

# **EXHIBIT A**

## **Description of OIA Staff**

## OIA Staff Descriptions

**Sharon Oxborough, Esq., Independent Administrator.** Ms. Oxborough is the principal of the Law Offices of Sharon Oxborough. Ms. Oxborough is a graduate of Hamline University, *summa cum laude*, and Harvard Law School, *cum laude*. She was a federal law clerk in the Central District of California. She has twenty-five years of experience in general civil litigation, appeals, and alternative dispute resolution. She was of counsel to the Law Offices of Sharon Lybeck Hartmann. In that capacity, Ms. Oxborough drafted and negotiated the original *Rules* and forms used by the OIA and consulted about issues as they arose. She drafted all amendments and the OIA contracts and had primary responsibility for negotiating them with Kaiser and the AOB. Now, as Independent Administrator, she supervises the overall operation of the OIA, meets with Ms. Bell and Ms. O'Neal monthly regarding the status of cases, and writes the Annual Reports.

**Marcella A. Bell, Esq., Director.** Ms. Bell is a graduate of Loyola Marymount University and the University of West Los Angeles School of Law, where she served on the Moot Court Board of Governors. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Ms. Bell was an attorney with the Law Offices of Sharon Lybeck Hartmann firm from 1995 to 2003. As Director of the OIA, Bell supervises day-to-day operations of the OIA and its staff. She also decides fee waiver applications and petitions for expedited proceedings, selects neutral arbitrators based on parties' responses, speaks with neutral arbitrators about their selection and the progress of their cases, compiles and analyzes statistical data, and answers substantive questions from claimants and attorneys. She also reviews neutral arbitrators disclosures to ensure that the disclosure required by Ethics Standard 12(b) is made and is timely, and the Standard 8 disclosures provided by the OIA are served on the parties. Ms. Bell speaks with neutral arbitrators about the status of their cases, monitoring the progress of those open more than 15 months. She served as a volunteer attorney at the West Los Angeles Domestic Violence Prevention Clinic from 1998 to 2000. Ms. Bell is fluent in Spanish and Italian.

**Stephanie L. O'Neal, Esq., Assistant Director.** Ms. O'Neal is a graduate of Dartmouth College and UCLA School of Law. She also holds a Masters in Urban Planning from UCLA. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Ms. O'Neal was an attorney with the Hartmann firm from 1996 to 2003. At the OIA, Ms. O'Neal reviews arbitrator applications and fee waiver applications, decides fee waiver applications and petitions for expedited proceedings, selects neutral arbitrators based on parties' responses, speaks with neutral arbitrators about their selection and the progress of their cases, and answers substantive questions from claimants and attorneys. She reviews neutral arbitrators disclosures to ensure that the disclosure required by Ethics Standard 12(b) is made and is timely, and the Standard 8 disclosures provided by the OIA are served on the parties. Ms. O'Neal speaks with neutral arbitrators about the status of their cases, monitoring the progress of those open more than 15 months. She also assists Ms. Bell in supervision of the OIA and its staff. Ms. O'Neal is an adjunct instructor in the UCLA Extension Paralegal Training Program, and an adjunct instructor at Los Angeles Valley College, where she teaches Business Law.

**Tracy Holler, Management Information Systems.** Ms. Holler is a graduate of California State Polytechnic University, Pomona. She studied Business Administration, with a concentration in Management and Human Resources. She worked at the Hartmann firm from 1994 to 2003. She is the computer network administrator and is responsible for all parts of the firm's computer network. She designed, set up, and maintains the OIA's extensive computer databases. She was responsible in 2002 for redesigning the OIA's software to meet the reporting requirements of both the Ethics Standards and of California Code of Civil Procedure §1281.96. Because of her, the OIA posted all data required before the statutory deadline of January 1, 2003. She generates the statistical reports upon which these annual reports are based.

**Vivian Arroyo, Administrative Staff.** Ms. Arroyo worked as an administrator at the Hartmann firm from 1997 to 2003. Prior to that, she worked for Mexicana Airlines as a sales representative for fifteen years. Ms. Arroyo traveled all over the world during her career with the airline. At the OIA, Ms. Arroyo is responsible for tracking each case's compliance with the *Rules* to the extent that it can be tracked through our computer database, sending form letters reminding parties and neutrals of deadlines, and maintaining case files. She also assists Ms. Bell and Ms. O'Neal in the neutral arbitrator selection process. She is fluent in Spanish.

**Joyce Daniels, Administrative Legal Assistant.** Ms. Daniels attended Metropolitan Junior College (now Los Angeles Trade Technical College) where she majored in Secretarial Science for two years. She has worked with Ms. Hartmann and Ms. Oxborough since 1984 as legal secretary/assistant. Ms. Daniels has been a legal secretary for over thirty years in a number of large law firms including Irell & Manella and the U.S. Air Force, Judge Advocate General's Office. Ms. Daniels has worked in many areas of law including litigation, civil rights, alternative dispute resolution, bankruptcy, entertainment, labor, tax, probate/estate planning, patent/trademark and corporate. At the OIA, Ms. Daniels is responsible for sending out the lists of possible arbitrator ("LPA") packets to the parties. She also calls the parties to remind them of the deadline to respond to the LPA and keeps track of who is named on the LPAs and sends letters confirming the granting of 90 day postponements with new due dates.

**Maria Garcia, Administrative Staff.** Ms. Garcia worked at the Hartmann firm from 1996 to 2003. She generates the LPAs, assembles copies of the neutral arbitrators applications for the LPAs, and maintains the neutral arbitrator application files. She inputs the information the neutral arbitrators provide about themselves in their applications into the OIA computer database and sends out neutral arbitrator applications to potential applicants. Ms. Garcia also maintains the database of Kaiser Senior Advantage plan members who elect to opt out of arbitration. Those Senior Advantage members who do not wish to arbitrate any disputes that may arise under their plan sign and return a form, provided by Kaiser, to the OIA. Ms. Garcia adds their names and other pertinent information to the database. She is fluent in Spanish.

**Lynda Tutt, Legal Assistant.** A native of Philadelphia, Pennsylvania, Ms. Tutt attended Temple University. She has many years' experience as a legal assistant, and worked for the Hartmann firm from 1995 to 2003. Ms. Tutt is a licensed notary and a member of the Legal Secretaries Association, Beverly Hills/Century City Chapter. Ms. Tutt answers incoming telephone calls and responds to questions from lawyers, claimants, and the public. She creates case files, enters information about new cases into the OIA's computer database, sends letters to neutral arbitrators confirming their selection, and sends letters regarding payment of filing fees.

# **EXHIBIT B**

**Rules for Kaiser Permanente Member  
Arbitrations Administered by the  
Office of the Independent Administrator,  
Amended as of January 1, 2007**

**RULES FOR KAISER PERMANENTE MEMBER  
ARBITRATIONS**

**ADMINISTERED BY**

**THE OFFICE OF THE INDEPENDENT ADMINISTRATOR**

**AMENDED AS OF JANUARY 1, 2007**

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## **A. GENERAL RULES**

### **1. Goal**

These Rules are intended to provide an arbitration process that is fair, timely, lower in cost than litigation, and that protects the privacy interests of all Parties.

### **2. Administration of Arbitration**

The arbitrations conducted under these Rules shall be administered by the Office of the Independent Administrator. Arbitrations conducted under these Rules shall be considered to be consumer arbitrations under California law.

### **3. Confidentiality**

Information disclosed to, and documents received by, an Arbitrator or the Independent Administrator by or from the Parties, their representatives, or witnesses in the course of the arbitration shall not be divulged by the Arbitrator or the Independent Administrator. With respect to the Independent Administrator, this Rule shall not apply to communications concerning Arbitrators, disclosures required by law, or statistical information used in its annual reports.

### **4. Code of Ethics**

All Neutral Arbitrators appointed on or after July 1, 2002, shall comply with the Ethics Standards for Neutral Arbitrators in Contractual Arbitration, Division VI of the Appendix to the California Rules of Court ("Ethics Standards.") All other arbitrators shall comply with the AAA Code of Ethics for Arbitrators in Commercial Disputes.

### **5. Meaning of Arbitrator**

The term "Arbitrator" in these Rules refers to the arbitration panel, whether composed of one or more Arbitrators or whether the Arbitrators are Neutral or Party. The term "Party Arbitrator" means an Arbitrator selected by one of the sides to the arbitration. The term "Neutral Arbitrator" means any Arbitrator other than a "Party Arbitrator."

### **6. Authority of Arbitrators**

Once appointed, the Neutral Arbitrator will resolve disputes about the interpretation and applicability of these Rules, including disputes relating to the duties of the Arbitrator and the conduct of the Arbitration Hearing. In cases involving more than one Arbitrator, however, issues that are dispositive with respect to a claim, including summary judgment motions, will be ruled on by all three Arbitrators and decided by a majority of them. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the full panel or as otherwise agreed by them.

### **7. Contents of the Demand for Arbitration**

The Demand for Arbitration shall include the basis of the claim against the Respondent(s); the amount of damages the Claimant(s) seeks in the Arbitration; the name, address and telephone number of the Claimant(s) and their attorney, if any; and the name of all Respondent(s). Claimant(s) shall

include all claims against Respondent(s) that are based on the same incident, transaction, or related circumstances in the Demand for Arbitration.

