NINTH 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, 2007 - December 31, 2007

REPORT SUMMARY

This is the ninth annual report the Office of the Independent Administrator (OIA) has issued on the arbitration system between Kaiser Foundation Health Plan and its affiliated groups of physicians and hospitals (collectively Kaiser) and its members.[1] Since 1999, the OIA has administered such arbitrations. 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 2007 and relate directly to the system's fairness, speed, or cost.

Developments in 2007

While the system has been relatively stable, the OIA and the AOB strive to improve it and to provide more information about it to the public. The items below are consistent with these goals.

1. **Tracking Website Use.** The OIA began tracking how many users visit the website, how they visit, and which portions they visit. See page 4.

2. **New Software Program.** The software program, described in the last report, was used successfully to generate most of the statistics for this report. See page 4.

3. **Modification of the Arbitration Management Form.** This form was modified to encourage the neutral arbitrators and parties to consider if translators will be needed during the arbitration. See pages 4, 80.

4. **Analysis of Neutral Arbitrators With Ten or More Cases.** The OIA compared how cases handled by neutral arbitrators who had ten or more cases in 2007 closed to the way cases with other neutral arbitrators closed. See page 9.

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

Status of Arbitration Demands

The number and types of demands and the proportion where a claimant is not represented by an attorney is almost identical to last year.

1. **Demands for Arbitration.** After declining from 1,053 in 2002 to 861 in 2004, the number of demands has leveled off. In 2007, the OIA received 823 demands for arbitration. This is only two fewer than it received in 2006. See page 46.

2. **Medical Malpractice Claims.** More than 93% of the cases the OIA administered in 2007 involved allegations of medical malpractice. Only 1% presented benefit and coverage allegations. The remaining 5.5% are based on allegations of premises liability, other torts, or lien. See page 11. The allegations almost all involve the affiliated doctors and hospital groups. The percentage of cases involving medical malpractice allegations has been consistent since the OIA began operations.

3. **Proportion of Claimants Without Attorneys.** Slightly more than 20% of claimants were not represented in 2007. See pages 12, 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 with a single neutral arbitrator.

4. **Three-Quarters of Cases Closed by the Parties' Action.** During 2007, the parties settled 42% of the closed cases. The claimants withdrew 26% and abandoned another 5% by failing to pay the filing fee or get the fee waived. See pages 28, 29.

5. **One-Quarter Closed by Decision of Neutral Arbitrator.** 10.5% were closed through summary judgment, 3% were dismissed by neutral arbitrators, and 13.5% of cases closed after an arbitration hearing. In the cases that went to arbitration hearing, claimants prevailed in 35%. The average award was $571,735. The range was from $15,800 to $6,000,236. See pages 30 - 31.

6. **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 one award made after a hearing in 2007. A single neutral decided the other 105. See page 22.

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 all made by claimants. Even with such requests, the process is expeditious.

7. **Slightly More than Half of Neutral Selections Proceeded with No Delay; the Other Neutral Selections Had Delays Requested by Claimants.** Slightly more than half (51%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (46%), a neutral arbitrator was disqualified (1%), or both (2%). Claimants requested all of the postponements. They also made 81% of the disqualifications. See pages 15 - 18. The percentage of cases in which the parties chose to postpone the deadline has increased over the years from 17% the first year of operation to 46% in 2007. See pages 15, 47.

8. **Overall Average Length of Time to Select Neutral Arbitrator Increased Two Days; Length of Time to Select Neutral Arbitrators Stayed the Same When There Was No Postponement, and Increased Two Days When There Was Only a Postponement.** The average time to select a neutral arbitrator was 68 days, two more days than last year. For the cases without a disqualification or postponement, the neutral arbitrators were selected in 25 days, the same as last year. The time to select a neutral arbitrator increased by two days in the cases where the claimant asked for a 90 day postponement to 113 days. The 68 days to select a neutral arbitrator in 2007 is more than ten times faster than that described by the *Engalla* case. See pages 19 - 21, 47.

9. **Cases Closed on Time, and Time to Close Decreased in All Categories Except Settlements.** In 2007, the cases closed, on average, in 336 days, or 11 months, down from 342 days in 2006. Only one case failed to close on time. Eighty-nine percent of the cases closed within 18 months (the deadline for most cases) and 63% closed in a year or less. See pages 26 - 28.

10. **Hearings Completed Within Eighteen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 520 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 in 403 days, or less than 14 months. See pages 27, 31.

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. It prevents the appearance of a captive pool of neutral arbitrators, beholden to Kaiser for their livelihood. Neutral arbitrators continue to 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.

11. **Large Neutral Arbitrator Pool.** The OIA has 278 neutral arbitrators in its pool. More than 40% of them, or 113, are retired judges. See page 5.

12. **Applications Reveal Balanced Pool of Neutral Arbitrators.** The applications filled out by the members of the OIA pool show that 132 arbitrators, or more than 45%, spend all of their time acting in a neutral capacity. The remaining members divide their time almost equally between claimants' side and respondents' side work. See pages 6 - 7.

13. **Applications Reveal Medical Malpractice Experience by Neutral Arbitrators.** Neutral arbitrators' applications and updates also show that 255 of the arbitrators have medical malpractice experience. That is more than 90%. See page 7.

14. **Large Percentage of Arbitrators Served on Arbitrations and Heard Cases.** Sixty-two percent of the neutral arbitrators in the OIA pool served on a case in 2007. Arbitrators averaged two assignments each in 2007. Eighty different neutrals, including arbitrators not in the OIA pool, decided the 106 awards made in 2007. See pages 7 - 8.

15. **Seventy percent of Neutral Arbitrators Selected by Strike and Rank.** In 2007, the parties chose more than 70% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 28%. Eighty percent of the arbitrators jointly selected were members of the OIA pool. In 20% (40 cases) the parties chose a neutral arbitrator who was not a member of the OIA pool. See page 14.

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.

16. **Kaiser Paid the Neutral Arbitrator's Fees in 85% of Cases Closed in 2007.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2007, Kaiser paid the entire fee for the neutral arbitrators in 85% of those cases that had fees. See page 36.

17. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from $125/hour to $660/hour, with an average of $361. For the 595 cases that closed in 2007 and for which the OIA has information, the average total fee charged by neutral arbitrators was $6,189.12. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was $7,001.00. 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. More than half of the parties returned their evaluations, while almost all neutral arbitrators returned theirs.

18. **Positive Evaluations of Neutral Arbitrators.** In 2007, the great majority of 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.

19. **Positive Evaluations of the OIA.** Neutral arbitrators continue to evaluate OIA procedures positively. More than 45% said that the OIA experience was better than a court system, and 52% said it was about the same. Less than 2% said the OIA experience was worse. See pages 40 - 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 ninth 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, 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. While the ninth annual report mainly focuses on what happened in the arbitration system during 2007, one section compares 2007 with earlier years. The final section finds that the system is continuing to achieve its goals.

The Arbitration Oversight Board (AOB), an unincorporated association registered with the California Secretary of State, provides ongoing oversight of the OIA and the independently administered system. Its activities are discussed in Section 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 by e-mail, 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. Almost all of the demands are based on allegations against these affiliates.

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

[4]Exhibit B, Rules 16 and 18.

[5]Exhibit B, Rule 24.

Procedures to adjust the deadlines for cases when required;[6] and

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

The 18 month timeline that the *Rules* 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 is expected to provide 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 being achieved. The data in this report are collected and published to allow the AOB and the public to determine how well the arbitration system meets these goals.

B. Format of This Report[8]

The report first discusses developments in 2007. The next sections look at the OIA's pool of neutral arbitrators, and the number and types of cases the OIA received in 2007. 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 summarized in the following sections. The report next describes the AOB's membership and activities during 2007. Finally, the report compares 2007 to prior years.

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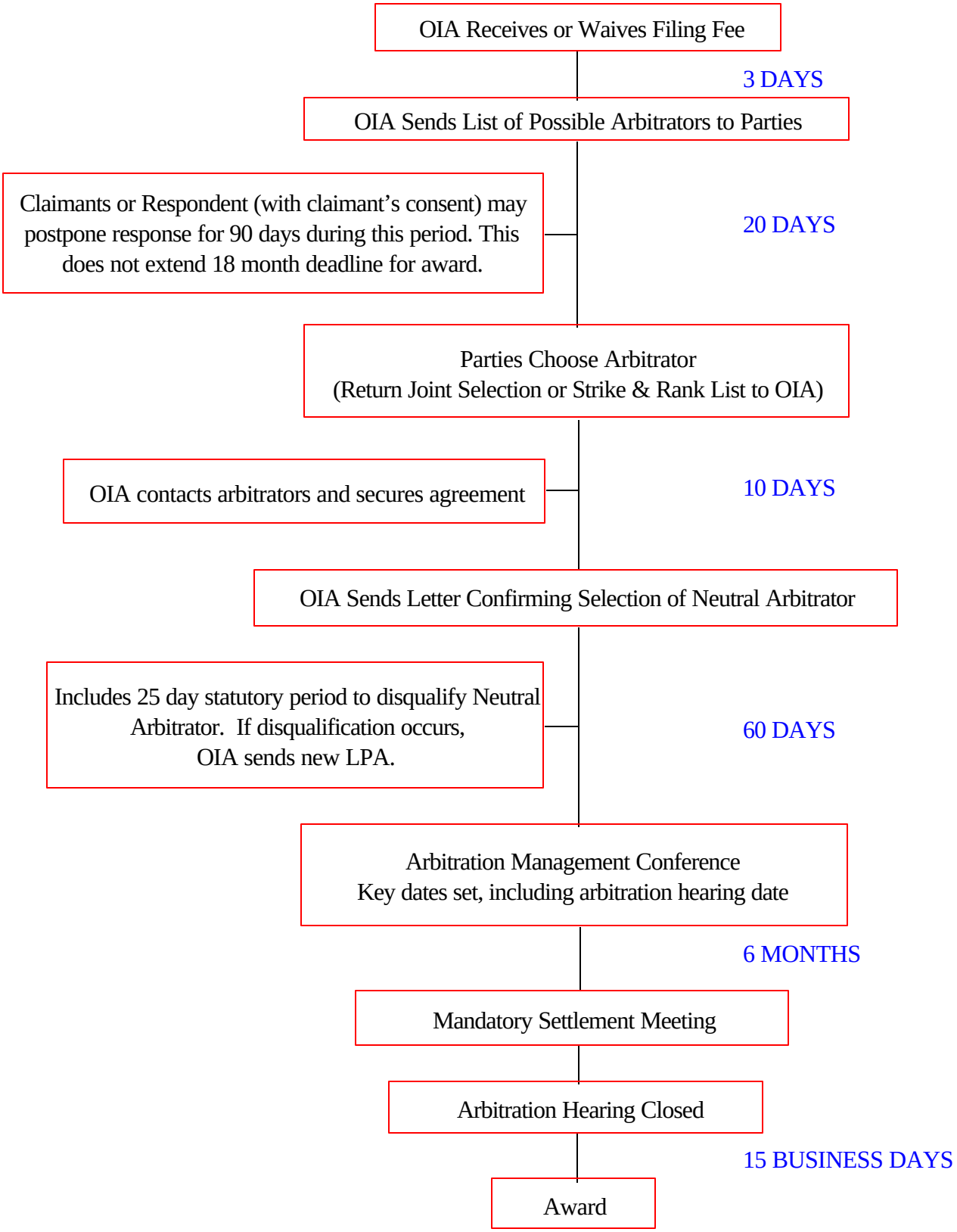
[6]Exhibit B, Rules 24, 28 and 33.

