filing fee. The OIA granted 43 and denied 2.[74] Twenty-six 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. 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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[71] See Exhibit B, Rule 13. A copy of this waiver form is at Exhibit H, pages 110 - 116.

[72] See Exhibit B, Rules 14 and 15. The forms are contained in Exhibit H, 117 - 118.

[73] 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.

[74] Both claimants received the waiver of both the arbitration fee and the neutral arbitrator's fee.

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

In 2006, the OIA received 53 completed fee waiver applications and one remained undecided from 2005. The OIA granted 50 waivers of the arbitration fees and neutral arbitration fees and denied 1.[75] Three requests for waiver of the fees and neutral fees remained at the end of the year. Kaiser did not object to any request.

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.[76] We received fee information from neutral arbitrators in 629 cases that closed in 2006.

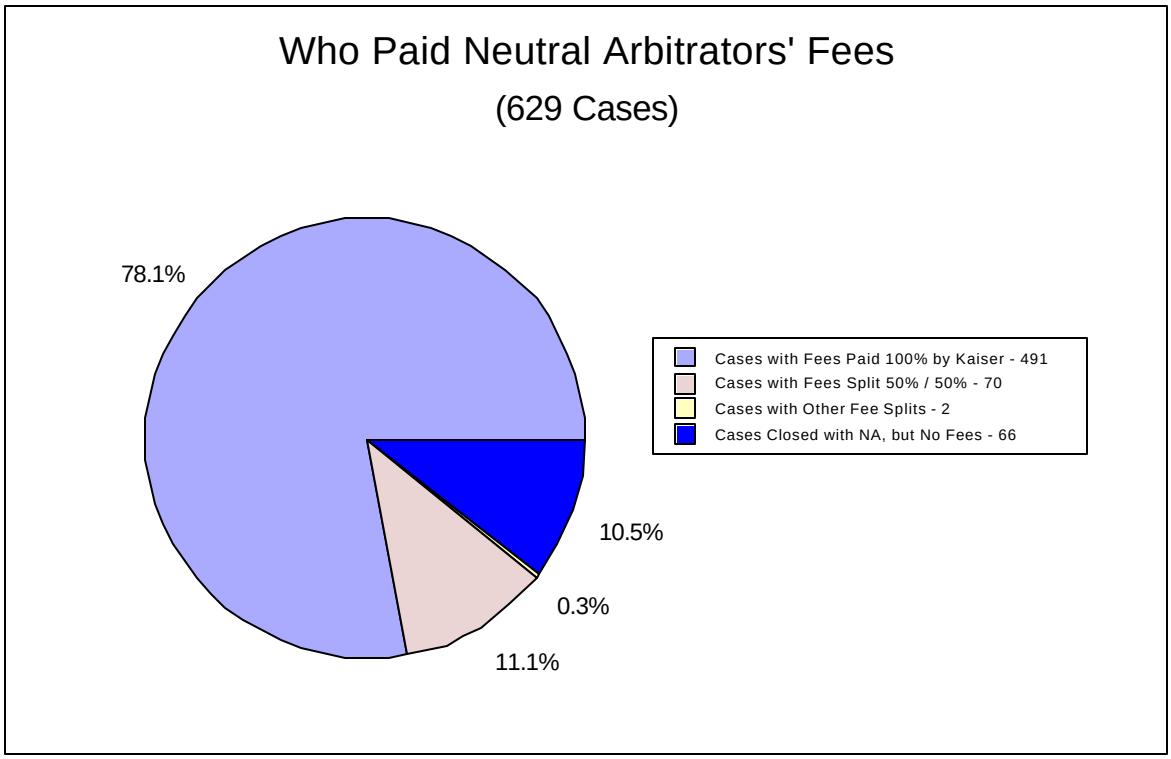
Of these 629 cases, 491 (78%) reported that fees were allocated 100% to Kaiser. Sixty-six (10.5%) reported no fees were charged. The claimant paid nothing in these cases. Seventy (11%) reported that the fees were split 50/50. Two neutrals reported other allocations, which ranged between 66 and 99 percent 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. (95% vs. 85%.) Of the 563 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 87% of the cases. As shown in the chart on the next page, claimants paid neutral fees in only 11.4% of cases that closed in 2006.