## **8. Serving Demand for Arbitration**

- a. In Northern California, Kaiser Foundation Health Plan, Inc. ("Health Plan"), Kaiser Foundation Hospitals, and/or The Permanente Medical Group, Inc. shall be served with a Demand for Arbitration by mailing the Demand for Arbitration addressed to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc. or Legal Department P.O. Box 12916 Oakland, CA 94604	Kaiser Foundation Health Plan, Inc. Legal Department 1950 Franklin Street, 17th Floor Oakland, CA 94612
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Service on that Respondent shall be deemed completed when received.

- b. In Southern California, Health Plan, Kaiser Foundation Hospitals, and/or Southern California Permanente Medical Group, shall be served with a Demand for Arbitration by mailing the Demand for Arbitration to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc.  
Legal Department  
393 East Walnut Street  
Pasadena, CA 91188

Service on that Respondent shall be deemed completed when received.

- c. All other Respondent(s), including individuals, must be served as required by the California Code of Civil Procedure for a civil action.
- d. All Respondent(s) served with a Demand for Arbitration in the manner described above shall be Parties to the Arbitration. The Arbitrator shall have jurisdiction only over Respondent(s) actually served. If Claimant(s) serves any Respondent(s) other than an organization affiliated with Kaiser Permanente, the Claimant(s) shall serve a proof of service of that Respondent(s) on the Independent Administrator.

## **9. Serving Other Documents**

- a. Service of other documents required by these Rules will be made on the Parties or Arbitrator at their last known address. If the Party is represented in this arbitration, that counsel shall be served instead of the Party. Service may be made by personal service, Federal Express or other similar services, facsimile transmission, or by U.S. mail.
- b. Parties should only serve the Independent Administrator with those documents specified in these Rules. Unless otherwise directed by the Neutral Arbitrator, the parties should not serve the Independent Administrator with copies of motions or briefs. Service for the Independent Administrator shall be directed to:

Office of the Independent Administrator for the  
Kaiser Foundation Health Plan, Inc.  
P. O. Box 76587  
Los Angeles, California 90076-0587

or

Office of the Independent Administrator for the  
Kaiser Foundation Health Plan, Inc.  
3580 Wilshire Boulevard, Suite 2020  
Los Angeles, California 90010

or

Fax: 213-637-8658.

- c. If a Party or Arbitrator serves the Independent Administrator by fax, the Party or Arbitrator shall call the Independent Administrator's office at 213-637-9847 to confirm receipt or shall retain confirmation of receipt of the faxed document.
- d. Service on the Independent Administrator is effective on the date the Independent Administrator receives the document.

#### **10. Representation**

Parties represented by counsel shall not contact the Independent Administrator except through counsel.

### **B. RULES ON COMMENCEMENT OF ARBITRATION AND SELECTION OF ARBITRATORS**

#### **11. Initiation of Arbitration**

Demands for Arbitration shall be served in accordance with Rule 8. Whether or not the Claimant(s) has enclosed a filing fee, within ten (10) days of such service upon the Health Plan at the address set forth in Rule 8, Health Plan shall transmit the Demand for Arbitration and the envelope it came in to the Independent Administrator using the Transmission Form. If the Claimant(s) submitted a filing fee with the Demand, the Health Plan shall transmit the filing fee as well. Health Plan shall also serve a copy of the Transmission Form on the Claimant(s).

#### **12. Filing Fee**

- a. Claimant(s) seeking arbitration shall pay a single, non-refundable, filing fee of \$150 per arbitration payable to "Arbitration Account" regardless of the number of claims asserted in the Demand for Arbitration or the number of Claimants or Respondents named in the Demand for Arbitration.
- b. **The Independent Administrator will waive the filing fee for Claimant(s) who submit forms that show that the Claimants' gross monthly income is less than 300 percent of the federal poverty guidelines. A copy of this form may be obtained from the Independent Administrator. Claimants should not serve a copy of this form on Respondent(s).**
- c. If Claimant(s) wishes to have both the filing fee and the Neutral Arbitrators' fees waived, the Claimant(s) should follow the procedure set out in Rule 13. If Claimant(s) wishes only to avoid paying the fees for the Neutral Arbitrator,

but can afford the filing fee or has received a waiver under 12.b, the Claimant(s) should follow the procedure set out in Rule 15.

- d. If a Claimant(s) fails to pay the filing fee or obtain a waiver of that fee within seventy-five (75) days of the date of the Transmission Form, the Independent Administrator will not process the Demand and it shall be deemed abandoned.
- e. While the filing fee is normally non-refundable, if Claimant(s) has paid the filing fee with the Demand for Arbitration before receiving notice of the opportunity to have it waived, the Independent Administrator will refund the fee if it receives a completed waiver form within seventy-five (75) days of the date of the Transmission Form and grants the waiver.

### **13. Waiver of Filing and Neutral Arbitrator Fees**

Any Claimant(s) who claims extreme hardship may request that the Independent Administrator waive the filing fee and Neutral Arbitrator's fees and expenses. A Claimant(s) who seeks such a waiver shall complete the Fee Waiver Form and submit it to the Independent Administrator and simultaneously serve it upon Respondent(s). The Fee Waiver Form sets out the criteria for waiving fees and is available from the Independent Administrator or by calling the Kaiser Permanente Member Service Customer Center at 1-800-464-4000. Respondent(s) may submit any response to the Independent Administrator within ten (10) days of the date of Claimant's Fee Waiver Form, and shall simultaneously serve any submission upon Claimant(s). Within fifteen (15) days of receipt of a Fee Waiver Form, the Independent Administrator shall determine whether the fees should be waived and notify the Parties in writing of the decision. In those cases where the Independent Administrator grants the waiver of fees, the Independent Administrator shall waive the filing fee and Health Plan shall pay the Neutral Arbitrator's fees and expenses.

### **14. Number of Arbitrators**

- a. If the Demand for Arbitration seeks total damages of \$200,000 or less, the dispute shall be heard and determined by one Neutral Arbitrator, unless the Parties otherwise agree in writing that the arbitration shall be heard by two Party Arbitrators and a Neutral Arbitrator. The Arbitrators shall not have authority to award monetary damages that are greater than \$200,000.
- b. If the Demand for Arbitration seeks total damages of more than \$200,000, the dispute may be heard and determined by one Neutral Arbitrator and two Party Arbitrators, one appointed by the Claimant(s) and one appointed by the Respondent(s). Parties who are entitled to select a Party Arbitrator under these Rules may agree to waive this right. If both Parties agree, these arbitrations will be heard by a single Neutral Arbitrator.
- c. A Party who is entitled to a Party Arbitrator and decides to waive this right shall sign a Waiver of Party Arbitrator Form and serve a copy of it upon the Independent Administrator, Neutral Arbitrator, and other Party. The Claimant(s) shall serve this form on the Neutral Arbitrator and Respondent(s) no later than the date of the Arbitration Management Conference set out in Rule 25 and shall serve the Independent Administrator no later than five (5) days after serving the other Parties. If a Claimant(s) serves Respondent(s) with a signed Waiver of Party Arbitrator Form, Respondent(s) shall inform Claimant(s) within five (5) days of the date of that Form if Respondent(s) will also waive the Party Arbitrator.

- d. The Blue Ribbon Advisory Panel on Kaiser Permanente Arbitration concluded that Party Arbitrators increase the cost and cause more delay than would occur with a single Neutral Arbitrator. The Independent Administrator therefore encourages Parties to use a single Neutral Arbitrator to decide cases.
- e. The number of Arbitrators may affect the Claimant(s)' responsibility for paying the Neutral Arbitrator's fees and expenses, as set out in Rule 15.

## **15. Payment of Neutral Arbitrator Fees and Expenses**

- a. Respondent shall pay for the fees and expenses incurred by the Neutral Arbitrator if
  - i. Claimant(s) agrees to waive any potential objection arising out of such payment, signs the Waiver of Objection Form, and serves a copy of it on the Independent Administrator and Respondent(s); and
  - ii. either the arbitration has only a single Neutral Arbitrator or the Claimant(s) has served a Waiver of Party Arbitrator Form as set out in Rule 14.c.
- b. In arbitrations where the Independent Administrator has granted Claimant's Fee Waiver request, Respondent shall pay the fees and expenses incurred by the Neutral Arbitrator.
- c. In all other arbitrations, the fees and expenses of the Neutral Arbitrator shall be paid one-half by the Claimant(s) and one-half by the Respondent(s).
- d. Nothing in this Rule shall prohibit an order requiring the payment of the Neutral Arbitrator's fees and expenses which were incurred as a result of conduct which causes the Neutral Arbitrator to incur needless fees and expenses. Such conduct includes, but is not limited to, failure to respond to discovery requests, abusive discovery practices, the filing of frivolous motions of all sorts, and untimely requests for continuances. In the event that such a finding is made by the Neutral Arbitrator, those fees and expenses shall be paid by the responsible Party or counsel. The Neutral Arbitrator shall make such a finding in writing, shall specify what fees and expenses are covered by the order, and shall serve a copy of the finding on the Independent Administrator with the Parties' names redacted.

## **16. List of Possible Arbitrators**

- a. Within three (3) business days after the Independent Administrator has received both the Demand for Arbitration and the filing fee, or has granted a request for waiver of fees, it shall simultaneously send to each Party an identical List of Possible Arbitrators, along with the Application forms of and redacted Awards, if any, by each of the possible Neutral Arbitrators.
- b. The List of Possible Arbitrators shall contain the names of twelve (12) persons. The Independent Administrator will choose the twelve (12) names at random from the Independent Administrator's arbitration panel for San Diego, Southern or Northern California, based on the location where the cause of action arose.

- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the Parties' responses to the List of Possible Arbitrators on or before the deadline date appearing on the List of Possible Arbitrators. This deadline will be twenty (20) days from the day the Independent Administrator sent the List of Possible Arbitrators. Rules 17 and 18 specify how the Parties may respond.

**17. Joint Selection of the Neutral Arbitrator**

- a. The Parties may all agree upon a person listed on the List of Possible Arbitrators. If they do, the Parties and counsel shall sign the Joint Selection of Neutral Arbitrator Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the form by the deadline set out in Rule 16.c.
- b. Rather than selecting a Neutral Arbitrator from the List of Possible Arbitrators, the Parties may agree to select another person to serve as Neutral Arbitrator, provided that the person agrees in writing to comply with these Rules. If the Parties collectively select a person not on the List of Possible Arbitrators, all the Parties and counsel shall complete and sign the Joint Selection of Neutral Arbitrator Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the form by the deadline set out in Rule 16.c.
- c. The Independent Administrator encourages Parties, if possible, to make more than one joint selection and requires the Claimant and Respondent to individually submit the List of Possible Arbitrators under Rule 18. If the person the Parties have jointly selected is unable to serve, the Independent Administrator will then first use other joint selection(s). If only one joint Selection was submitted, the Independent Administrator will then use the strike and ranked List(s) of Possible Arbitrators. If no such List was submitted, Rule 18.c shall apply, and the Independent Administrator will randomly select a possible Neutral Arbitrator from the List of Possible Arbitrators.
- d. After the Independent Administrator has received these forms, it will send a Letter Confirming Service to the person who has agreed to act as Neutral Arbitrator, with a copy to the Parties.

**18. Selection of the Neutral Arbitrator When the Parties Do Not Agree**

- a. If the Parties do not collectively agree upon a Neutral Arbitrator, the Neutral Arbitrator shall be selected from the List of Possible Arbitrators in the following manner. Claimant(s) and Respondent(s) may each strike up to four (4) names to which the Party objects and shall rank the remaining names in order of preference with "1" being the strongest preference. No name should be left blank. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the forms by the deadline set out in Rule 16.c.
- b. Regardless of the number of Claimants or Respondents, the Claimant(s) shall return only one list of preferences and the Respondent(s) shall return only one list of preferences. If they do not, Rule 18.c will apply.
- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, if the Independent Administrator does not receive a response from a Party by the deadline set out in Rule 16.c, all persons named on the List of Possible

Arbitrators shall be deemed equally acceptable Neutral Arbitrators to that Party.

- d. At any time before the Party's response is due, a Party or representative may request to review further information, if any, which the Independent Administrator has in its files about the persons named on the List of Possible Arbitrators. Parties and their representatives may call the Independent Administrator at 213-637-9847 to request such information. The Parties and their representatives may review the information by going to the Independent Administrator's office. If requested, the Independent Administrator will also send the information to the Party or attorney by mail or fax. Parties who request that further information be sent to them shall be responsible for the Independent Administrator's cost of providing it, with no charge made for duplication of the first twenty-five (25) pages. Time spent requesting or waiting for the additional information shall not extend the time to respond to the List of Possible Arbitrators.
- e. Working from the returned Lists of Possible Arbitrators it has timely received, the Independent Administrator shall invite a person to serve as the Neutral Arbitrator, asking first the person with the lowest combined rank whose name has not been stricken by either Party. If the person with the lowest combined rank is not available, the Independent Administrator will ask the second lowest ranked person who was not stricken by either party, and will continue until a person whose name was not stricken agrees to serve. When the Independent Administrator contacts the persons, it shall inform them of the names of the Parties and their counsel and ask them not to accept if they know of any conflict of interest. If there is a tie in ranking, the Independent Administrator shall select a person at random from those choices who are tied.
- f. If, for any reason, a Neutral Arbitrator cannot be obtained from the first List of Possible Arbitrators, the Independent Administrator shall send a second List of Possible Arbitrators to the Parties. The procedure and timing in that case shall be the same as that for the first List of Possible Arbitrators. If, for any reason, a Neutral Arbitrator cannot be obtained from the second List of Possible Arbitrators, the Independent Administrator shall randomly select a Neutral Arbitrator from the other members on the panel who have not been named on either prior List of Possible Arbitrators.
- g. If a Neutral Arbitrator should die, become incapacitated, be disqualified, or otherwise become unable or unwilling to proceed with the arbitration after appointment, the Independent Administrator shall serve the Parties with a new List of Possible Arbitrators and the selection process as set out in Rules 16 through 18 shall begin again.

#### **19. Acceptance by the Neutral Arbitrator**

- a. If a person in the Independent Administrator's pool is appointed as the Neutral Arbitrator in a case and either served a notice saying no further work by the Parties or the attorneys would be accepted during the pendency of the case, or failed to serve any Standard 12(b) disclosure, the person shall be removed from the pool until the case is closed.
- b. When a person agrees to act as a Neutral Arbitrator under Rule 18, the Independent Administrator shall send the person a copy of these Rules and a Letter Confirming Service. The Independent Administrator shall also serve the Parties with a copy of the Letter Confirming Service.

## **20. Disclosure and Challenge**

- a. The person who has agreed to serve as Neutral Arbitrator shall make disclosures as required by law, including California Code of Civil Procedure Section 1281.9 or its successor statute and the Ethics Standards simultaneously upon the Parties and the Independent Administrator. Party responses, if any, shall be in accordance with the Code, with a copy served to the Independent Administrator. After the time for any response has passed, the Independent Administrator will deem that the Neutral Arbitrator has been appointed if no timely objection is received.
- b. The Neutral Arbitrator shall make all further disclosures as required by law, including California Code of Civil Procedure Section 1281.9 or its successor statute and the Ethics Standards simultaneously upon the Parties and the Independent Administrator. Party responses, if any, shall be in accordance with the code, with a copy served to the Independent Administrator.

## **21. Postponement of Selection of Neutral Arbitrator**

- a. The Claimant(s) may obtain a single postponement of up to ninety (90) days for the appointment of the Neutral Arbitrator if the Independent Administrator receives a written request for postponement on or before the date that the response to the List of the Possible Arbitrators is due under Rule 16. Claimant(s) shall serve a copy of this request for postponement on the Respondent(s). Regardless of the number of Claimants, Claimant(s) is entitled to only a single ninety (90) day postponement of the appointment of the Neutral Arbitrator.
- b. If the Claimant(s) agrees in writing, Respondent(s) may obtain a single ninety (90) day postponement for the appointment of the Neutral Arbitrator. The Independent Administrator must receive this written request for postponement before the date that the response to the List of the Possible Arbitrators is due under Rule 16.c.
- c. There shall be only one postponement whether made by either Claimant(s) or Respondent(s) pursuant to this Rule in any arbitration.

## **22. Selection of the Party Arbitrator**

- a. If the Parties are entitled to a Party Arbitrator and have not waived that right, the Claimant(s) and the Respondent(s) shall each select a Party Arbitrator and notify the Independent Administrator and the Neutral Arbitrator of the Party Arbitrator's name, address, and telephone and fax numbers. Each Party Arbitrator shall sign the Agreement to Serve, and submit it to the Independent Administrator before serving in the arbitration.
- b. If possible, the Parties should select the Party Arbitrators before the Arbitration Management Conference that is set forth in Rule 25. Any Party Arbitrator who is selected after the Arbitration Management Conference shall conform to any arbitration schedule established prior to his or her selection. Notwithstanding any other Rule, if a Party Arbitrator has not been selected, or has not signed the Agreement to serve, or does not attend a hearing, conference or meeting set by the Neutral Arbitrator of which the Party Arbitrator or Party had notice, the remaining Arbitrators may act in the absence of such Party Arbitrator.

- c. Regardless of the number of Claimants or Respondents, all of the Claimant(s) are entitled to only one Party Arbitrator and all of the Respondent(s) are entitled to only one Party Arbitrator.
- d. No Claimant, Respondent, or attorney may act as Party Arbitrator in an arbitration in which he or she is participating in any other manner.

### **23. Appointment of Chairperson**

In cases involving more than one Arbitrator, the Neutral Arbitrator will chair the arbitration panel. Absent objection by any Party, the Neutral Arbitrator shall have the authority to decide all discovery and procedural matters, but may not decide dispositive issues without the Party Arbitrators. Dispositive issues shall be decided by a majority of the Arbitrators. The Neutral Arbitrator will also set the time and location of hearings and be responsible for submitting all necessary forms to the Independent Administrator. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the Arbitrators or as otherwise agreed by them.

## **C. RULES FOR REGULAR PROCEDURES**

### **24. Deadline for Disposing of Arbitrations**

- a. Unless Rule 24.b, 24.c, or 33 applies, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within eighteen (18) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. The Parties and Arbitrator are encouraged to complete the arbitration in less time than the maximums set forth in the Rules, if that is consistent with a just and fair result.
- b. If all of the Parties and their counsel agree that the claim is a complex case and the Neutral Arbitrator agrees, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within twenty-four (24) to thirty (30) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Designation of Complex Arbitration Form upon the Independent Administrator.
- c. There may be some small number of extraordinary cases which cannot be disposed of within thirty (30) months, such as those where the damages or injuries cannot be ascertained within that time. If all the Parties, counsel, and Neutral Arbitrator agree, the Neutral Arbitrator may select a later date for disposition of the case. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Designation of Extraordinary Arbitration Form upon the Independent Administrator. This form will set forth the reason for this designation and the target disposition date.
- d. It is the Neutral Arbitrator's responsibility to set a hearing date and to ensure that the arbitration proceeds within the time limits set out in these Rules. Failure by the Parties, counsel, or Neutral Arbitrator to comply with this Rule may subject them to sanction, removal as Neutral Arbitrator, or removal from the pool of Neutral Arbitrators. However, this Rule is not a basis to dismiss an arbitration or a claim. Nothing in this paragraph affects the remedies otherwise available under law for violation of any other Rule.