[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 and 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 2007

A. Tracking of Website Use

The AOB was interested in how many people used the OIA's website and which portions were viewed most often. As a result, the OIA began tracking the use of its website, oia-kaiserarb.com. The OIA does not keep track of who visits the website. The OIA's website address is included in many of the letters the OIA sends to parties and neutral arbitrators. It is also given to people who call the OIA with questions that are answered by materials located there. Tracking information showed that approximately 40-70 people visit the website each week. They are divided relatively evenly between new and repeat visitors. Most visit the site by typing in its address, rather than through search engines. Other than the home page, the most visited parts of the OIA website are the forms for parties and *Rules*. Other popular pages are the list of neutral arbitrators, neutral arbitrators forms, OIA disclosures, and annual reports.

B. New Software Program

As discussed in last year's report, a new software program which automatically generates some of the statistics used in the annual reports was created. It was used for last year's report, and its results tested successfully against statistics generated in the traditional method. The new software system has greatly simplified the generation of statistics for this year's report.

C. Modification of the AMC Form

The AOB was concerned whether participants in the arbitration system were aware that Kaiser would pay for a translator if the neutral arbitrator decided one was necessary for the arbitration. It suggested, and the OIA agreed, to a modification which added a query about translation services on the form the neutral arbitrator fills out and serves on the parties after the AMC.[9] It was sent out to neutral arbitrators toward the end of 2007.

D. Analysis of How Neutral Arbitrators with Ten or More Cases Closed Cases

The AOB was interested in whether the neutral arbitrators who served on ten or more cases in a year closed their cases in different ways than the other neutral arbitrators. The analysis for the neutral arbitrators in 2007 appears on page 9.

[9]A copy of the form, with the new language underlined, is attached as Exhibit C to this report.

III. POOL OF NEUTRAL ARBITRATORS

A. Turnover in 2007 and the Size of the Pool at Year-end

On December 31, 2007, there were 278 people in the OIA's pool of possible arbitrators. Of those, 113 were former judges, or 41%.

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.

Number of Neutral Arbitrators by Region

Total Number of Arbitrators in the OIA Pool:	**278**
Southern California Total:	**153**
Northern California Total:	**116**
San Diego Total:	**54**

***The three regions total 371 because 40 arbitrators are in more than one panel; 30 in So. Cal & San Diego, 6 in No. Cal & So. Cal, and 5 in all three panels.**

On January 1, 2007, the OIA had 326 people in its pool of possible arbitrators. During the year, 68 people left the pool. The reason this number is so high is that the neutral arbitrators were required in 2007 to update their applications, as is required every two years. Thirty-two neutral arbitrators, none of whom had an open case, did not return the updates and were therefore removed from the pool. In addition, ten neutral arbitrators resigned from the pool, probably as a result of the update process. Only one had open cases, which he retained.

Eighteen new arbitrators joined the pool.[10] The OIA rejected nine applicants in 2007 because they failed to meet the qualifications.[11]

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[10]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.

[11]The qualifications for neutral arbitrators are attached as Exhibit D. If the OIA rejects an application, we inform the applicant of the qualifications which he or she failed to meet.

B. Practice Background of Neutral Arbitrators

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 65% 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, 11% as a respondent (or defense) attorney, 9% as a claimant (or plaintiff) attorney, less than 1% as an expert, and 16% 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 47% of the pool, 132 members, reported that they spend 100% of their time that way.[12] The remainder are distributed as shown below.

Percent of Practice Spent As a Neutral Arbitrator

Percent of Time	0%	1 - 25%	26 - 50%	51 - 75%	76 - 99%	100%
Number of NAs	**9**	**84**	**25**	**9**	**18**	**132**

[12]This is not surprising as 113 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 is relatively balanced on both sides.

Percent of Practice Spent As an Advocate

Percent of Practice	Number of NAs Reporting Claimant Counsel Practice	Number of NAs Reporting Respondent Counsel Practice
0%	**206**	**206**
1 - 25%	**32**	**29**
26 - 50%	**28**	**20**
51 - 75%	**4**	**7**
76 - 100%	**8**	**16**

Finally, while the qualifications do not require that members of the OIA pool have medical malpractice experience, almost 92% of them do. At the time they filled out or updated their applications, 255 reported that they had such experience, while 23 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.[13]

C. How Many in the Pool of Arbitrators Have Served?[14]

One of the recurring concerns expressed about mandatory consumer arbitration 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, no one depends on the defendant for his or her income and impartiality is better served. Thus, the large 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 prevent possible bias.

[13]Of the 23 who reported no medical malpractice experience in their applications, all but 5 of them have served as a neutral arbitrator in an OIA case. Ten 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.

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

1. The Number Who Have Served in 2007

In 2007, 195 different neutral arbitrators were selected to serve as neutral arbitrators in 715 OIA cases. The great majority (171) were members of the OIA pool. Thus, in 2007, 62% 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 2007 is 0 to 19. The neutral arbitrator at the highest end was jointly selected 14 times. The average number of appointments for members of the pool in 2007 is 2, the median is 1, and the mode is 0.

2. The Number Who Wrote Awards in 2007

The number of neutral arbitrators deciding awards after hearing is similarly diverse. The 106 awards made in 2007 were decided by 80 different neutral arbitrators. Sixty-three of the arbitrators made a single award, while ten decided two. Five other neutral arbitrators decided three cases each, and two decided four. Only two of these seven neutral arbitrators made awards only for one side, and found only in favor of Kaiser.[15]

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 three 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, 47 different neutral arbitrators have made 58 awards of $500,000 or more in favor of claimants.[16] Ten of these awards were made in 2007. The awards have ranged from $500,000 to $6,000,236. Since they made their awards, they have served 499 times, 240 times because the parties jointly selected.

Of the 47 neutral arbitrators, 7 were never members of the OIA pool and 14 have left the pool for various reasons. Thus, at the end of 2007, there were 26 neutral arbitrators in the pool who have made awards of $500,000 or more. Twenty neutral arbitrators who are still in the pool made awards prior to 2007. Only 5 of them have not served again.

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[15]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.

[16]Eight neutral arbitrators have made more than one such award. Six of these neutral arbitrators made such awards in different years.

4. Comparison of Cases Closed by Neutral Arbitrators with Ten or More Cases with Other Closed Cases

As mentioned above, as a result of the AOB's review of last year's annual report, the OIA analyzed the way cases were closed by neutral arbitrators who were the neutral arbitrator on ten or more cases with the way cases with other neutral arbitrators closed. For the annual report, this analysis has been updated.

There were 15 neutral arbitrators who served as neutral arbitrators on ten or more cases in 2007. To compare their cases, the OIA reviewed the cases closed in 2006 and 2007 with a neutral arbitrator in place. The table below shows the results.

Comparison of Neutral Arbitrators with 10 or More Closed Cases vs. Other Neutral Arbitrators 2006 - 2007

	Cases with Neutral Arbitrators 10 or More Cases		**Cases with Other Neutral Arbitrators**	
Settled	148	47.1%	480	44.6%
Withdrawn	80	25.5%	258	24.0%
Summary Judgment	35	11.1%	118	11.0%
Awarded to Respondent	33	10.5%	109	10.1%
Awarded to Claimant	7	2.2%	72	6.7%
Dismissed	10	3.2%	36	3.3%
Other	1	.3%	3	.3%
Total	314		1076	

5. The Number Named on a List of Possible Arbitrators in 2007

All but one of the neutral arbitrators in the OIA pool were named at least once on a List of Possible Arbitrators (LPA) sent to the parties by the OIA in 2007. The average number of Northern California arbitrators appearing on an LPA is 44, the median number is 44, and the mode is 44. The range of appearances is from 10 to 66 times.[17] In Southern California, the average number of appearances is 19, the median is 19, and the mode is 18. The range is from 0

[17]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 in the OIA pool since it started; two joined October 25, 2007, nine weeks before the end date for this report. The number of times an arbitrator is selected also depends on whether the individual will hear cases where the claimant has no attorney (*pro per* cases). Slightly more than 20% of the pool will not.

to 31. In San Diego, the average is 11, the median is 11, and the mode is 11. The range of appearances is from 3 to 19. The one member of the pool who was not named on an LPA in 2007 told the parties in another case that he would not take on additional work while it remained open, and therefore was not eligible to be included on an LPA in 2007.

D. "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."

The OIA tracks Standard 12 disclosures and removes "one case neutral arbitrators" from the pool while their cases are open. During 2007, 11 neutral arbitrators were "one case neutral arbitrators" for part of the year. At the end of 2007, three remained "one case neutral arbitrators."

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 823 demands for arbitration in 2007. Geographically, 451 demands for arbitration came from Northern California, 301 came from Southern California, and 71 came from San Diego.[18]

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.[19] In 2007, 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 two days. The range is 0 to 84 days.

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[18]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.

[19]Exhibit B, Rule 11.

There were 16 cases in 2007 in which Kaiser took more than ten days to submit the demand to the OIA.[20] If only these "late" cases are considered, the average is 29 days, the median is 22 and the mode is 22 days.

B. Mandatory Cases

Almost 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 823 demands for arbitration the OIA received in 2007, 808 were mandatory and 15 could choose whether to have the OIA or Kaiser administer the arbitration. The latter group of cases are considered "opt-ins". At the end of 2007, 99% of the open cases were mandatory and 1% was 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 to opt in. Without agreement, Kaiser administers it.

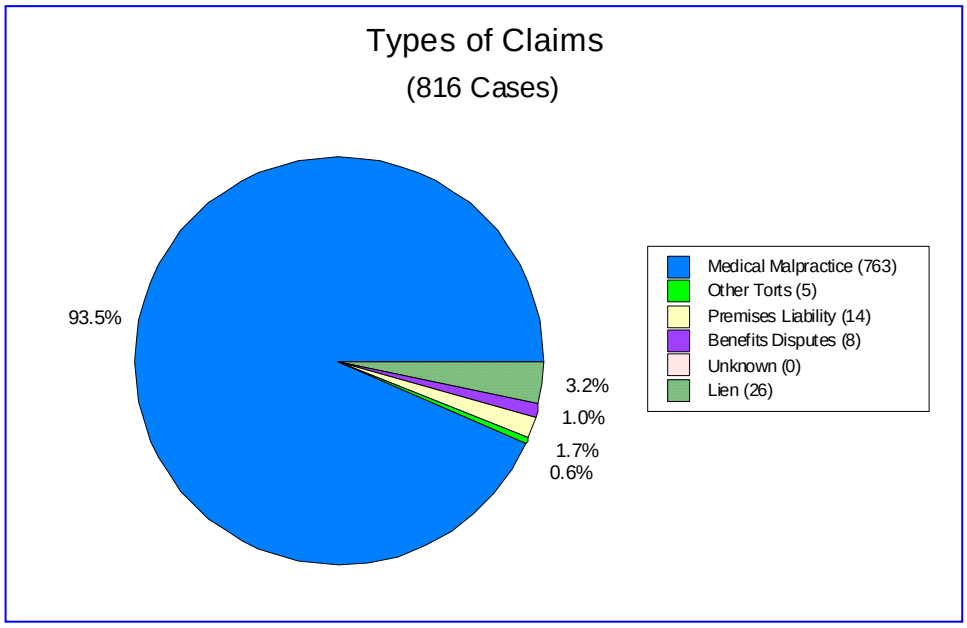
Of the 15 opt in demands the OIA received in 2007, 8 claimants decided to have the OIA administer their claims. None affirmatively opted out of the OIA. In one instance, the deadline had not occurred by the end of the year. Another was withdrawn before the deadline to opt in occurred. The remaining five were returned to Kaiser for administration because the claimants did not affirmatively opt in to the OIA.