[75]The claimant was represented by counsel. The deadline to pay the fee had not yet occurred by the end of 2006.

[76]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 $660/hour. The average hourly fee is $343, the median is $350, and the modes are $350 and $650.[77] Neutral Arbitrators also often offer a daily fee. This ranges from $600/day to $6,500/day. The average daily fee is $2,738, the median is $2,450, and the mode is $2,000.[78]



Looking at the 563 cases in which neutral arbitrators reported fees, the average neutral arbitrator's fee is $5,593.09. The median is $1,527.50 and the mode is $350. This excludes the 66 cases in which there are no fees. The average for all cases, including those with no fees, is $5,006.22.

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[77] 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.

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

The arbitrators' fees described in the last paragraph include many cases where the neutral arbitrator performed very little work. If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee is $16,603.98, the median is $13,370, and there are multiple modes. The range is $720 to $86,924.54.

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 2006 from the parties and the neutrals. The complete statistics and copies of the forms are set out in Exhibits I and J, 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 2006, the OIA sent out 1,110 evaluations and received 455 responses in return.[79] One-hundred-sixty-nine identified themselves as claimants (15) or claimants' counsel (154), and 257 identified themselves as respondent's counsel. Twenty-nine did not specify a side.[80]

The responses have been quite positive overall, and they are encouragingly similar for both claimants and respondents. In 2006, the mode and median for <u>all</u> of the following questions and all types of evaluators was 5. This means that the most common answer to all the questions from all classes was the most favorable response possible.

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[79]This is 175 more than last year. The response rate climbed back from 28% to 41%. Because the return rate was low last year, attorneys in the OIA telephoned attorneys and pro per claimants to encourage them to complete and return their evaluations.

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

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 4.8. *Pro pers* average 4.6. Respondents counsel average 4.8. The median and the mode in all three groups is 5.

Item 5: "The neutral arbitrator explained procedures and decisions clearly." – 4.7 Average

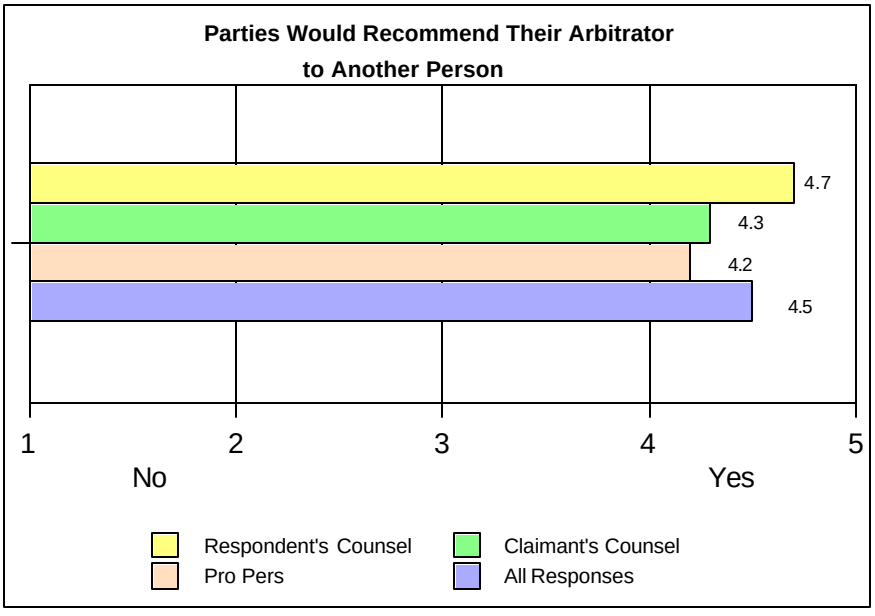
The average of all responses is 4.7. Claimants counsel average 4.5. *Pro pers* average 4.6. Respondents counsel average 4.8. The median and the mode is 5 in all three subgroups.

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 4.1. *Pro pers* average 4.2. Respondents counsel average 4.7. 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 4.3. *Pro pers* average 4.2. Respondents counsel average 4.7. The median and the mode for all groups is 5.



B. The Neutral Arbitrators Evaluate the OIA System

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and improve the system. During 2006, the OIA sent out the questionnaire in 555 closed cases and received 484 responses.[81] 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.