## 25. Arbitration Management Conference

- a. The Neutral Arbitrator shall hold an Arbitration Management Conference with the attorneys representing the Parties, or the Claimant in pro per and the attorney(s) representing Respondent(s) within sixty (60) days of the date of the Letter Confirming Service of the Neutral Arbitrator. The Neutral Arbitrator shall give notice to the Parties of the time and location at least ten (10) days in advance. The Arbitration Management Conference may be conducted by telephone or by video conference if such facilities are available.
- b. The Neutral Arbitrator shall discuss, but is not limited to, the following topics:
  - i. the status of the Parties, claims, and defenses;
  - ii. a realistic assessment of the case;
  - iii. any pending or intended motions;
  - iv. completed and intended discovery;
  - v. the procedures to be followed, including any written submissions the Neutral Arbitrator requires or permits; and
  - vi. if appropriate, whether the Parties have or will waive any Party Arbitrator.
- c. At the Arbitration Management Conference, the Arbitrator shall establish:
  - i. the schedule for motions and the mandatory settlement meeting and
  - ii. the dates of the Arbitration Hearing. The Arbitrator and the Parties shall schedule the Arbitration Hearing for consecutive days if more than one day is necessary. If the Arbitrator permits post-Arbitration briefs, the dates for the Arbitration Hearing must be set early enough to ensure that it will be closed within the deadlines established in Rule 24.
- d. If any of the Parties is not represented by counsel, the Neutral Arbitrator should explain the process to be followed at the Arbitration Hearing, use of motions, need for expert witnesses, costs, etc.
- e. The Neutral Arbitrator shall record all deadlines established by the Neutral Arbitrator during the Arbitration Management Conference on the Arbitration Management Conference Form. The Neutral Arbitrator shall serve the Arbitration Management Conference Form on the Parties and the Independent Administrator within five (5) days of the Arbitration Management Conference. The Neutral Arbitrator shall also serve a copy of the Arbitration Management Conference Form on the Party Arbitrators if and when they are named.
- f. At any time after the Arbitration Management Conference, the Neutral Arbitrator may require, or the Parties may request, additional conferences to discuss administrative, procedural, or substantive matters and to assure that the case continues to move expeditiously. Neutral Arbitrators are encouraged to conduct such conferences by telephone or video conference if facilities are available.

## **26. Mandatory Settlement Meeting**

- a. No later than six (6) months after the Arbitration Management Conference, attorneys representing the parties, or the claimant in pro per and the attorneys representing the respondents shall conduct a mandatory settlement meeting. Represented parties are not required to attend, but if they choose not to do so, either their attorneys must be fully authorized to settle the matter, or the parties not present must be immediately available by phone for consultation with their attorneys while the meeting is in progress. The Parties shall jointly agree on the form these settlement discussions shall take, which may include a conference by telephone, a video-conference, an in-person meeting or any other format they shall agree upon. This Rule does not require that a neutral third party oversee the mandatory settlement meeting; nor does it preclude the presence of such a person. The Neutral Arbitrator shall not take part in the mandatory settlement meeting. Within five (5) days after the mandatory settlement meeting, the Parties and their counsel shall sign the Mandatory Settlement Meeting Form and serve a copy on the Independent Administrator to confirm that the meeting occurred. If the Parties have settled the claim, they shall give notice as required in Rule 40.
- b. This Rule sets a deadline for the Parties to conduct a mandatory settlement meeting. The Parties are encouraged to engage in settlement discussions at an earlier date.
- c. Section 998 of the California Code of Civil Procedure (Offers by a Party to Compromise) applies to arbitrations conducted under these Rules.

## **27. Discovery**

- a. Discovery may commence as soon as the Health Plan serves Claimant(s) with a copy of the Transmission Form, unless some Party objects in writing. If a Party objects, discovery may commence as soon as the Neutral Arbitrator is appointed. Discovery shall be conducted as if the matter were in California state court. Any extension of time for completion of discovery shall not affect the date of the Arbitration Hearing.
- b. The Parties should address problems stemming from the discovery process to the Neutral Arbitrator for rulings. The time for serving any discovery motions shall commence as required by the California Code of Civil Procedure or upon the appointment of the Neutral Arbitrator, whichever is later.
- c. If the Claimant(s) requests and at the Claimant's expense, Health Plan or the affiliated entities that are named as Respondent(s) shall serve a copy of that portion of Claimant's medical records requested on the Claimant(s) within thirty (30) days of Claimant's request.
- d. At the request of the Parties and as would be permitted in state court, the Neutral Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive or private information.

## **28. Postponements**

- a. Any postponement of dates other than that set out in Rule 21 shall be requested in writing from the Neutral Arbitrator if one has been appointed or from the Independent Administrator if the Neutral Arbitrator has not been appointed or has become incapacitated. The request shall set out good cause for the postponement and whether the other Party agrees. Postponements, absent extraordinary circumstances, shall not prevent the Arbitration Award from being served within the time periods specified in Rule 24. Failure of the parties to prepare for a scheduled hearing or to keep the hearing dates free from other commitments does not constitute extraordinary circumstances.
- b. Whenever a Party requests a postponement of an Arbitration Hearing, the request must be in the form of a written motion to the Neutral Arbitrator, with a copy served on the Parties.
  - i. The motion must state the reasons for the request.
  - ii. The Neutral Arbitrator must issue a written order that either denies or grants the motion for postponement, states who made the motion, and gives the reason for the decision. The order must be served on the parties and the Independent Administrator. If the Neutral Arbitrator grants the motion, the order must state the date to which the hearing has been postponed.
  - iii. If the motion for a postponement is granted, the Neutral Arbitrator has the discretion to enter an order requiring that the Neutral Arbitrator's costs and fees associated with the postponement of an Arbitration Hearing be paid by the party requesting the postponement

## **29. Failure to Appear**

- a. The arbitration may proceed in the absence of a Party, a Party's attorney, or a Party Arbitrator who, after due notice of the date, time, and location of the Arbitration Hearing, or any other conference or hearing, fails to be present and failed to obtain a postponement. If the date of the Arbitration Hearing has not been changed, service of the Arbitration Management Conference Form on a Party shall constitute due notice.
- b. An Award shall not be made solely on the default of a Party. The Arbitrator may require each Party who attends to submit such evidence as the Arbitrator requires for the making of an Award.

**30. Securing Witnesses for the Arbitration Hearing**

The Party's attorney, the Neutral Arbitrator, or other entity authorized by law may issue subpoenas for the attendance of witnesses or the production of documents. The Independent Administrator shall not.

**31. Close of Hearing or Proceeding**

- a. When the Parties have rested, the Neutral Arbitrator shall declare the Arbitration Hearing closed.
- b. The Neutral Arbitrator may defer the closing of the Arbitration Hearing until a date agreed upon by the Neutral Arbitrator and the Parties, to permit the Parties to submit post-Hearing papers. The date for the post-Hearing submissions shall not be more than fifteen (15) days after the Parties have rested. If post-Hearing papers are to be submitted, the Arbitration Hearing will be deemed closed on the date set for the submission. If a Party fails to submit the papers by the closing date, the Neutral Arbitrator need not accept or consider them.
- c. The time limit under Rule 37 for the Neutral Arbitrator to make the Award shall begin to run upon the closing of the Arbitration Hearing or proceeding. The late filing of a post-hearing paper shall not affect the deadline for making the Award.

**32. Documents**

After making the Award, the Neutral Arbitrator has no obligation to preserve copies of the exhibits or documents the Neutral Arbitrator has previously received.

**D. RULES FOR EXPEDITED PROCEDURES**

**33. Expedited Procedures**

- a. Expedited Procedures are available in an arbitration where the Claimant(s) requires an Award in less time than that set out in Rule 24.a. The need for the Expedited Procedures shall be based upon any of the following:
  - i. a Claimant or member suffers from an illness or condition raising substantial medical doubt of survival until the time set for an Award according to Rule 24.a; or
  - ii. a Claimant or member seeks a determination that he or she is entitled to a drug or medical procedure that the Claimant or member has not yet received; or
  - iii. other good cause.
- b. The Claimant(s) and Respondent(s) may submit evidence, including declarations by physicians or others, to establish any of these criteria.
- c. If either the Independent Administrator or the Neutral Arbitrator decide that Expedited Procedures are required, the arbitration shall be disposed of within the time set out in that order. No extension of that time is allowed.

- d. Except when inconsistent with orders made by the Neutral Arbitrator to meet the deadline for the disposition of the case, the other Rules shall apply to cases with Expedited Procedures.