D. Types of Claims

In 2007, the OIA administered 816 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 make up 94% (763 cases) in the OIA system. Benefits and coverage cases represent less than one percent of the system (8 cases).

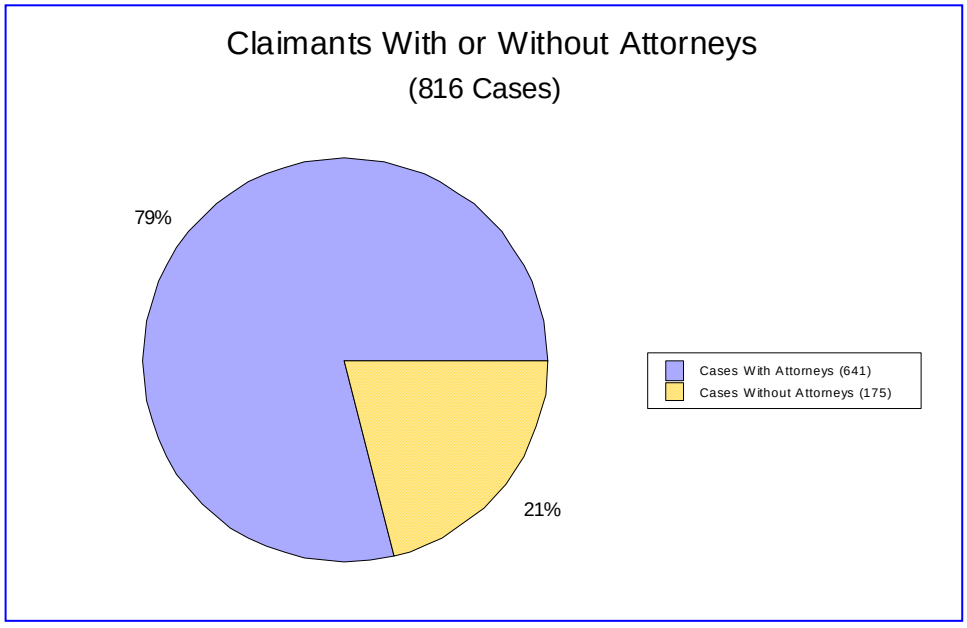
The chart on the next page shows the types of claims the OIA administered during 2007.

[20]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.



E. Claimants With and Without Attorneys

Claimants were represented by counsel in 79% of the cases the OIA administered in 2007 (641 of 816). 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 List of Possible Arbitrators (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[21] 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 from the appropriate panel of the OIA pool of neutral arbitrators. 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.

The parties have 20 days to respond to the LPA.[22] 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

[21]"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 to administer.

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

OIA pool, or meet the OIA qualifications.[23] 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 best score[24] 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 2007, 81 cases either settled (24) or were withdrawn (57) without a neutral arbitrator in place.[25] Before a neutral has been selected, the parties can request a postponement of the LPA deadline under Rule 21 of up to 90 days. 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 715 neutral arbitrators selected in 2007, 200 were jointly selected by the parties (28%) and 515 (72%) were selected by the strike and rank procedure. Of the neutral arbitrators jointly selected by the parties, 160 (80%), were members of the OIA pool, though not necessarily on the LPA sent to the parties. In 40 cases (20%), the parties selected a neutral arbitrator who was not a member of the pool.

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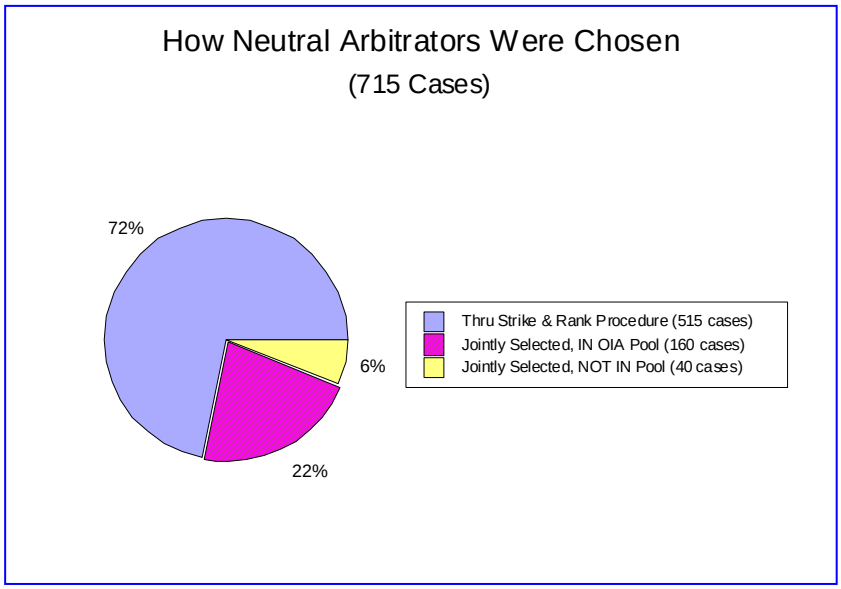
[23]Some neutral arbitrators who do not meet our qualifications – for example, they might have served as a party arbitrator in the past three years for either side in a Kaiser arbitration – do serve as jointly selected neutral arbitrators. There is, however, one exception: If a neutral arbitrator is 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."

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

[25]These 81 cases included both cases with attorneys and cases where the claimant was in *pro per*. The disposition varied however. In the 35 *pro per* cases that closed without a neutral arbitrator selected, 5 settled and 30 were withdrawn. In the 46 cases with an attorney, 19 settled and 27 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[26] – though it may be longer if, for example, it is based on the claimant's medical condition.

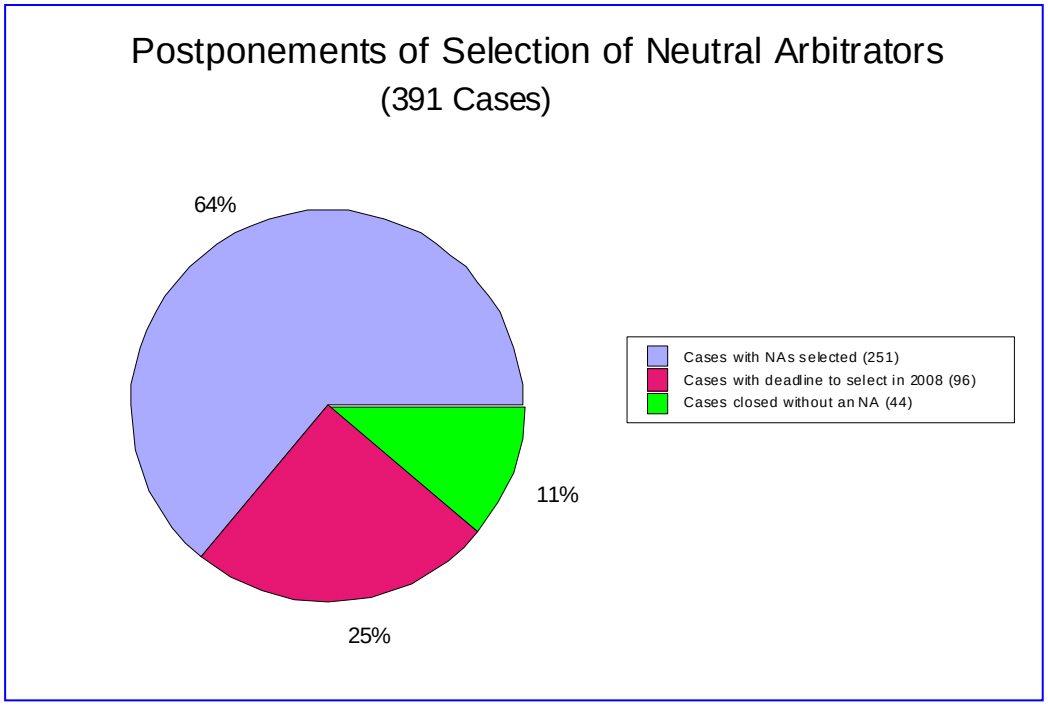
Claimants do not have to give a reason for why they want a 90 day postponement under Rule 21, though there must be a reason for a Rule 28 extension. The reasons for a Rule 28 extension are often the same as claimants volunteer for why they use Rule 21. In some cases, the parties are seeking to settle the case or to select a neutral arbitrator jointly. Some claimants or attorneys want a little more time to evaluate the case before incurring the expense of a neutral arbitrator. As noted above, parties in 81 cases either settled or withdrew them before a neutral

[26]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.

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 391 cases in 2007 where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their responses to the LPA, or both. Claimants made all of the requests. In 388 cases, the claimants requested Rule 21 postponements. Respondents never made a request. Requests for a Rule 28 postponement were made in 8 cases. The claimant had always made a prior request under Rule 21.[27]

The following chart shows what has happened in those 391 cases. Two-hundred-fifty-one (251) of them (64%) now have a neutral arbitrator in place. Forty-four 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, 2007.



[27]The numbers do not total because in three cases where a Rule 28 extension was requested, the Rule 21 postponement had been made in 2006.

D. Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators at the start of a case.[28] Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.[29] 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.[30]

Multiple disqualifications occur infrequently. In 2007, neutral arbitrators were disqualified in 31 cases. Twenty-seven cases had a single disqualification. One case had two disqualifications, two cases had three, and one case had seven disqualifications.[31] In 26 cases with a disqualification, a neutral arbitrator had been selected at the end of 2007. In three 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 these multiple disqualifications, these 31 cases represent 42 neutral arbitrators who were disqualified in 2007. The neutrals were disqualified by the claimants' side 34 times, and by the respondents' side 8 times.

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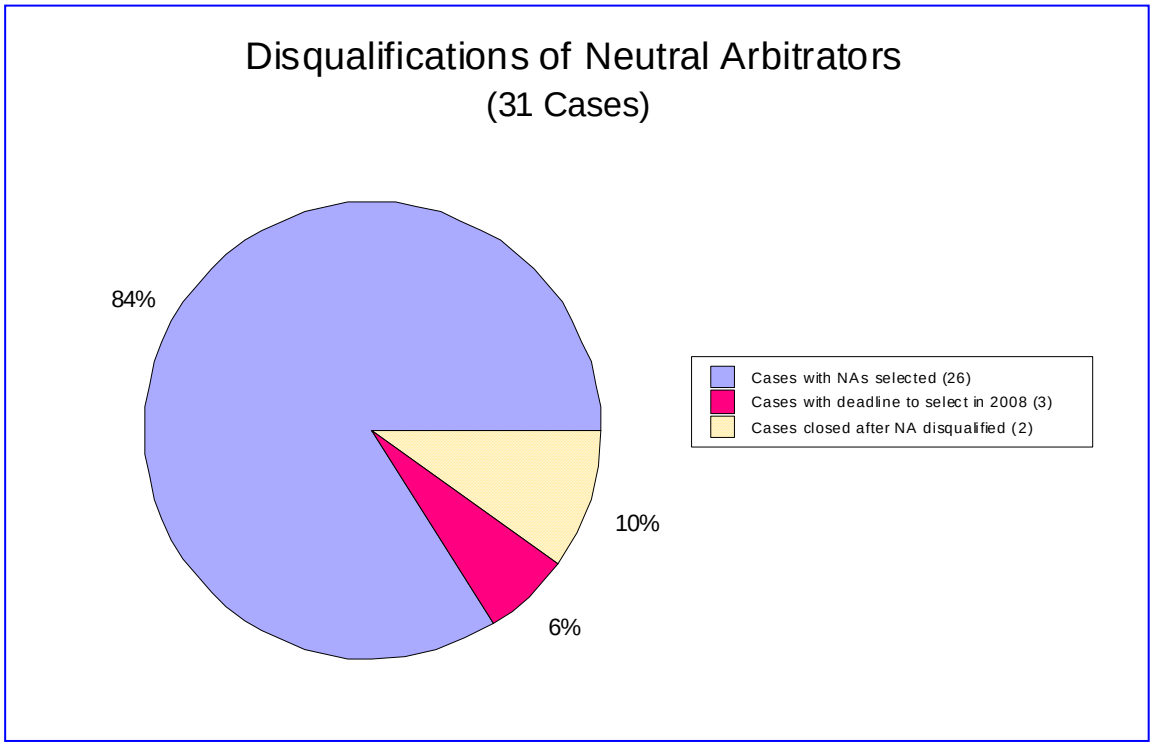
[28]California Code of Civil Procedure § 1281.91; see also Exhibit B, Rule 20.