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, the chart on the next page displays the responses of those who did not.

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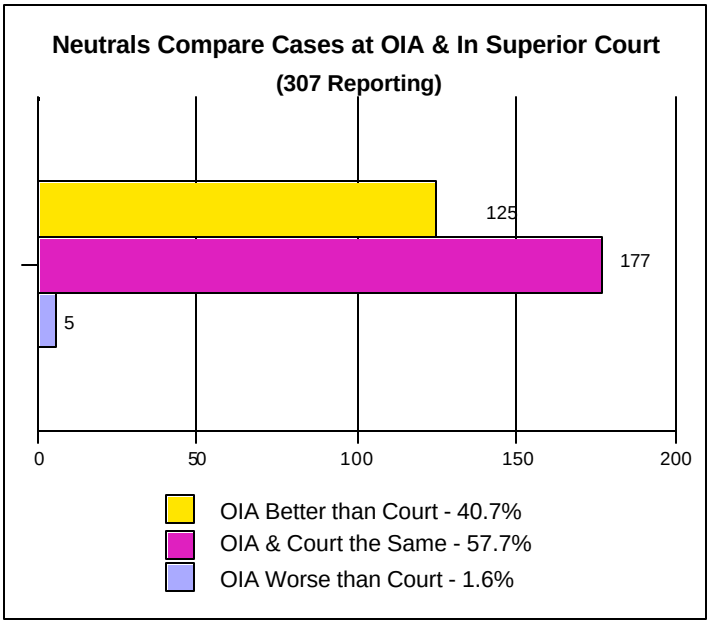
[81] This report has previously reported that 844 cases closed in 2006. Obviously, we do not send questionnaires if the case closed without a neutral arbitrator in place. Similarly, the OIA does not send them where the case was closed soon after an arbitration management conference was held. This eliminates 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 2006 was 548; however, 64 were blank. They are not included in the following discussion.

Neutral Arbitrators' Opinions Regarding OIA System

Feature of OIA System	Works Well	Needs Improvements
Manner of NA's appointment	363	5
Early Management Conference	368	3
Availability of expedited proceedings	141	4
Award within 15 business days of hearing closure	128	14
Claimants' ability to have Kaiser pay NA	254	15
System's rules overall	302	13
Hearing within 18 months	167	11
Availability of complex/extraordinary proceedings	60	4

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. Fifty-six percent of the neutral arbitrators (307) made the comparison. One hundred twenty-five, or 41%, said the OIA experience was better. One-hundred-seventy-seven, or 58%, said it was about the same. Only five -- less than two percent -- said the OIA experience was worse. Those who believe it was better provided assorted comments: that arbitration was more manageable, that the claimant was satisfied with the process, that the expedited procedures were good, and that trial was long and wasteful. One of the neutral arbitrators who rated it worse described procedures in court as more cumbersome, delaying the hearing and not providing for a separate settlement hearing. None of the other four made any comments. Two checked off a single factor as needing improvement (the *Rules* overall and claimants' ability to have Kaiser pay their fees). Three rated the OIA's system and service 5's. They checked off two to five 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. The most common other comment was that 15 days is too short for awards in complex cases (14). The next most common comment (10) referred to difficulties involved with *pro per* claimants. There were only three comments about the billing process this year. One each complaining about payments by Kaiser, claimants or in general.[82] A few comments mentioned continuances, and most of them said the *Rules* provided for them. One neutral arbitrator complained that he lacked the discretion to extend deadlines.[83]

[82]In addition to the drop in comments about fees, 20 more neutral arbitrators listed the fee shifting provisions as a positive part of the *Rules*.

[83]The OIA spoke to the neutral arbitrator after receiving the questionnaire and discussed the *Rules*' avenues for extending deadlines.

X. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

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

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

The members are, in alphabetical order:

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

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 2006, the AOB had several discussions concerning the results of the review of the OIA and the creation of a software program that would generate most of the statistics presented in the annual reports. It selected a company to create such a program and tracked its progress. That program was used for this report.