#### **34. Seeking Expedited Procedures from the Independent Administrator**

- a. If Claimant(s) believes that Expedited Procedures are required and a Neutral Arbitrator has not yet been appointed, the Claimant(s) may serve a written request, with a brief statement of the reason for request for Expedited Procedures and the length of time in which an Award is required, on the Independent Administrator, with a copy to Respondent(s). Respondent(s) shall provide written opposition to the request for Expedited Procedures, if any, within seven (7) days of the date of the request. The Independent Administrator shall decide the request and inform the Parties of the decision no later than five (5) days after any opposition by Respondent(s) is due.
- b. Should the Independent Administrator determine that Expedited Procedures are necessary, the selection procedures set out in Section B of these Rules shall be followed except that no ninety (90) day continuance shall be allowed and the Independent Administrator shall require that the Neutral Arbitrator agree to render an Award within the period required.
- c. After the Neutral Arbitrator is appointed, he or she shall promptly confer with the Parties to decide what schedule, actions, or modifications of these Rules will be needed to meet the deadline. The Neutral Arbitrator shall issue any additional orders that are necessary to assure compliance with that deadline and serve the Independent Administrator with a copy of such orders. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions.

#### **35. Seeking Expedited Procedures from the Neutral Arbitrator**

If a Neutral Arbitrator has been appointed, the Party seeking Expedited Procedures may, at any time, petition the Neutral Arbitrator to proceed on an expedited basis. If the Neutral Arbitrator issues an order to proceed on an expedited basis, he or she shall issue any additional orders that are necessary to assure compliance with that decision. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions. The Neutral Arbitrator shall serve a copy of any such orders on the Independent Administrator, including the date by which such Award shall be served.

#### **36. Telephonic Notice**

When Expedited Procedures apply, the Parties shall accept all notices, process, and other communications (other than the List of Possible Arbitrators) from the Independent Administrator and Arbitrator by telephone. The Independent Administrator and the Arbitrator shall promptly confirm any such oral notices, process, and other communications, in writing to the Parties.

## **E. RULES ON AWARD AND ENFORCEMENT**

### **37. Time of Award**

The Neutral Arbitrator shall serve the Award on the Parties and the Independent Administrator promptly. Unless otherwise specified by law, the Neutral Arbitrator shall serve the Award in Extraordinary and Complex cases, no later than thirty (30) business days after the closing of the Arbitration hearing, and in all other cases, no later than fifteen (15) business days after the date of the closing of the Arbitration Hearing. If post arbitration briefs are submitted, the Arbitration Hearing is closed on the date the briefs are due.

### **38. Form of Award**

- a. A majority of the Arbitrators shall sign the Award. The Award shall specify the prevailing Party, the amount and terms of the relief, if any, and the reasons for the decision. In setting forth the reasons, the Award, or any decision deciding an arbitration, shall provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632. The reasons for the decision will not become part of the Award nor be admissible in any judicial proceeding to enforce or vacate the Award. The Arbitrator may use the Arbitration Award Form. The Neutral Arbitrator shall be responsible for preparing the written Award.
- b. As required by California regulation, all written decisions must contain the following language in bold, twelve (12) point type,  
  
"Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care."

### **39. Delivery of the Award**

- a. The Neutral Arbitrator shall serve a copy of the Award on the Parties and Independent Administrator by mail.
- b. Respondent(s) shall redact the Award by eliminating the names of the enrollees, the plan, witnesses, providers, health plan employees, and health facilities.
- c. Respondent(s) shall serve the redacted Award on the Independent Administrator and Claimant(s). The redacted version of the Award will become part of the Neutral Arbitrator's file.

### **40. Notice after Settlement or Withdrawal**

- a. At any point in the proceedings, if the Parties reach a settlement, they shall promptly inform the Neutral Arbitrator and the Independent Administrator in writing. Upon receiving such notice, the Independent Administrator shall deem the arbitration terminated.
- b. If a Claimant decides to withdraw a demand, the Claimant or the Claimant's attorney shall serve a notice of withdrawal upon Respondent, the Neutral Arbitrator, and the Independent Administrator.

- c. Except in cases in which the Independent Administrator receives a decision from the Neutral Arbitrator, the Neutral Arbitrator's appointment is terminated on the date the Independent Administrator receives written notice under Rule 40.a or 40.b. No further Neutral Arbitrator will be appointed.

#### **41. Sanctions**

The Neutral Arbitrator may order appropriate sanctions for failure of any Party to comply with its obligations under any of these rules or applicable law. These sanctions may include any sanction available under applicable law, as well as payment of all or a portion of the other Party's expenses for its Party Arbitrator or the Neutral Arbitrator's fees and expenses.

#### **42. Release of Documents for Judicial Proceedings**

The Independent Administrator shall, upon the written request of and payment by a Party, furnish to the Party, at the Party's expense, copies of any papers, notices, process or other documents in the possession of the Independent Administrator that may be required in judicial proceedings relating to that Party's arbitration.

### **F. RULES OF ADMINISTRATION**

#### **43. Counting of Days**

- a. Unless a Rule specifies otherwise, "days" mean calendar days. Thus, all days, including holidays, Saturdays and Sundays are to be counted when counting the number of days. In determining the date an action is required, the date of the event or document that triggers the action is not included, but the date by which the action must occur is included.
- b. If a Rule refers to "business days," federal holidays, Saturdays, and Sundays are excluded when counting the number of days.
- c. If the date on which some action is to be taken, or a notice, process, or other communication would otherwise be required to be sent or a period would otherwise expire, falls on a holiday, a Saturday, or a Sunday, the date is extended to the next succeeding business day.

#### **44. No Limit on Immunity**

Nothing in these Rules limits any statutory or common law immunity that the Independent Administrator or Neutral Arbitrator may otherwise possess.

#### **45. Neutral Arbitrator Fees**

- a. If the Neutral Arbitrator was selected from the List of Possible Arbitrators, the Neutral Arbitrator's compensation for an arbitration shall accord with the fees and terms sent out to the Parties by the Independent Administrator with the List of Possible Arbitrators.
- b. The Independent Administrator is not responsible for, or involved in the collection of, the Neutral Arbitrator's fees.

**46. Expenses**

The expenses of witnesses for any Party shall be paid by the Party producing them. The fees and expenses of the Party Arbitrator shall be paid by the Party who selected that Party Arbitrator.

**47. Forms**

The Parties and the Neutral Arbitrator may request blank copies of any forms mentioned in these Rules from the Independent Administrator.

**48. Questionnaire**

- a. At the conclusion of the arbitration, the Neutral Arbitrator shall complete and timely return the arbitration questionnaire supplied by the Independent Administrator. This information may be used by the Independent Administrator and the Arbitration Oversight Board (“AOB”) in evaluating the arbitration system.
- b. If the Independent Administrator received the Demand for Arbitration on or after January 1, 2003, at the conclusion of the arbitration, the Neutral Arbitrator shall inform the Independent Administrator of the total fee and the percentage of fee allocated to each party. This information will be used by the Independent Administrator to comply with the disclosure requirements of California law.

**49. Evaluation**

At the conclusion of the arbitration, each Party shall complete and timely return the evaluation form supplied by the Independent Administrator.

**50. Amendment of Rules**

- a. The AOB may amend these Rules in consultation with the Independent Administrator and Health Plan. The Rules in effect on the date the Independent Administrator receives the Demand for Arbitration will apply to that arbitration throughout unless the Parties agree in writing that another version of the Rules applies. The Parties shall serve a copy of that agreement on the Independent Administrator.
- b. If the relevant law changes or an event occurs which is not contemplated by these Rules, the Arbitration Oversight Board may adopt a new Rule(s) to deal adequately with that event. New Rule(s) shall apply to all pending arbitrations if the AOB deems such a change necessary notwithstanding Rule 50.a. Any such new Rule(s) shall be created in consultation with the Independent Administrator and Health Plan and shall not be inconsistent with existing Rules unless the Independent Administrator agrees to the change. The Independent Administrator shall serve all Parties and Arbitrators in pending arbitrations with a copy of any such new Rule(s) and it shall be binding upon the Parties and Arbitrators.
- c. In the event of an urgent condition that in the judgment of the Independent Administrator threatens the orderly administration of the arbitration system, with the concurrence of the Chair or Vice-Chair of the AOB, the Independent Administrator shall adopt such temporary rules as it deems necessary to preserve the orderly administration of the arbitration system.

**51. Conflict with Law**

If any of these Rules, or a modification of these Rules agreed on by the Parties, is discovered to be in conflict with a mandatory provision of applicable law, the provision of law will govern, and no other Rule will be affected.

**52. Acknowledgment of No Warranty**

The Independent Administrator makes no representation about, or warranty with respect to, the accuracy, or completeness of any information furnished or required to be furnished in any Application Form or with respect to the competence or training of any Neutral Arbitrator. Information is supplied to allow Parties to conduct their own inquiries.

**53. Public Reporting**

Annually, the Independent Administrator will report in a collective fashion the lengths of times it took to complete various tasks in the process of adjudicating the claims, how the arbitrations were disposed of, and the choices made by the Parties and Arbitrators. This report may be available to the public. The Independent Administrator will also post on its website disclosures required by statute or the Ethics Standards.

**54. Legal Advice**

While the Independent Administrator will try to answer questions about these Rules, it cannot give legal advice to Parties or their counsel or provide them with referrals. The following “Information for Claimants Who Do Not Have Attorneys” may answer some of the most commonly asked questions.

**If You Do Not Have An Attorney**

This handout is for people who represent themselves in arbitration without help from a lawyer. Lawyers say that a person who represents him or herself is acting *in propria persona* or “in pro per.” This Office of the Independent Administrator wants you to know about our system and its procedures. We cannot, however, give you legal advice. This is because we do not take sides in any case.