[29]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.

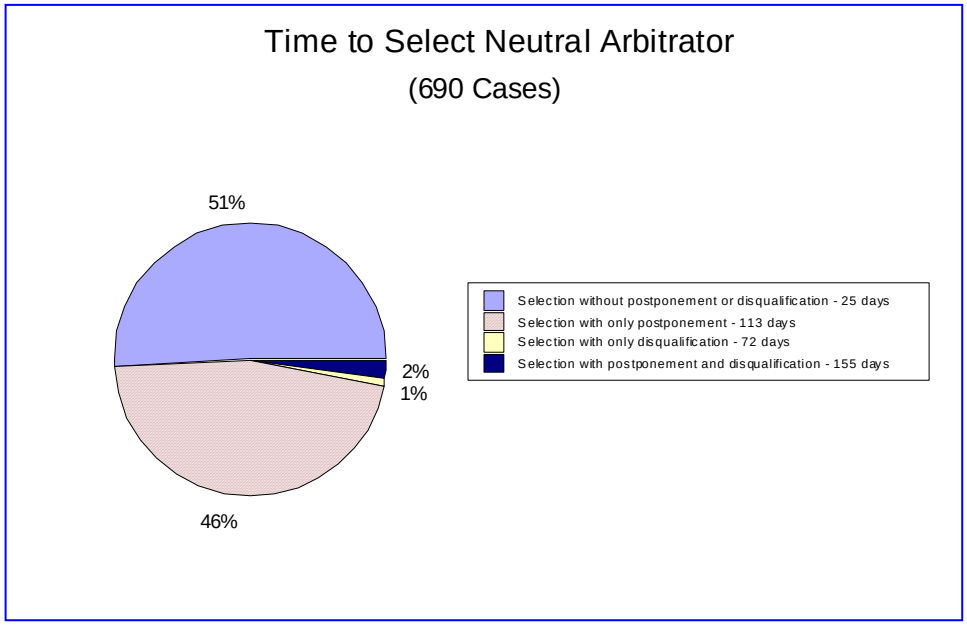
[30]Under Rule 18.f, after two neutral arbitrators have been disqualified, the OIA randomly selects subsequent neutral arbitrators, rather than continuing to send out new LPAs.

[31]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
(31 Cases)
84%
10%
6%
Cases with NAs selected (26)
Cases with deadline to select in 2008 (3)
Cases closed after NA disqualified (2)

E. Length of Time to Select a Neutral Arbitrator

This section considers 690 cases in which a neutral arbitrator was selected in 2007.[32] 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 690 cases. The four categories are displayed in the chart below.



[32] Twenty-five cases in which a neutral arbitrator was selected in 2007 are not included in this section. In 22 cases, a neutral arbitrator had previously been appointed, had begun acting as the neutral arbitrator, but had subsequently been removed as the neutral arbitrator. These include cases where a neutral arbitrator died or became seriously ill, was made a judge, moved, etc. In addition, two neutrals arbitrators made disclosures in the middle of a case, because of some event occurring after the initial disclosure, and were disqualified. In another case, in addition to the 90 day extension, the member (who is an attorney) had disqualified 14 neutral arbitrators by the end of 2007. The OIA gave Kaiser a postponement while it changed attorneys and said it was preparing to file a petition for the State Court to select a neutral arbitrator. It has not yet done so. (While a neutral arbitrator was in place at the end of 2007, he was disqualified in 2008.). 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 351 cases where a neutral arbitrator was selected in 2007 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 25 days, and the range is 1-44 days.[33] This category still represents a slim majority, at 51%, after slipping below 50% in 2005.

2. Cases with Postponements

There were 315 cases where a neutral arbitrator was selected in 2007 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 2006, but the neutral arbitrator was actually selected in 2007. 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 113 days, the mode is 114 days, the median is 115 days, and the range is 33-275 days.[34] This category represents 46% of all cases which selected a neutral arbitrator in 2007.

3. Cases with Disqualifications

There were 10 cases where a neutral arbitrator was selected in 2007 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 2006. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96, if there is only one disqualification.[35] The average number of days to select a neutral arbitrator in the 10 cases is 72 days, the median is 61 days, the range is

[33]Two cases took 44 days to select a neutral arbitrator because the LPA packet was mailed to the wrong address. When this was discovered, the LPA packet was resent and that party given an additional 20 days.

[34]The case that took 275 days to select a neutral arbitrator was a lien case; that is, a case in which Kaiser serves a demand for arbitration against a member who, in a separate matter against a third party, recovered money for services Kaiser provided to the member. In this case, when the OIA contacted the member's attorney who had been served with the demand for arbitration, the attorney informed us that he did not represent the member in the lien arbitration. However, he requested a 90 day postponement to allow the member to respond to the LPA and provided contact information for the member. The member subsequently requested and obtained several additional postponements of time to respond because of his ill health and hospital admissions.

[35]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.

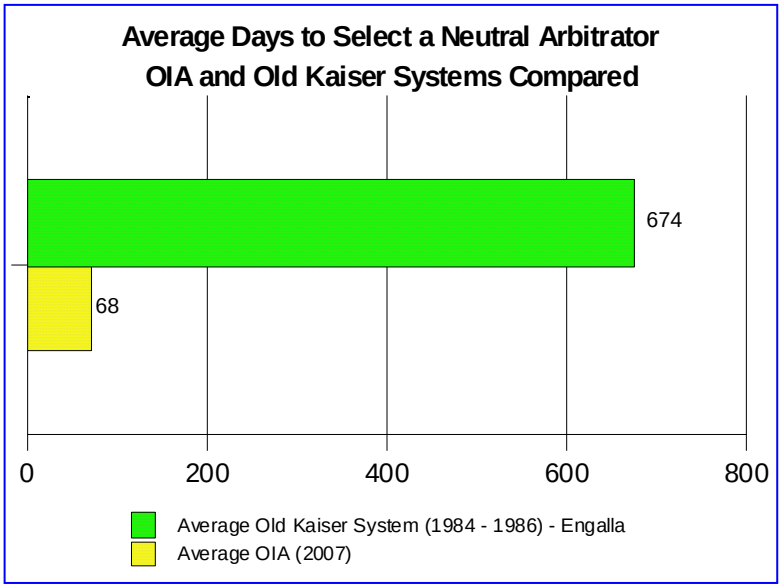
51-137 days,[36] and there is no mode. Disqualification only cases represent 1% of all cases which selected a neutral arbitrator in 2007.

4. Cases with Postponements and Disqualifications

There were 14 cases where a neutral arbitrator was selected in 2007 after a postponement and the disqualification of a neutral arbitrator. Again, this includes cases where a postponement or disqualification was made in 2006. 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 155 days, there is no mode, the median is 152 days, and the range is 134-174 days. These cases represent 2% of all cases which selected a neutral arbitrator in 2007.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 68 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*[37] 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 2007, the OIA system was almost 10 times faster.



[36] In the case that took 137 days to select a neutral arbitrator, the first neutral arbitrator, two months after serving the initial disclosures, served supplemental disclosures and was disqualified. The first neutral arbitrator never held an AMC.

[37] 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.[38] 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 2007, party arbitrators signed the award in only one of the 106 cases in which the neutral arbitrator made an award.[39] The remaining 105 cases were decided by a single arbitrator. The one case with party arbitrators closed in 1,531 days.[40] The arbitrators found for the claimant, awarding $1,247,472.

Of the 766 cases that remained open at the end of 2007, party arbitrators had been designated in 18 of them. In 8 of those, the OIA had designations from both parties; in the other 10, only one side had designated a party arbitrator.

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

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[38]California Health & Safety Code §1373.19.

[39]In addition, one case that was settled also had party arbitrators.

[40]Cases with party arbitrators take longer to have the arbitration hearing. The average for all cases is 520 days. (See generally Section VII.)

to discuss the status of all cases open more than 15 months. Cases that fall into this category generally require more OIA contact for a number of reasons, e.g., a claimant with a continuing medical problem which makes scheduling the hearing and maintaining scheduled dates difficult or the recusal or death of the neutral arbitrator late in the case and/or right before the scheduled hearing. OIA attorneys also review a neutral arbitrator's open cases when they offer him or her new cases.

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

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, 13 different neutral arbitrators were suspended 18 times in 16 cases in 2007. No neutral arbitrator was still suspended at the end of the year. Most of the suspensions were caused by the neutral arbitrator's failure to hold timely AMCs.

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 2007, one neutral arbitrator was suspended 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.[41] It was the feature of the OIA system that neutral arbitrators rated 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

[41]Exhibit B, Rule 25.

OIA to see that the case has been scheduled to finish within the time allowed by the *Rules*, usually 18 months. Receipt of the form is therefore important. Eleven neutrals were suspended in 13 cases for failing to return an AMC form in 2007. 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.[42] The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. In 2007, the OIA received notice from the parties in 348 cases that they have held an MSM. Thirty-one of them reported that the case had settled at the MSM. None of these cases involved a *pro per* claimant. On the other hand, in 93 cases neither party returned the MSM form to the OIA despite requests.