As mentioned in earlier reports, the needs of *pro pers* in the system has been a particular topic of concern. The AOB devoted parts of two meetings to the issue of how and when a *pro per* claimant can be helped by a non-attorney. In the end, it amended Rule 54 to read in part:[84]

> **May I ask a friend or relative to assist me in the case?**
>
> You may only be represented by a lawyer. This is true both in arbitration and in court. However, an unpaid friend or family member may accompany and assist you, if in the judgment of the Arbitrator, your personal circumstances warrant such assistance.

The AOB extended its contract with Ms. Oxborough for two more years with an option for further renewal. Officers of the AOB are in regular contact with the OIA by e-mail and by telephone. The AOB also reviews the draft annual report and comments upon it. Exhibit K is the AOB Comments on the Eighth Annual Report. Consistent with the AOB's suggestion in 2006, it is also separately available on the OIA website, www.oia-kaiserarb.com.

[84] Exhibit B, Rule 54.

XI. COMPARISON OF 2006 WITH PRIOR YEARS[85]

A. Pool of Neutral Arbitrators

The number of neutral arbitrators in the OIA pool increased by 20 from last year to an all time high of 326. (Line 1) Each of the geographic panels reached all time highs as well. (Lines 3 - 5).

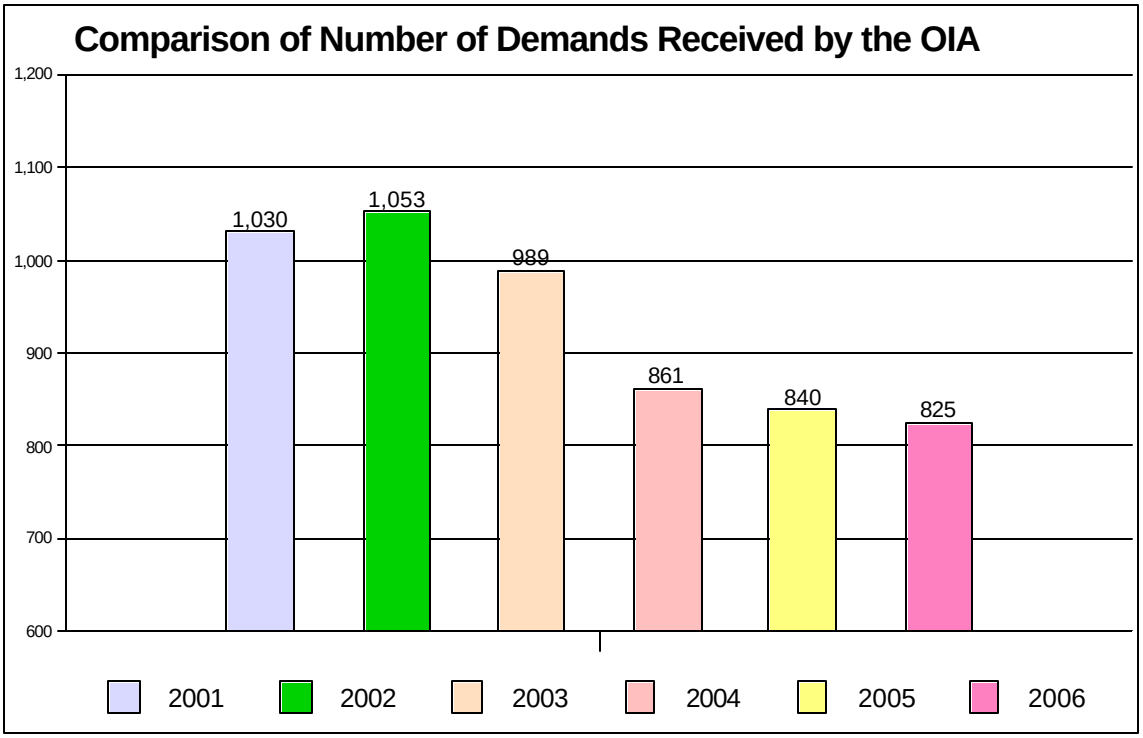
B. How Many Neutral Arbitrators Have Served

The percent of neutral arbitrators in the OIA pool who served in 2006 declined to 57%. This is the natural result of a large pool and a decreasing number of demands. The number of neutral arbitrators who have ever written an award is 281 (12 more than at the end of 2005); 81 different neutral arbitrators wrote awards in 2006. Only eight neutral arbitrators wrote more than two awards in 2006. This widespread distribution of work among members of the pool and corresponding lack of concentration are protections against "captive" neutrals.