Please note: We try to ensure that the facts in this handout are accurate. However, where there are rules, the rules take priority.

**What is the Office of the Independent Administrator, or the OIA?**

The OIA oversees the arbitration process. We are neutral. We are not part of Kaiser Permanente. The written Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator control the arbitrations. If you represent yourself, read these Rules carefully. If you have questions about these Rules, call the OIA at (213) 637-9847.

We cannot give legal advice. We will tell you what the Rules mean and how to follow them. However, we cannot advise you on how the Rules might affect your case.

### **What is arbitration?**

Arbitration is a legal proceeding. It is similar to a case filed in court. At the arbitration hearing, you and the other side present witnesses, including medical experts, and other evidence. Unlike most trials in court, there is no jury. A neutral arbitrator hears the evidence and acts as a judge. This person decides both the facts and the law.

Neutral arbitrators cannot give legal advice. They decide cases based on the law and the facts presented by both sides. Their decision is final, binding, and can be enforced in court. Only rarely can a court overturn the arbitrator's decision.

### **Are arbitration and mediation different?**

Yes. Arbitration is not mediation. Arbitration is a legal proceeding where evidence is presented. It is similar to a trial in a court. Mediation, however, is not a legal proceeding. People solve their dispute with the help of a neutral person, called the "mediator." A mediator cannot make a decision that the parties have to accept. Mediation is a voluntary attempt to settle the dispute. A mediator tries to help the parties reach an agreement and end their dispute.

### **Is a medical expert always necessary to prove a claim of medical malpractice?**

Almost always. Under California law, a medical expert's testimony is nearly always needed to prove medical malpractice. This is true in both arbitration and in court. If you do not have a medical expert, you will probably lose the case. Neither the neutral arbitrator nor the OIA can help you find or hire a medical expert.

### **What is summary judgment and why is it important to my claim of medical malpractice?**

Kaiser Permanente may make a motion for summary judgment. This means they argue that there is no dispute about the facts. They also argue they deserve to win under the law. If this happens, you must prepare your position in writing and send it to the neutral arbitrator and the other side before the deadline. If you fail to do this, the neutral arbitrator will probably grant the motion and your case will be over. If Kaiser Permanente has included an expert declaration, you probably need to do the same. You can also take part in the hearing on the motion in person or by phone. If the neutral arbitrator grants a motion for summary judgment, the case is over.

### **Are any other expert witnesses needed?**

Sometimes. If you are asking for lost wages or future damages, you may need an economist or other financial expert to testify. You may also need other experts based on your claims.

### **May I ask a friend or relative to assist me in the case?**

You may only be represented by a lawyer. This is true both in arbitration and in court. However, an unpaid friend or family member may accompany and assist you, if in the judgment of the Arbitrator, your personal circumstances warrant such assistance.

## **When are party arbitrators used?**

Only parties who claim more than \$200,000 in damages may have a party arbitrator. However, you can claim more than \$200,000 without having one. If you choose to have a party arbitrator, you will have to find and pay your party arbitrator. You must also pay one-half of the neutral arbitrator's fees, unless you qualify for a fee waiver under Rule 13. While both sides choose the neutral arbitrator, each side chooses its own party arbitrator. In cases with party arbitrators, at least two of the three arbitrators must agree on all rulings, including the award.

If you claim more than \$200,000, you may give up your right to a party arbitrator. If the respondent also agrees to give up its party arbitrator, a single neutral arbitrator will hear your case. This neutral arbitrator will be authorized to award more than \$200,000. If the respondent will not give up its party arbitrator, you must also have a party arbitrator. In either case, the respondent will pay all of the neutral arbitrator's fees and expenses if you sign the Waiver of Objection to Payment of Fees and the Waiver of Party Arbitrator - Claimant Forms.

For more information about party arbitrators and payment of the neutral arbitrator's fees, see Rules 13, 14, 15, and 22.

## **What is *ex parte* communication?**

*Ex Parte* communication occurs when one party talks or writes to the neutral arbitrator without giving the other party a chance to participate or respond. *Ex Parte* communication is prohibited unless it is about the time or place of a hearing or conference. If you need to contact the neutral arbitrator for any other reason, write a letter to the neutral arbitrator. You must also send a copy of the letter to the other party. You may also ask for a conference call with the neutral arbitrator and the other party.

## **What are my responsibilities when proceeding without a lawyer?**

When you represent yourself, you must do all the tasks that a lawyer would do:

- Learn the California law that applies to the case.
- Meet deadlines.
- Find and subpoena witnesses when they are needed.
- Find, hire, and pay expert witnesses when they are needed.
- Write and deliver all documents that the neutral arbitrator tells you to prepare.

Some of these tasks take time, are difficult, cost money, and must be done in advance. If this sounds like a lot of work, it is. The neutral arbitrator will not make the job any easier because you represent yourself. We encourage people to get a lawyer to represent them. If you represent yourself, we will help you understand the Rules. But neither the OIA nor the neutral arbitrator can give you legal advice or help you find an expert witness.

**Are there other resources to help people who represent themselves?**

There are useful books written for people who represent themselves. Please check your local library or bookstore. If you need help finding a lawyer, call the State Bar or County Bar Association.

If you have any questions, please call the OIA at (213) 637-9847. You can get copies of the Rules, our forms and other helpful items at our website at [www.oia-kaiserarb.com](http://www.oia-kaiserarb.com).

# **EXHIBIT C**

## **New Evaluation of OIA Procedure and Rules**

**Party or Attorney Evaluation of Arbitration System**

1. In this case, I thought the procedures set out in the *Rules for Kaiser Permanente Members Arbitrations Administered by the Office of Independent Administrator* worked well.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. In this case, the process for obtaining medical records worked well.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. In this case, the Office of Independent Administrator was responsive to my questions and concerns.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Have you had experience with a similar case in Superior Court?  Yes  No  
If yes, was your experience in this system with this case:  
 better  worse  about the same?

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Please offer your suggestions for how this office can improve the system.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Please offer your suggestions for improvement or change in the *Rules*.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# **EXHIBIT D**

## **Geographic Comparisons of Selection of Neutral Arbitrators, Representation of Claimants, and Closure of Cases**

**How Neutral Arbitrators were Selected in 2008 by Area**

<b>2008</b>	<b>Total</b>		<b>Northern</b>		<b>Southern</b>		<b>San Diego</b>	
No Delay	338	53.14 %	171	53.27%	146	54.28%	21	45.65 %
Postponement Only	262	41.19 %	132	41.12%	109	40.52%	21	45.65 %
Disqualificatio n Only	17	2.67%	9	2.8%	7	2.6%	1	2.17%
Postpone. & Disq.	20	3.14%	9	2.8%	7	2.6%	3	6.52%
<b>TOTAL</b>	<b>636</b>		<b>321</b>	<b>50.47%</b>	<b>269</b>	<b>42.3%</b>	<b>46</b>	<b>7.23%</b>

**How Neutral Arbitrators were Selected 1999 - 2008 by Area**

<b>1999 - 2008</b>	<b>Total</b>		<b>Northern</b>		<b>Southern</b>		<b>San Diego</b>	
No Delay	3,897	57.97 %	1,929	56.22%	1,694	60.05%	274	58.17 %
Postponement Only	2,456	36.53 %	1,314	38.3%	970	34.38%	172	36.52 %
Disqualificatio n Only	196	2.92%	100	2.91%	84	2.98%	12	2.55%
Postpone. & Disq.	174	2.59%	88	2.56%	73	2.59%	13	2.76%
<b>TOTAL</b>	<b>6,723</b>		<b>3,431</b>	<b>51.03%</b>	<b>2,821</b>	<b>41.96%</b>	<b>471</b>	<b>7.01%</b>

### Length of Time to Select Neutral Arbitrators by Area

	2008		1999 - 2008	
	# of Cases	Average	# of Cases	Average
All Cases	636	67.1 days	6,723	61.3 days
Northern	321	67.9 days	3,431	63.3 days
Southern	269	64.5 days	2,821	59.1 days
San Diego	46	76.3 days	471	60 days

### Claimants With and Without Attorneys in 2008 by Area

2008	Total		Northern		Southern		San Diego	
Rep. By Counsel	588	76.6%	291	72.4%	259	81.7%	38	77.55%
Pro Per	180	23.4%	111	27.6%	58	18.3%	11	22.45%
<b>Total</b>	<b>768</b>		<b>402</b>		<b>317</b>		<b>49</b>	

### Claimants With and Without Attorneys 1999 - 2008 by Area

1999 - 2008	Total		Northern		Southern		San Diego	
Rep. By Counsel	6,966	76.3%	3,312	72.7%	3,145	80.1%	509	79.3%
Pro Per	2,159	23.7%	1,244	27.3%	782	19.9%	133	20.7%
<b>Total</b>	<b>9,125</b>		<b>4,556</b>		<b>3,927</b>		<b>642</b>	