D. Hearings and Awards

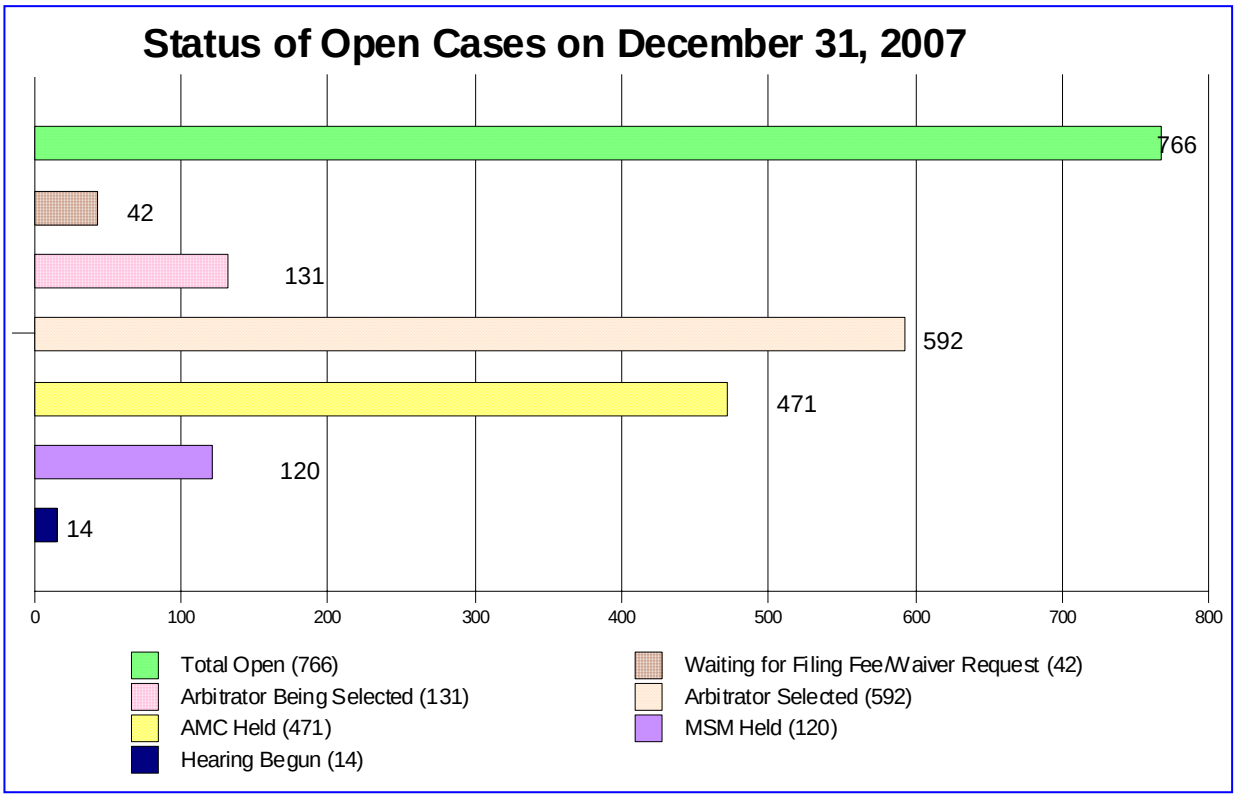
The neutral arbitrator is responsible for ensuring that the hearing occurs and an award is served within the time limits set out in the *Rules*. The OIA suspended one neutral arbitrator for failing to set a hearing date. One neutral was suspended for failing to serve his award within the *Rules*' time limits. Both were reinstated when the awards were served.

One neutral arbitrator was suspended for failing to provide the fee and fee allocation information required by California Code of Civil Procedure § 1281.96. He was reinstated. Another was suspended for failing to return a questionnaire after a case closed. He was reinstated.

E. Status of Open Cases Administered by the OIA on December 31, 2007

As of December 31, 2007, there were 766 open cases in the OIA system. In 42 of these cases, the claimant had not yet sent in either the filing fee or the paperwork to waive it so the LPA could be sent. In 131 cases, the parties were in the process of selecting a neutral arbitrator. In 592 cases, a neutral arbitrator had been selected. Of these, an arbitration management conference had been held in 471. This is 61% of all open cases. In 120 cases, the parties had held the mandatory settlement meeting. In 14 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.

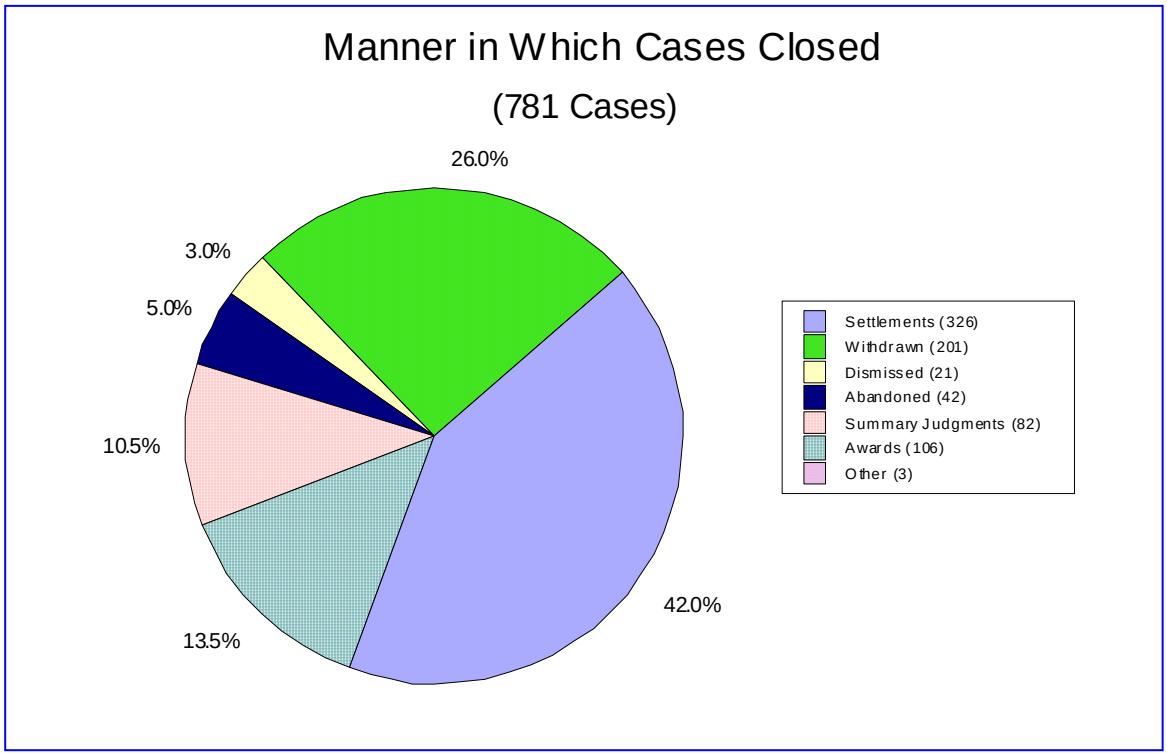
[42] As the settlement conference is supposed to be conducted without the appointed neutral and in a form agreed upon by the parties, the OIA has no real way to track whether the event has occurred except for receiving the forms from the parties. The OIA has no power to compel them to report or to meet. A neutral arbitrator, on the other hand, can order the parties to meet if a party complains that the other side refuses to do so.



VII. THE CASES THAT CLOSED

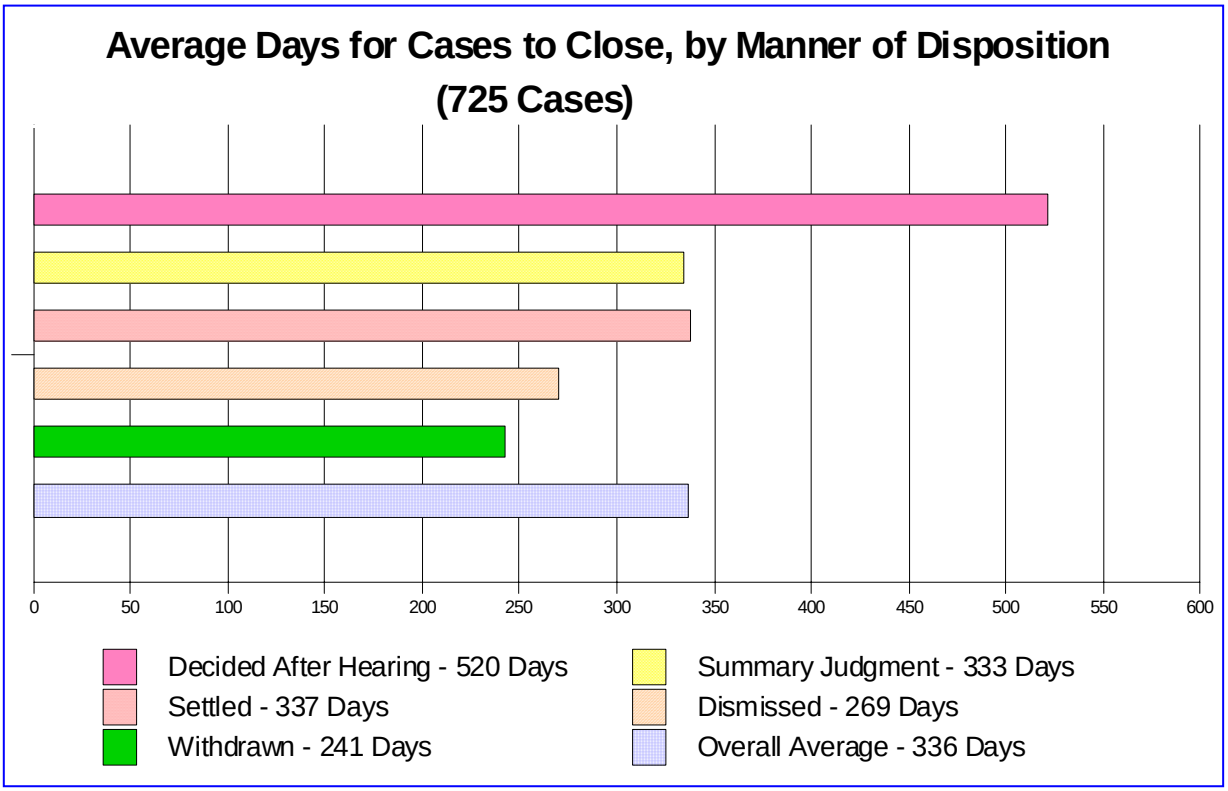
In 2007, 781 cases closed. Cases close either because of (1) action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of fees), or (2) action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). The first half 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.[43]

[43]There were three 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.



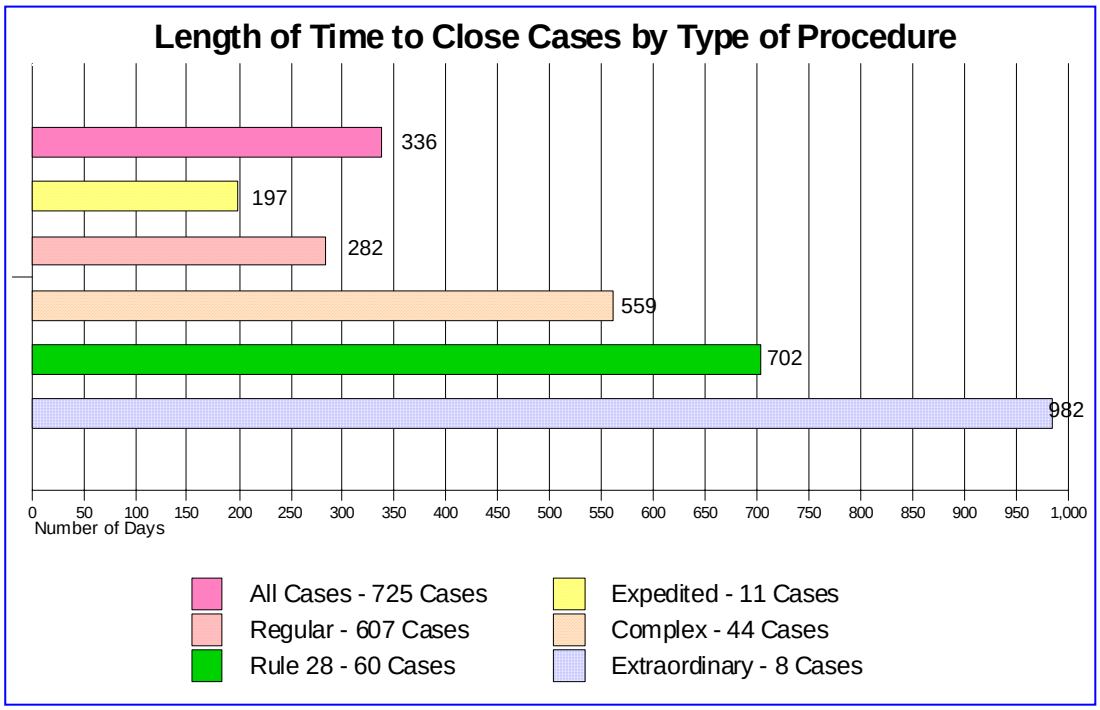
As shown on the chart on the following page, cases closed on average in 336 days, or 11 months.[44] This includes all cases regardless of procedure: regular, expedited, complex, extraordinary, and cases whose deadlines were extended under Rule 28. The median is 309 days. The mode is 111 days. The range is 3 to 1,531 days. Only one case closed late.