C. Demands for Arbitration

The number of demands received during 2006 fell again slightly to 825. In 2002, we received 1,053 demands; in 2003, 989; in 2004, we received 861, and in 2005, 840. Given that the decreases in the past two years are only 21 and 15 (versus 50 and 128 in prior years), the number of demands may be stabilizing.

[85] If readers want a copy of the tables that contain statistics set out in the prior reports, as well as the statistics for this report, they are available from the OIA website or from the office.



As predicted in the sixth annual 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 and only 9 in 2006.

D. Types of Claims

The percentage of medical malpractice claims remained relatively stable at 91%. (Line 63). The percentage of benefit claims dropped to 1% from 2%. Lien cases represented 5% of all the demands the OIA received in 2006, an all time high. Lien cases are cases in which Kaiser serves a demand against a member who has, in a separate matter against a third party, such as a motorist, recovered money for services Kaiser provided the member.

E. Claimants Without an Attorney

The percent of cases with claimants who are not represented by an attorney remained relatively stable at 21%. It is far below the 29% figure recorded in the first year.

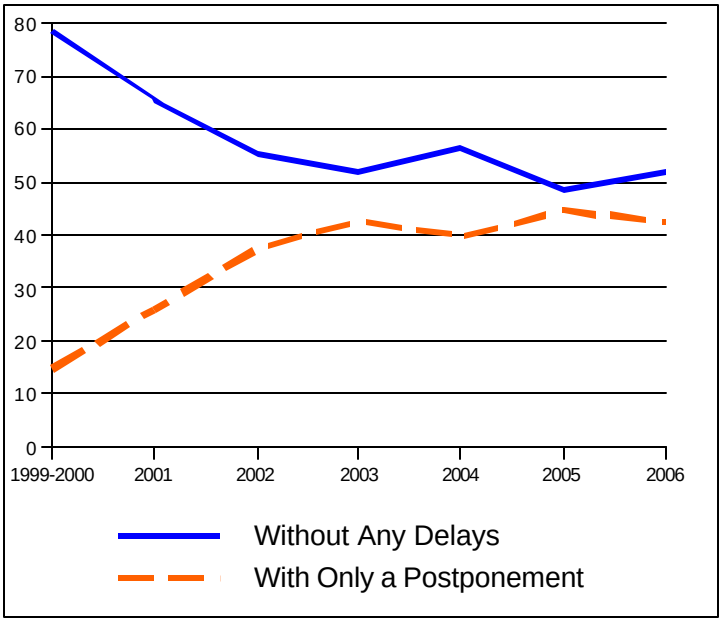
F. How Neutral Arbitrators Are Selected

The percentage of neutral arbitrators chosen by strike and rank versus those jointly selected was stable in 2006. The percent of neutral arbitrators jointly selected who are members of the OIA pool increased. In 2006, as in 2004, parties chose a neutral arbitrator who was not part of the OIA pool only 5.5% of the time. This suggests 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

The percent of cases in which a neutral arbitrator was selected without any postponement or disqualification increased slightly last year to 53%, after falling below 50% for the first time in 2005. It is still far below the 79% who selected the neutral arbitrator this way in 2000. These trends are graphed below:

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



The number of disqualifications of neutral arbitrators dropped in 2006 (54) from 2005 (71). As in every other year, almost all of the postponements and the vast majority of disqualifications were made by the claimants' side.

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

Comparison of No Delay vs. Delays and Average Number of Days to Select Neutral Arbitrators

	1999-2000	2001	2002	2003	2004	2005	2006	1999 - 2006
No delay	25 days, 79%	23 days, 66%	27 days, 55.7%	25 days, 52%	24 days 57%	24 days 49%	25 days 53%	25 days, 59%
Only Postponement	106 days, 15%	104 days, 26%	115 days, 37.7%	114 days, 43%	111 days 40%	111 days 45%	111 days 43%	111 days, 35%
Only Disqual.	73 days, 5%	61 days, 6%	62 days, 3.6%	75 days, 2%	51 days 1.5%	68 days 2.3%	59 days 2%	64 days, 3%
Postponement & Disqual	167 days, 1%	143 days, 3%	164 days, 4%	162 days, 4%	160 days 1.5%	173 days 3.7%	171 days 2%	163 days, 3%
Total Selections	41 days	50 days	67 days	69 days	61 days	70 days	66 days	60 days

H. How Cases Close

The following chart shows how cases closed, year by year. There appears to be a trend in an increasing percentage of cases being withdrawn by the claimants and a decreasing percentage of cases closed by a neutral arbitrator granting summary judgment. The percentage of cases that settled in 2006 rose slightly from 2005, but overall are consistent with 2005.