### How Cases were Closed in 2008 by Area

2008	Total		Northern		Southern		San Diego	
Abandoned - No Fee	38	4.9%	12	2.9%	22	6.9%	4	7.8%
Consolidated	1	.1%	1	.2%	0	0%	0	0%
Dismissed by NA	22	2.8%	13	3.2%	6	1.9%	3	5.9%
Judg. on Pleadings	0	0%	0	0%	0	0%	0	0%
Judgment - Claim	30	3.9%	9	2.2%	21	6.6%	0	0%
Judgement - Resp.	68	8.7%	40	9.7%	25	7.9%	3	5.9%
Other	0	0%	0	0%	0	0%	0	0%
Settled	346	44.4%	178	43.3%	142	44.8%	26	51%
Split Results	2	.3%	1	.2%	1	.3%	0	0%
Sum. Judg. - Resp.	62	8%	35	8.5%	22	6.9%	5	9.8%
Withdrawn	210	27%	122	29.7%	78	24.6%	10	19.6%
<b>Total</b>	<b>779</b>		<b>411</b>		<b>317</b>		<b>51</b>	

### How Cases were Closed 1999 - 2008 by Area

1999 - 2008	Total		Northern		Southern		San Diego	
Abandoned - No Fee	316	4.2%	120	3.2%	160	5.1%	36	6.6%
Consolidated	24	.3%	12	.3%	11	.4%	1	.2%
Dismissed by NA	198	2.6%	93	2.4%	92	2.9%	13	2.4%
Judg. on Pleadings	4	.05%	4	.1%	0	0%	0	0%
Judgment - Claim	396	5.3%	126	3.3%	245	7.7%	25	4.6%
Judgment - Resp.	675	9%	283	7.4%	357	11.3%	35	6.4%
Other	3	.04%	1	.03%	2	.06%	0	0%
Settled	3,321	44.1%	1,706	44.8%	1,346	42.5%	269	48.9%
Split Results	10	.1	8	.2%	2	.06%	0	0%
Sum. Judg. - Resp.	728	9.7%	428	11.2%	257	8.1%	43	7.8%
Withdrawn	1,850	24.6%	1,030	27%	692	21.9%	128	23.3%
<b>Total</b>	<b>7,525</b>		<b>3,811</b>		<b>3,164</b>		<b>550</b>	

**Length of Time for Cases to Close by Area**

	<b>2008</b>		<b>1999 - 2008</b>	
	<b># of Cases</b>	<b>Average</b>	<b># of Cases</b>	<b>Average</b>
<b>All Cases</b>	719	324.5 days	7,025	311.7 days
<b>Northern</b>	387	316.5 days	3,603	311.4 days
<b>Southern</b>	287	325.7 days	2,921	315.4 days
<b>San Diego</b>	45	386.2 days	501	292.3 days

# **EXHIBIT E**

**Lists of Neutral Arbitrators  
On The OIA Panel as of  
December 31, 2008**

## OIA Panel of Neutral Arbitrators

### Northern California

Title	First	Middle	Last	Suffix
Justice	Nat	Anthony	Agliano	
Mr.	Roger	F.	Allen	Esq.
Justice	Carl	West	Anderson	(Ret.)
Ms.	Karen	G.	Andres	Esq.
Judge	Robert A.		Baines	
Mr.	G. Archer		Bakerink	Esq.
Judge	Michael	E.	Ballachey	(Ret.)
Ms.	Eileen		Barker	Esq.
Judge	Michael J.		Berger	
Judge	Joseph	F.	Biafore	Jr.
Mr.	Stephen	M.	Biersmith	Esq.
Mr.	Daniel	V.	Blackstock	Esq.
Judge	Allan	J.	Bollhoffer	
Judge	Cecily		Bond	(Ret.)
Mr.	Robert	J.	Brockman	Esq.
Ms.	Mary Margaret		Bush	Esq.
Mr.	Thomas		Campbell	Esq.
Judge	Victor		Campilongo	
Justice	Walter	P.	Capaccioli	
Mr.	Clayton	E.	Clement	Esq.
Mr.	Casey		Clow	Esq.
Ms.	Patricia Lee		Connors	Esq.
Judge	Thomas		Dandurand	
Mr.	Gary	S.	Davis	Esq.
Mr.	Thomas	H.R.	Denver	Esq.
Ms.	Reggie		Derryberry	Esq.
Judge	Benjamin	A.	Diaz	(Ret.)
Mr.	John	M.	Drath	Esq.
Mr.	Paul	J.	Dubow	Esq.
Mr.	Robert	T.	Durbrow	Jr., Esq.
Mr.	Joseph		Elie	Esq.
Mr.	Eric	S.	Emanuels	Esq.
Mr.	W. Gregory		Engel	Esq.
Mr.	Douglas	L.	Field	Esq.
Judge	John	A.	Flaherty	(Ret.)
Judge	Richard S.		Flier	
Mr.	Ronald	F.	Frazier	Esq.
Mr.	Kenneth	D.	Gack	Esq.
Judge	John J.		Gallagher	
Judge	David A.		Garcia	
Ms.	Ruth	V.	Glick	Esq.
Mr.	Stephen	B.	Gorman	Esq.
Judge	Ronald		Greenberg	(Ret.)
Judge	Ina	Levin	Gyemant	(Ret.)
Mr.	Arnold	B.	Haims	Esq.
Judge	Zerne	P.	Haning	
Mr.	Stephen	S.	Harper	Esq.
Ms.	Catherine	C.	Harris	Esq.
Mr.	William	W.	Haskell	Esq.
Mr.	David M.		Helbraun	Esq.

## OIA Panel of Neutral Arbitrators

### Northern California

Title	First	Middle	Last	Suffix
Mr.	Richard	C.	Henderson	Esq.
Mr.	Douglas	W.	Holt	Esq.
Mr.	Val	D.	Hornstein	Esq.
Mr.	Garry	J.D.	Hubert	Esq.
Mr.	C. Mark		Humbert	Esq.
Ms.	Nancy		Hutt	Esq.
Mr.	Ralph	L.	Jacobson	Esq.
Judge	Ellen	Sickles	James	
Judge	Ken	M.	Kawaichi	(Ret.)
Mr.	John P.		Kelly	Esq.
Judge	Margaret J.		Kemp	
Mr.	Lawrence E.		Kern	Esq.
Mr.	Donald	H.	Kincaid	Esq.
Mr.	Alfred	P.	Knoll	Esq.
Ms.	Dorine R.		Kohn	Esq.
Ms.	Barbara		KongBrown	Esq.
Mr.	P. Beach		Kuhl	Esq.
Dr.	Urs	Martin	Laeuchli	Esq.
Mr.	Ernest	B.	Lageson	Esq.
Judge	Henry B.		Lasky	
Judge	David C.		Lee	(Ret.)
Mr.	Perry D.		Litchfield	Esq.
Mr.	Ernest A.		Long	Esq.
Justice	Harry	W.	Low	
Judge	John	A.	Marlo	
Mr.	James D.		Mart	Esq.
Mr.	Allan	J.	Mayer	Esq.
Mr.	John	J.	McCauley	Esq.
Mr.	Otis		McGee	Jr., Esq.
Mr.	John	P.	McGlynn	Esq.
Mr.	Brick	E.	McIntosh	Esq.
Mr.	Mel		McKinney	Esq.
Mr.	David	J.	Meadows	Esq.
Ms.	Susan	H.	Mosk	Esq.
Mr.	Robert	A.	Murray	Esq.
Mr.	Jeffrey	Scott	Nelson	Esq.
Ms.	Trish		Nugent	Esq.
Judge	Suzanne	K.	Nusbaum	(Ret.)
Mr.	William	J.	O'Connor	Esq.
Mr.	Marc D.		Paisin	Esq.
Ms.	Julia	J.	Parranto	Esq.
Judge	Lise A.		Pearlman	(Ret.)
Mr.	Anthony	F.	Pinelli	Esq.
Ms.	Andrea	M.	Ponticiello	Esq.
Mr.	Gary T.		Ragghianti	Esq.
Mr.	Thomas	D.	Reese	Esq.
Judge	Hadden		Roth	
Mr.	Geoffrey	E.	Russell	Esq.
Judge	Ronald M.		Sabraw	(Ret.)
Judge	Alex		Saldamando	

## OIA Panel of Neutral Arbitrators

### Northern California

Title	First	Middle	Last	Suffix
Mr.	Michael	D.	Senneff	Esq.
Mr.	George J.		Shelby	Esq.
Ms.	Rhonda	D.	Shelton	Esq.
Mr.	Paul S.		Silver	Esq.
Mr.	Douglas L.		Smith	Esq.
Judge	Norman		Spellberg	
Judge	Leonard	B.	Sprinkles	
Judge	Frederick	R.	Stevens	(Ret.)
Mr.	John A.		Sullivan	Esq.
Professor	Jon	H.	Sylvester	
Mr.	Ronald	I.	Toff	Esq.
Ms.	Patricia		Tweedy	Esq.
Mr.	Gregory	D.	Walker	Esq.
Judge	Rebecca		Westerfield	
Mr.	Matthew N.		White	Esq.
Mr.	Barry	S.	Willdorf	Esq.
Judge	Raymond D.		Williamson	Jr.
Judge	Robert B.		Yonts	Jr., (Ret)
Mr.	Maurice L.		Zilber	Esq.