[44] 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 725 closed cases, not 781. It excludes 42 abandoned cases, 12 cases that were withdrawn or settled before the fee was paid, and 2 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 (63%) 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 below shows the average time to close based by type of procedure.



A. How Cases Closed

1. Settlements – 42% of Closures

During 2007, 326 of the 781 cases settled. This represents 42% of the cases closed during the year. The average time to settlement was 337 days, or about eleven months. The median is 319, the mode is 435, and the range is 7 to 1,242 days.[45] In 21 settled cases (6%), the claimant is in *pro per*. Thirty-one of these cases closed at the mandatory settlement meeting.

[45]The case that took 1,242 days to settle involved a companion case in superior court which had to be decided first. Because the court case was continued, the arbitration was designated extraordinary.

2. Withdrawn Cases – 26% of Closures

In 2007, the OIA received notice that 201 claimants had withdrawn their claims. In 60 (30%) 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-six percent of closed cases have been withdrawn.

The average time for a party to withdraw a claim in 2007 is 242 days. The median is 209 days. The mode is 111 days, and the range is 3 to 1,511 days.[46]

3. Abandoned Cases – 5% of Closures

Claimants failed to either pay the filing fee or obtain a waiver in 42 cases.[47] These were therefore deemed abandoned for non-payment. In 29 of the 42 cases (69%), 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 five fee waiver applications. The claimants subsequently paid the $150 fee and continued with the arbitration.

[46]The case that was withdrawn after 1,511 days had also been designated extraordinary because the claimant's medical condition required extensions of the hearing dates to allow tests to determine if his cancer was in remission. After receiving several continuances, the claimant's attorney ultimately withdrew the case.

[47]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 2007, neutral arbitrators dismissed 21 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Thirteen of these closed cases (62%) involved *pro pers.*

5. Summary Judgment – 10.5% of Closures

In 2007, 82 cases were decided by summary judgments granted to the respondent. In 64 of these cases (78%), the claimant was in *pro per*. Failing to have an expert witness (32 cases), failing to file an opposition (28 cases), exceeding the statute of limitations (11 cases), and no triable issue of fact (10 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 2007 is 333 days. The median is 312 days. The mode is 207. The range is 175 to 939 days.[48]

6. Cases Decided After Hearing – 13.5% of Closures

a. Who Won

About 13.5% of all cases closed in 2007 (106 of 781) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 69 of these cases, or 65%. In seven of these cases, the claimant was in *pro per*. The claimant prevailed in 37 of them, or 35%.[49] One of these cases involved a *pro per* claimant.

b. How Much Claimants Won

Thirty-seven cases resulted in awards to claimants. One claimant was awarded more than $6 million. The range of relief is $15,800 to $6,000,236. The average amount of an award is $571,735.00. The median is $250,000. The mode is $250,000. A list of the awards made in 2007 is attached as Exhibit F.

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[48]The case that was decided by summary judgment after 939 days was designated complex by the neutral arbitrator because of the claimant's unresolved damages and uncertainty as to their permanence. About a year before the case finally closed, the claimant attorney requested permission to be relieved. After permission was finally granted, the neutral arbitrator continued the hearing date under Rule 28 to give claimants time to find an attorney. They were unsuccessful, and the neutral arbitrator granted the respondent's motion for summary judgment.

[49]In this section, "claimant" means "member." Lien cases, where Kaiser makes the demand for arbitration and recovers money if successful, are excluded, except for one lien case which was decided in favor of the member.

c. How Long It Took

The 106 cases that proceeded to a hearing in 2007, on average, closed in 520 days. The median is 480 days. The mode is 501 days. The range is 147 to 1,531 days.[50]

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.[51]

In 2007, 13 claimants requested that their cases be resolved in less than the standard eighteen months. All received such status. The OIA received ten of those requests from claimants before a neutral was selected in the case. In such cases, under Rule 34, the OIA makes the decision. The OIA granted all of them.[52] Kaiser objected to one of these requests. Two requests were made to neutral arbitrators; the neutral arbitrators granted both. In one case, the state court ordered arbitration and set dates for its completion that imposed expedited status.

We had four open expedited cases on January 1, 2007. Eleven expedited cases closed in 2007, including the four cases that were open at the beginning of the year. Five cases settled, three cases were withdrawn and three proceeded to hearing. In the last group, two awards were for the claimant (for $111,500 and $300,000, respectively), and one for the respondent. The average for the ll cases to close is 197 days (six months), the median is 212 days, and the range is from 41 to

[50]The case that took 1,531 days to close after a hearing was an unusual case. As noted on page 22, the case had party arbitrators. Its original hearing date was continued by the first neutral arbitrator because of its medical complexity. The complexity and the difficulty in scheduling because of all the experts and parties caused the first neutral arbitrator to resign when the case was two years old. The second neutral arbitrator held a hearing at the end of 2006. During the deliberations, the arbitrators decided they needed additional economic evidence. The first economic expert resigned. After the second one made his report, additional testimony was allowed. The award was finally issued in favor of the claimant for $1,247,472.

[51]Exhibit B, Rules 33-36.

[52]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. This denial is without prejudice and the claimant can make another request to the neutral arbitrator.

302 days.[53] Two expedited cases remained open at the end of 2007. In four cases, at the request of the parties, the neutral arbitrators extended the deadlines for a few weeks.

Although originally designed in part to decide benefit claims quickly, none of the expedited cases in 2007 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.[54] In 2007, 33 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 33 cases designated in 2007, at the beginning of 2007, there were 27 open cases designated as complex. Forty-four complex cases closed in 2007 and the designation of one case was changed to extraordinary. The average length of time for complex matters to close in 2007 is 559 days, about nineteen months. The median is 594 days. The mode is 276. The range is from 239 to 1,142[55] days (about 37 months).

Considering the cases designated as complex in 2007, 4 cases were designated as complex because of medical issues; 12 had complex discovery; 6 had procedural problems; 7 were designated by order of the neutral; and 4 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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[53]In the case that took 302 days to close, the OIA granted expedited status. The parties jointly selected the neutral arbitrator. The hearing was set within the time requested by the claimant attorney. The neutral arbitrator issued an award in favor of the claimant for $300,000.

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

[55]The complex case that took 1,142 days to close was complicated by multiple neutral arbitrators and a claimant attorney who refused to participate for long periods of time and was ultimately suspended from practice by the State Bar, leading to his replacement, more than two years after the DFA was initially served. The first neutral arbitrator designated the case complex in late 2005, after the first scheduled days of hearing proved insufficient. Two additional dates were scheduled in February 2006, but were not held because the neutral arbitrator recused himself when the claimant attorney would neither pay the neutral arbitrator's fees or sign the fee waivers. The next neutral arbitrator recused himself when he failed to serve the standard 12 disclosure on time. The final neutral arbitrator was selected by the court after Kaiser petitioned to secure the claimant attorney's participation in the arbitration. The claimant attorney failed to participate in the neutral arbitrator's conferences, however, until he reported in August 2006 that he had been suspended from practice. At this point, the neutral arbitrator gave the claimant an extension of the 30 month deadline so she could obtain counsel who would be able to handle the hearing. The hearing began and the new claimant attorney moved to amend the case, which resulted in further continuance to May 2007. The award for the respondents was served July 2, 2007.

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.[56] Four cases were designated extraordinary in 2007. There were eight extraordinary cases open at the beginning of 2007. Eight cases closed this year, five settled, two were withdrawn by the claimants, and one was closed by summary judgement. The average number of days for an extraordinary case to close is 982 days, or 32 months. The range is 620 to 1,511 days (50 months).[57]

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.[58] In 2007, the neutral arbitrators made Rule 28 determinations of "extraordinary circumstances" in 65 cases and extended these cases beyond their limit. In addition, 38 such cases remained open at the end of 2006.[59] At the end of 2007, 39 cases remained open, with 64 cases having closed during the year. The average time in 2007 to close cases with a Rule 28 order is 671 days, about 22 months. The median is 604 days. The mode is 652 days. The range is 90 to 1,531 days.[60]

According to the neutral arbitrator orders granting the extension, the respondents side never requested an extension, the claimants side requested 16, and the parties stipulated 13 times. The neutral arbitrator ordered it on his or her own 36 times. Extensions were ordered 8 times over the respondents' objections and never over the claimants' objection. Thirteen orders noted that there was no objection. Thirty-eight orders merely recited there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reason, the most common reason was unanticipated scheduling conflicts (8). Other reasons include discovery problems (6), the claimants' attorney withdrawing from the case (2), and the illness of a party or attorney (including the need for a claimant's condition to stabilize) (9). Two orders mentioned multiple neutral arbitrators.

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

[57]The case that closed after 1,511 days is described in footnote 46.

[58]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. They are also included in the discussion of prior complex cases. Five cases that closed in 2007 were both complex and the subject of a Rule 28 extension. They are included in both averages.

[59]The eighth annual report states that 41 such cases were open at the end of 2006. The OIA subsequently received notice that three of these cases had closed in 2006.

[60]This case is discussed in footnote 50.

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.[61] 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.[62]

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 guidelines. 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.[63] According to statute and Rule 12, this completed form is confidential and only the claimant and claimant's attorney know if a request for the waiver was made or granted.

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[61]California Code of Civil Procedure § 1284.2.

[62]Exhibit G 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.

[63]California Code of Civil Procedure §1284.3; Exhibit B, Rule 12. A copy of this waiver form is at Exhibit G, page 93.

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.[64]

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.[65] For claims under $200,000, the claimant must agree in writing not to object later that the arbitration was unfair because Kaiser paid the fees and expenses of the neutral arbitrator. For claims over $200,000, the claimant must also agree not to use a party arbitrator.[66] 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 2007, the OIA received 30 completed forms requesting waiver of the $150 filing fee. The OIA granted 25 and denied 5.[67] Fifteen 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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[64]See Exhibit B, Rule 13. A copy of this waiver form is at Exhibit G, pages 94 -100.

[65]See Exhibit B, Rules 14 and 15. The forms are contained in Exhibit G, pages 101 - 102.

[66]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.

[67]Of these 5, one received the waiver of both the arbitration fee and the neutral arbitrator's fee, one was denied and paid the $150 fee, and the other three paid without ever requesting this waiver.

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

In 2007, the OIA received 39 completed fee waiver applications and three remained undecided from 2006. The OIA granted 41 waivers of the arbitration fees and neutral arbitrator fees and denied 1.[68] Kaiser objected to one request, which the OIA granted.

3. The Neutral Arbitrators' Fees and Expenses

Arbitration providers such as the OIA are now required to disclose neutral arbitrators' fees and fee allocation for closed cases that they received after January 1, 2003.[69] We received fee information from neutral arbitrators in 595 cases that closed in 2007.