The percent of cases in which claimants prevailed after an award decreased from 42.5% in 2005 to 37% in 2006, but is still above the 34% in 2004. In 2006, neutral arbitrator made the second largest award in OIA history, $4,084,637

Comparison of How Cases Closed[86]

	2001	2002	2003	2004	2005	2006
Settlements	44 %	45 %	49 %	41%	40%	42%
Withdrawn	20 %	23 %	23 %	27%	27%	28%
Abandoned	5 %	3 %	4 %	4%	4.5%	5%
Dismissed	3 %	3 %	2 %	4%	2%	3%
Summary Judgment	14 %	11 %	9 %	8%	9%	8%
Awards	15 %	14 %	12 %	16%	16%	13%

I. Time to Close

The time to close continues to increase, except for cases that closed by summary judgment, which decreased by 22 days, and is the same as 2004. The increases in cases that settled or were withdrawn and for the overall average were small (14, 18, and 12 days). The average for cases that closed after an award in 2006 had a greater increase (63 more days) in part because of the case, described in footnote 57, that took 1,651 days to close due to multiple disqualifications and the need for court selections.[87]

Comparison of Average Number of Days to Close, by Disposition

	2001	2002	2003	2004	2005	2006
Settlements	278 days	300 days	317 days	320 days	311 days	325 days
Withdrawn	199 days	222 days	231 days	247 days	254 days	262 days
Summary Judgment	299 days	280 days	333 days	355 days	377 days	355 days
Awards	372 days	410 days	461 days	456 days	470 days	533 days
All Cases	281 days	296 days	319 days	326 days	330 days	342 days

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

[87]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.

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 (413 days vs. 533 days overall) or after settlement (271 days vs. 325 days overall).

J. Fee Waivers

We received 53 requests to shift the cost of both the neutral arbitrator and arbitration fees to Kaiser, 9 more than last year. The high was 79 in 2003. We received the same number of requests to waive just the arbitration filing fee (45). 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 increased from 81% in both 2004 and 2005 to 87% of cases which neutral arbitrators charged fees.

K. Evaluations of Neutral Arbitrators and the OIA System

The overall 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 decreased from 4.8 to 4.2, but is still much higher than 2004's 3.6% average. The averages increased for both sets of attorneys. The overall average, *pro per* average and respondents' attorneys average increased for the question about explaining procedures and decisions clearly. The claimants' attorneys and *pro pers* gave higher scores to the question about treating parties with respect. The averages range from a low of 4.1 to 5, while the mode and median are 5. 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 one claimant who sought a waiver of this fee was denied it and that claimant continued the case. In 87% of the cases with fees that began after January 1, 2003 and ended in 2006, 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, the *Rules* and OIA procedures promote fairness in the arbitration process and in its outcomes in many ways.

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.

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 helps reduce the appearance and possibility of neutral arbitrators being dependent upon Kaiser for work. Of note, almost all of the neutral arbitrators who have made a significant award in favor of claimants have been selected to serve again.

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. This includes evaluations of the neutral arbitrators by the parties in earlier cases. The parties can jointly select anyone who agrees to follow the *Rules*, and either party can disqualify a neutral arbitrator after the selection.

The California Legislature and the Judicial Council have decided that disclosures about organizations involved in arbitrations helps promote fairer arbitrations. The OIA posts this information for all to see, and helps the neutral arbitrators comply with their obligations.

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.

The OIA publishes this report on the internet and sends a copy to the California Legislature and others who have asked for it. These annual reports provide more information about arbitrations involving Kaiser Permanente than any other arbitration system provides about its arbitrations.

It is the goal of the OIA to produce a fair, timely, low cost, and confidential arbitration process.