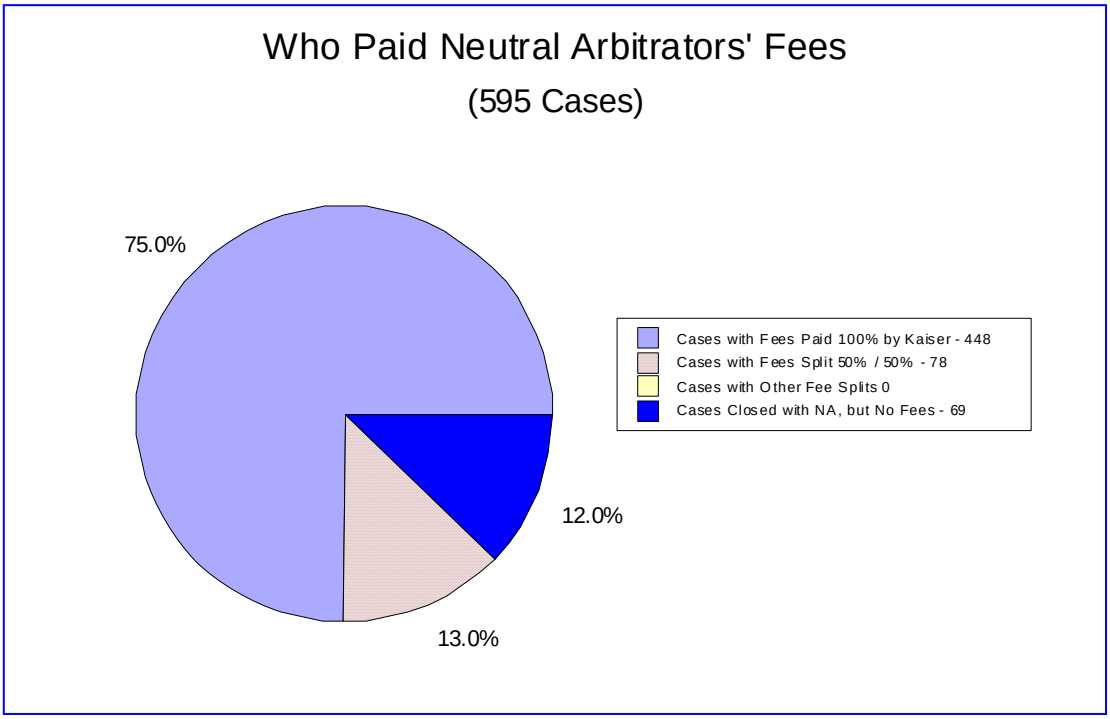
Of these 595 cases, 448 (75%) reported that fees were allocated 100% to Kaiser. Sixty-nine (12%) reported that no fees were charged. The claimant paid nothing in these cases. Seventy-eight (13%) reported that the fees were split 50/50. Of the 526 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 85% of the cases. As shown in the chart on the next page, claimants paid neutral fees in only 13% of cases that closed in 2007.

[68]This case was referred to in the immediately prior footnote.

[69]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 $125/hour to $660/hour. The average hourly fee is $361, the median is $350, and the mode is $400.[70] Neutral Arbitrators also often offer a daily fee. This ranges from $600/day to $7,000/day. The average daily fee is $3,051, the median is $2,750, and the mode is $2,000.



Looking at the 526 cases in which neutral arbitrators charged fees, the average neutral arbitrator's fee is $7,001. The median is $1,950.00 and the mode is $1000.00. This excludes the 69 cases in which there are no fees. The average for all cases, including those with no fees, is $6,189.12.

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

[70] 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.

are considered, the average neutral arbitrator fee is $20,805.82, the median is $16,037.00, and there are multiple modes. The range is $980 to $102,925.

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. It also sends 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 2007 from the parties and the neutrals. The complete statistics and copies of the forms are set out in Exhibits H and I, 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 evaluations are anonymous, though the people filling it out are asked to identify themselves by category and how the case closed.

During 2007, the OIA sent out 988 evaluations and received 515 responses in return, or 52%.[71] One-hundred-eighty-four identified themselves as claimants (24) or claimants' counsel (160), and 315 identified themselves as respondent's counsel. Sixteen did not specify a side.[72]

The responses have been quite positive overall, and they are encouragingly similar for both claimants and respondents. In 2007, the mode and median for all attorneys for the following questions and for *pro pers* for all questions but one all types of evaluators was 5. The mode is important because it means that the most common answer to all the questions was the most favorable response possible. Since the mode and median are uniformly 5 for the attorneys, this is not repeated in the individual items.

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

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[71]This is 60 more than 2006 and 235 more than 2005. The response rate has climbed from 28% in 2005.

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

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 4.7. *Pro pers* average 3.5. Respondents counsel average 4.9. The median for *pro pers* is 4.5 while the mode is 5.0.

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

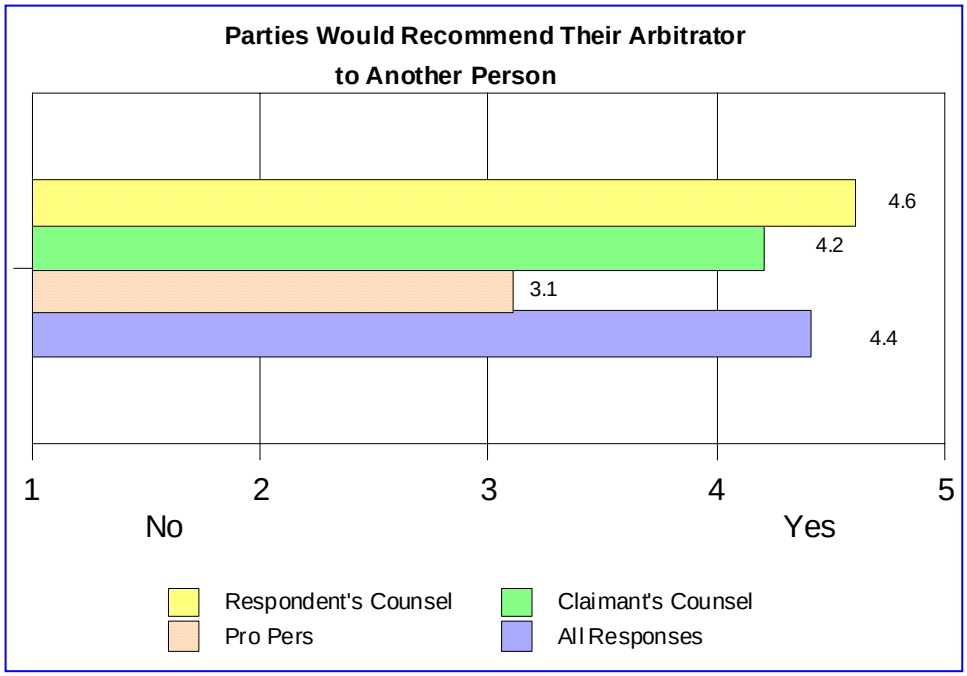
The average of all responses is 4.6. Claimants counsel average 4.5. *Pro pers* average 3.2. Respondents counsel average 4.8. The median for *pro pers* is 3.0 while the mode is 5.0.

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 4.4. *Pro pers* average 3.0. Respondents counsel average 4.8. The median for *pro pers* is 4.0 while the mode is 1.0.

Item 11: "I would recommend this arbitrator to another person or another lawyer with a case like mine." – 4.4 Average

The average on all responses to this question is 4.4. Claimant attorneys average response of 4.2. *Pro pers* average 3.1. Respondents counsel average 4.6. The median for *pro pers* is 4.0.



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 2007, the OIA sent out the questionnaire in 494 closed cases and received 438 responses.[73] 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 all questions are 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.

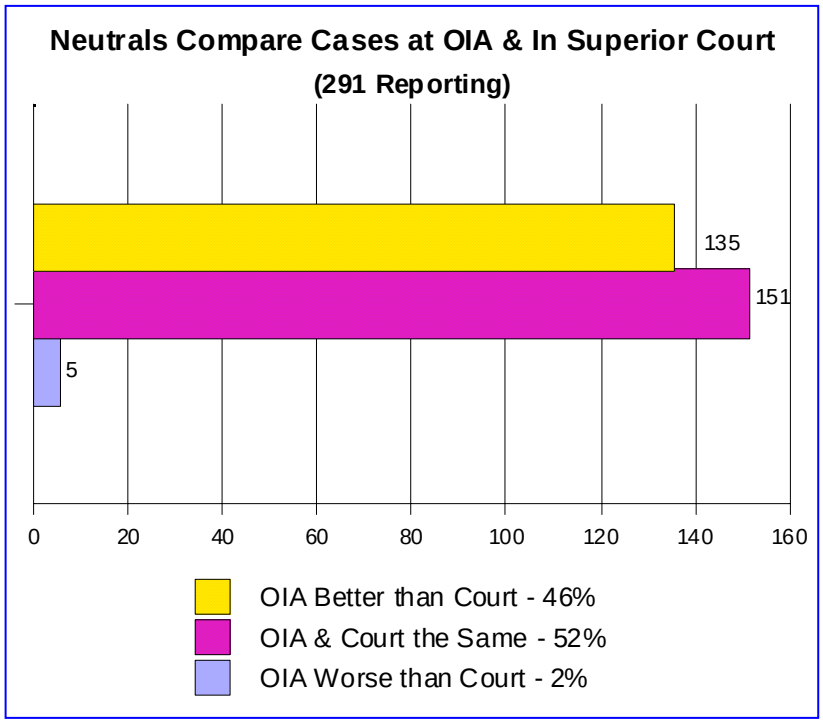
[73] This report has previously reported that 781 cases closed in 2007. The OIA does not send questionnaires if the case closed without a neutral arbitrator in place or where the case was closed soon after an arbitration management conference was held. This eliminates cases that settle or are withdrawn 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 2007 was 490. Fifty-two were blank and 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	337	2
Early Management Conference	331	1
Availability of expedited proceedings	92	3
Award within 15 business days of hearing closure	93	14
Claimants' ability to have Kaiser pay NA	237	13
System's rules overall	298	10
Hearing within 18 months	149	3
Availability of complex/extraordinary proceedings	36	6

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-nine percent of the neutral arbitrators (291) made the comparison. One hundred thirty-five, or 46%, said the OIA experience was better. One-hundred-fifty-one, or 52%, said it was about the same. Only five -- less than two percent -- said the OIA experience was worse. Those who believe it was better said it was faster, more convenient, and economical, and praised its flexibility to accommodate the needs of individual cases. Three neutral arbitrators specifically praised the attorneys involved in the arbitrations, calling them more competent and professional, better prepared, and staying abreast of the case. One of the neutral arbitrators who rated it worse said the claimant attorney argued with the respondent attorney and that the process was a little casual. Two of them described the OIA staff as helpful and responsive. Overall, they rated the OIA's system and service highly. Other than the comment about informality, there were no comments about improvements.



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 business days is too short for awards in complicated cases (11). The next most common comment (4) referred to difficulties involved with *pro per* claimants. There were only two comments about the billing process this year; one each complaining about payments by Kaiser or claimants.

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. This includes quarterly reports of statistics similar to those included in the annual reports.

During 2007, the AOB had several discussions concerning the OIA's website and who used it. As discussed earlier, the OIA began tracking and reporting on weekly statistics as to how many people visit and what parts of the website are visited.

As mentioned in earlier, the AOB devoted parts of meetings to the issue of how and when claimants can receive help with translation services, including signing for the hearing impaired. It suggested revisions to Arbitration Management Form to highlight the issues.[74]

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 J is the AOB Comments on the Ninth Annual Report. Consistent with the AOB's suggestion in 2006, it is also separately available on the OIA website, www.oia-kaiserarb.com and will be sent to the neutral arbitrators, along with the summary and table of contents.

[74]Exhibit C.

XI. COMPARISON OF 2007 WITH PRIOR YEARS[75]

A. Pool of Neutral Arbitrators

The number of neutral arbitrators in the OIA pool decreased by 48 from last year, when it was at an all time high of 326. The decrease often occurs when neutral arbitrators have to update their applications. This updating happens every two years and generally prompts some neutral arbitrators who have not been selected to serve or who plan to retire not to submit an update.

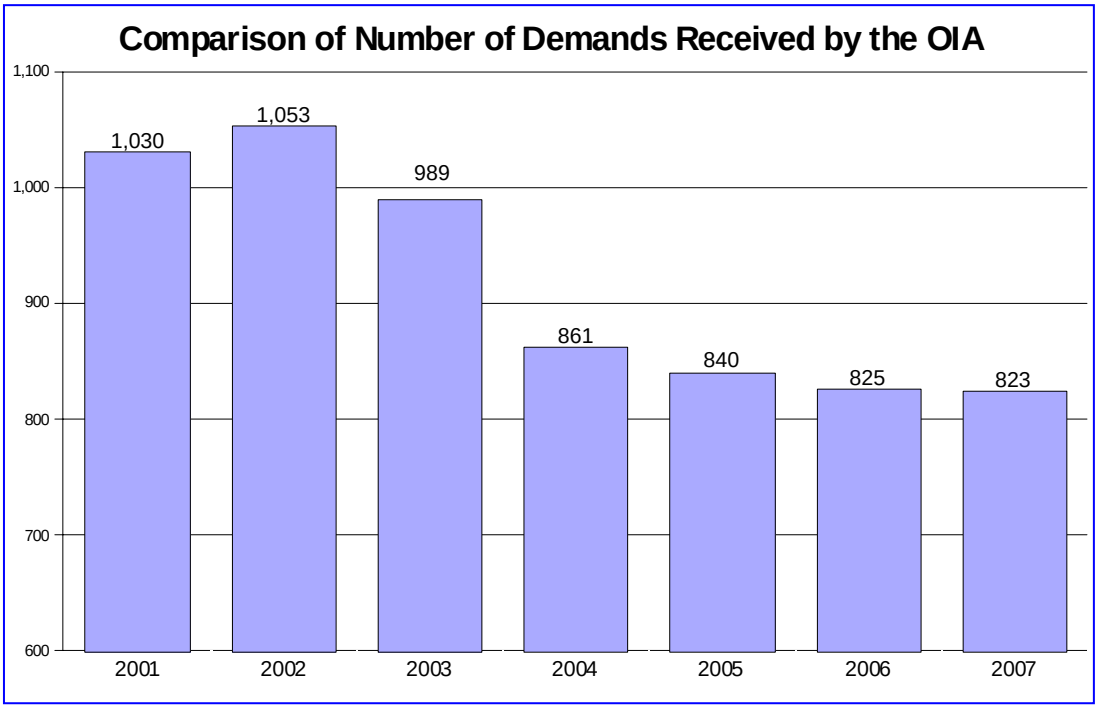
B. How Many Neutral Arbitrators Have Served

The percent of neutral arbitrators in the OIA pool who served in 2007 increased to 62% from 57%. This is in part the natural result of the smaller pool. Eighty different neutral arbitrators wrote awards in 2007. Only seven neutral arbitrators wrote more than two awards in 2007. 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 has declined since 2002 (1,053). As shown on the following graph, this decline has leveled recently. In 2002, we received 1,053 demands; in 2003, 989; in 2004, we received 861, in 2005, 840, and in 2006, 825. Given the small decreases in the past two years, the number of demands may be leveling off.

[75]Unless otherwise specified, the comparison is to 2006. 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.



The number of cases that Kaiser sent to the OIA after more than 10 days dropped from 115 in 2004 to 16 in 2007. This is a slight increase from 9 in 2006. Since many of the "late" cases are lien cases, the increase may be the result of a new attorney handling these cases.

D. Types of Claims

The percentage of medical malpractice claims increased slightly from 91% to 93.5%. The percentage of benefit claims stayed at 1%. Lien cases dropped to 3% of all the demands the OIA received in 2007. 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 unchanged at 21%. It is below the 29% figure recorded in the first year.

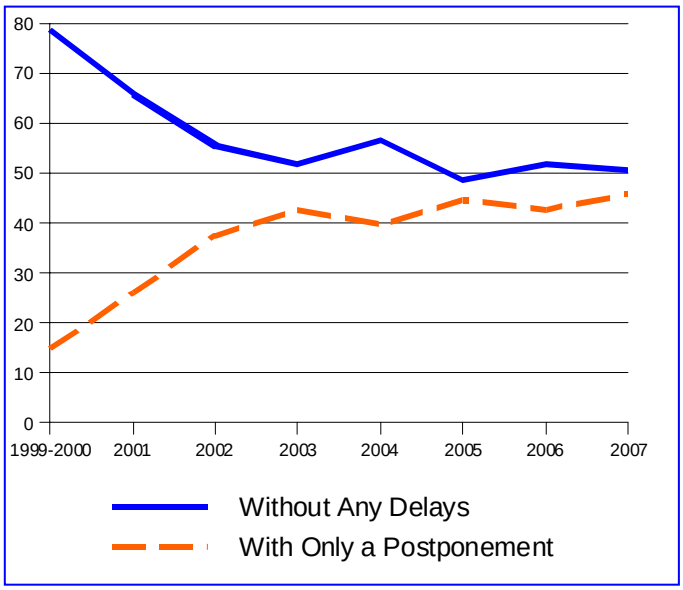
F. How Neutral Arbitrators Are Selected

The percentage of neutral arbitrators chosen by strike and rank versus those jointly selected increased slightly in 2007, from 70% to 72%. The percent of neutral arbitrators jointly selected who are members of the OIA pool fell slightly from 82% to 80%. In 2007, parties chose a neutral arbitrator who was not part of the OIA pool only 6% 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 decreased slightly last year to 51%. It is still far below the 77% 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 again in 2007 (42) from 2006 (54). All of the postponements and the vast majority of disqualifications were made by the claimants' side.[76]

[76] Kaiser members are considered claimants for purposes of these particular statistics.

The length of time to select a neutral arbitrator stayed the same for those with no delay. It increased two days for those cases where a neutral arbitrator was selected after only a postponement and by 12 days after only a disqualification. It decreased 16 days for the small number of cases where neutral arbitrators were disqualified with 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	2007	1999 - 2007
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 51%	25 days, 58%
Only Postponement	106 days, 15%	104 days, 26%	115 days, 37.7%	114 days, 43%	111 days 40%	111 days 45%	111 days 43%	113 days 46%	111 days, 36%
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%	72 days 1%	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%	155 days 2%	164 days, 3%
Total Selections	41 days	50 days	67 days	69 days	61 days	70 days	66 days	68 days	61 days

H. How Cases Close

The following chart shows how cases closed, year by year. Significantly fewer cases closed in 2007 (781) than closed in 2006 (844). This may be the result of the declining number of DFAs. The percentages are almost identical to 2006, except that the percentage of cases that were withdrawn by the claimants decreased 2% and the percentage that closed by summary judgment increased 2.5%.

The percent of cases in which claimants prevailed after an award decreased from 37% in 2006 to 35% in 2007, but is still above the 34% in 2004. In 2007, a neutral arbitrator made the largest award in OIA history, $6,000,236.

Comparison of How Cases Closed[77]

	2001	2002	2003	2004	2005	2006	2007
Settlements	44 %	45 %	49 %	41%	40%	42%	42%
Withdrawn	20 %	23 %	23 %	27%	27%	28%	26%
Abandoned	5 %	3 %	4 %	4%	4.5%	5%	5%
Dismissed	3 %	3 %	2 %	4%	2%	3%	3%
Summary Judgment	14 %	11 %	9 %	8%	9%	8%	10.5%
Awards	15 %	14 %	12 %	16%	16%	13%	13.5%

I. Time to Close

The time to close decreased in 2007, over all and for all categories except cases that settled, which increased by 12 days.

Comparison of Average Number of Days to Close, by Disposition

	2001	2002	2003	2004	2005	2006	2007
Settlements	278 days	300 days	317 days	320 days	311 days	325 days	337 days
Withdrawn	199 days	222 days	231 days	247 days	254 days	262 days	242 days
Summary Judgment	299 days	280 days	333 days	355 days	377 days	355 days	333 days
Awards	372 days	410 days	461 days	456 days	470 days	533 days	520 days
All Cases	281 days	296 days	319 days	326 days	330 days	342 days	336 days

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

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 85% 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 (403 days vs. 520 days overall) or after settlement (292 days vs. 337 days overall).

J. Fee Waivers

We received 39 requests to shift the cost of both the neutral arbitrator and arbitration filing fees to Kaiser, 14 fewer than last year. The high was 79 in 2003. We received 15 fewer requests to waive just the arbitration filing fee (30). The OIA continues to grant most of them. The percentage of cases where the neutral arbitrator reported that Kaiser paid all the fees in which neutral arbitrators charged fees, is 85%; slightly less than 2006's 87%, but more than the 81% in 2004 and 2005.

K. Evaluations of Neutral Arbitrators and the OIA System

The response rate from parties evaluating their neutrals has improved substantially to 52%. This is impressive as some of the attorneys have participated in the system for years, giving many evaluations of the same neutral arbitrators. On the 1 - 5 scale, the average responses from attorneys remained relatively stable - staying the same or going up or down .1.[78] The median and mode remained 5. Among *pro per* claimants, however, the responses declined, most significantly with the question whether the neutral arbitrator understood the facts of the case, where the median dropped to 4 and the mode to 1. *Pro pers*' lower responses may result from the way their cases close; of the 159 cases with *pro pers* that closed in 2007, only 21 settled, and 1 received an award in the claimant's favor. The rest were withdrawn by the claimant, or decided in favor of Kaiser by the arbitrator.

The neutral arbitrators' evaluation of the OIA remained uniformly positive. Eighty-nine percent of the arbitrators polled sent in their evaluations or responses.

[78]For example, the average changed from 4.7 to 4.8 or 4.6.

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 delay largely disappeared as an issue. The fact that only one case closed after its time limit is good evidence that the arbitration process meets expectations of timeliness.

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 85% of the cases with fees that began after January 1, 2003 and ended in 2007, 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 seek to promote fairness in the arbitration process and in its outcomes.

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 possibility of neutral arbitrators being dependent upon Kaiser for work. The neutral arbitrators who served ten or more times in 2007 were no more likely to decide in favor of Kaiser than other neutral arbitrators.

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 parties identical information about the neutral arbitrators. This includes evaluations of the neutral arbitrators by the parties in earlier cases and redacted awards. The parties can jointly select anyone who agrees to follow the *Rules*, and either party can timely 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 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. More than 90% report medical malpractice experience.

The system is easier than a court system to access: the fee is only $150, no particular forms are required to demand arbitration, most documents can be faxed to the OIA (or arbitrators), and the neutral arbitrators' fees can be and generally are paid by Kaiser.

The OIA reports to the AOB regularly about the arbitration process. It also is evaluated by neutral arbitrators at the conclusion of cases.

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