## OIA Panel of Neutral Arbitrators

### Southern California

Title	First	Middle	Last	Suffix
Mr.	Marc	D.	Adelman	Esq.
Judge	James		Albracht	(Ret.)
Mr.	Leon	J.	Alexander	Esq.
Judge	James J.		Alfano	
Ms.	Karen	G.	Andres	Esq.
Mr.	Maurice	J.	Attie	Esq.
Judge	Michael		Berg	(Ret.)
Mr.	Stephen	M.	Biersmith	Esq.
Judge	David	H.	Brickner	(Ret.)
Mr.	Michael D.		Brown	Esq.
Ms.	Adriana	M.	Burger	Esq.
Judge	Luis	A.	Cardenas	
Mr.	Richard	A.	Carrington	Esq.
Judge	Eli		Chernow	(Ret.)
Mr.	Walter	K.	Childers	Esq.
Mr.	Michael	A.	Cholodenko	Esq.
Mr.	Richard M.		Coleman	Esq.
Judge	Chris R.		Conway	
Judge	Barnet	M.	Cooperman	
Mr.	Timothy J.		Corcoran	Esq.
Judge	Lawrence W.		Crispo	
Judge	Daniel Arthur		Curry	
Mr.	John	P.	Daniels	Esq.
Mr.	Joseph	E.	Deering	Esq.
Judge	George	M.	Dell	
Justice	Robert	R.	Devich	(Ret.)
Mr.	Thomas	S.	Dillard	Esq.
Ms.	Wendy	L.	Doo	Esq.
Ms.	Katherine	J.	Edwards	Esq.
Mr.	James	M.	Eisenman	Esq.
Mr.	Eric	S.	Emanuel	Esq.
Judge	Joyce	K.	Fahey	(Ret.)
Judge	Michael J.		Farrell	
Mr.	David	R.	Flyer	Esq.
Judge	Richard O.		Frazee	Sr., (Ret)
Mr.	Ronald	F.	Frazier	Esq.
Mr.	Thomas	I.	Friedman	Esq.
Ms.	Dolly	M.	Gee	Esq.
Mr.	Gerald F.		Gerstenfeld	Esq.
Judge	Jack	E.	Goertzen	
Judge	Arnold H.		Gold	(Ret.)
Mr.	Martin	S.	Goldberg	Esq.
Judge	Norman	W.	Gordon	
Mr.	Ernest	S.	Gould	Esq.
Mr.	Darryl		Graver	Esq.
Mr.	Bruce	A.	Greenberg	Esq.
Judge	Margaret		Grignon	
Judge	Richard		Haden	
Mr.	Jon	Anders	Hammerbeck	Esq.
Justice	James Gary		Hastings	
Judge	Margaret	M.	Hay	

## OIA Panel of Neutral Arbitrators

### Southern California

Title	First	Middle	Last	Suffix
Mr.	Richard	C.	Henderson	Esq.
Judge	David	Allen	Horowitz	(Ret.)
Mr.	Jerry	W.	Howard	Esq.
Mr.	Godfrey		Isaac	Esq.
Judge	Karl W.		Jaeger	
Mr.	J. Craig		Jenkins	Esq.
Mr.	B. Elliott		Johnson	Esq.
Judge	Joseph E.		Johnston	
Judge	Eric Michael		Kaiser	(Ret.)
Mr.	Kevin	M.	Kallberg	Esq.
Judge	Craig S.		Kamansky	
Judge	Burton S.		Katz	(Ret.)
Ms.	Laurel	Greenspan	Kaufer	Esq.
Judge	Bernard		Kaufman	
Judge	John W.		Kennedy	Jr.
Ms.	Barbara		KongBrown	Esq.
Judge	Ann		Kough	
Ms.	Eileen		Kramer	Esq.
Mr.	Bryan		Kravetz	Esq.
Mr.	Martin		Krawiec	Esq.
Judge	Peter		Krichman	
Ms.	Adrienne	L.	Krikorian	Esq.
Judge	Stephen	M.	Lachs	
Mr.	Dennis	O.	LaRochelle	Esq.
Ms.	June		Lehrman	Esq.
Mr.	Philip	R.	LeVine	Esq.
Mr.	Leonard S.		Levy	Esq.
Judge	Michael D.		Marcus	
Mr.	Allan	J.	Mayer	Esq.
Mr.	John	J.	McCauley	Esq.
Mr.	James	J.	McKee	Esq.
Mr.	John P.		Miller	Esq.
Mr.	Kenneth		Miller	Esq.
Ms.	Elizabeth A.		Moreno	Esq.
Judge	Wendell		Mortimer	(Ret.)
Mr.	Steven E.		Moyer	Esq.
Justice	Richard	C.	Neal	(Ret.)
Judge	Jack M.		Newman	
Judge	Michael G.		Nott	
Judge	Thomas F.		Nuss	(Ret.)
Mr.	Kenan		Oldham	Esq.
Mr.	Jeffrey	P.	Palmer	Esq.
Judge	Robert W.		Parkin	
Judge	Lorna		Parnell	
Mr.	Charles	B.	Parselle	Esq.
Mr.	Carl	B.	Pearlston	Esq.
Judge	Alan S.		Penkower	
Judge	Victor		Person	(Ret.)
Mr.	Alexander	S.	Polsky	Esq.
Ms.	Victoria		Pynchon	Esq.
Mr.	Byron		Rabin	Esq.

## OIA Panel of Neutral Arbitrators

### Southern California

Title	First	Middle	Last	Suffix
Mr.	Kendall C.		Reed	Esq.
Mr.	Robert	A.	Rees	Esq.
Ms.	Barbara A.		Reeves	Esq.
Mr.	James		Reynolds	Esq.
Judge	Elwood		Rich	
Mr.	Roy	G.	Rifkin	Esq.
Mr.	Edward J.		Roberts	Esq.
Judge	Paul		Rosenthal	
Mr.	Charles		Rossman	Esq.
Judge	Marvin D.		Rowen	
Mr.	Gene	E.	Royce	Esq.
Judge	Charles	G.	Rubin	
Judge	Michael B.		Rutberg	(Ret.)
Judge	Philip M.		Saeta	
Mr.	Robert	F.	SaintAubin	Esq.
Mr.	Daniel R.		Saling	Esq.
Mr.	Myer	J.	Sankary	Esq.
Mr.	Michael	F.	Saydah	Esq.
Ms.	Jan Frankel		Schau	Esq.
Mr.	Steven	A.	Schneider	Esq.
Judge	Thomas		Schneider	(Ret.)
Judge	R. William		Schoettler	
Judge	Keith		Schulner	
Mr.	Peter	J.	Searle	Esq.
Mr.	Herbert	E.	Selwyn	Esq.
Judge	Tully	H.	Seymour	
Mr.	Donald	S.	Sherwyn	Esq.
Mr.	Eugene	E.	Siegel	Esq.
Mr.	Henry	J.	Silberberg	Esq.
Judge	Leroy	A.	Simmons	
Judge	James L.		Smith	
Judge	Sherman W.		Smith	Jr.
Judge	Bruce J.		Sottile	
Judge	Frederick	R.	Stevens	(Ret.)
Justice	Steven J.		Stone	
Judge	Coleman A.		Swart	(Ret.)
Mr.	T. Emmet		Thornton	Esq.
Mr.	Jeffrey	A.	Tidus	Esq.
Judge	Don	A.	Turner	
Judge	John Leo		Wagner	
Judge	Stuart T.		Waldrip	
Mr.	Jack	A.	Weichman	Esq.
Judge	Henry		Wien	
Mr.	Garry	W.	Williams	Esq.
Mr.	Joseph		Winter	Esq.
Mr.	Alan	E.	Wisotsky	Esq.
Ms.	Deborah	Z.	Wissley	Esq.
Mr.	William	R.	Wolanow	Esq.
Judge	Leonard	S.	Wolf	
Judge	Eric	E.	Younger	
Judge	Raymond	F.	Zvetina	

## OIA Panel of Neutral Arbitrators

### San Diego

Title	First	Middle	Last	Suffix
Mr.	Marc	D.	Adelman	Esq.
Judge	James J.		Alfano	
Judge	E. Mac		Amos	Jr.
Mr.	Douglas	H.	Barker	Esq.
Ms.	Nancy	T.	Beardsley	Esq.
Mr.	Stephen	M.	Biersmith	Esq.
Judge	David	H.	Brickner	(Ret.)
Mr.	James	A.	Bush	Esq.
Judge	Luis	A.	Cardenas	
Mr.	Richard	A.	Carrington	Esq.
Mr.	James Edward		Chodzko	Esq.
Judge	Geary	D.	Cortes	(Ret.)
Mr.	Thomas	S.	Dillard	Esq.
Mr.	John	E.	Edwards	Esq.
Judge	Richard O.		Frazee	Sr., (Ret)
Mr.	Ronald	F.	Frazier	Esq.
Judge	E. Milton		Frosburg	(Ret.)
Mr.	Thomas	E.	Gniatkowski	Esq.
Judge	Jack	E.	Goertzen	
Judge	Richard		Haden	
Mr.	Jon	Anders	Hammerbeck	Esq.
Judge	Margaret	M.	Hay	
Mr.	Mandel	E.	Himmelstein	Esq.
Judge	Herbert	B.	Hoffman	
Mr.	Lawrence	A.	Huerta	Esq.
Judge	Anthony	C.	Joseph	(Ret.)
Judge	Craig S.		Kamansky	
Judge	John W.		Kennedy	Jr.
Ms.	Barbara		KongBrown	Esq.
Mr.	Thomas	L.	Marshall	Esq.
Mr.	John	J.	McCauley	Esq.
Judge	Harry	R.	McCue	(Ret.)
Judge	Kevin W.		Midlam	
Judge	James	R.	Milliken	
Judge	David B.		Moon	(Ret.)
Judge	Robert J.		O'Neill	
Mr.	Kenan		Oldham	Esq.
Mr.	Dale E.		Ordas	Esq.
Judge	Wayne L.		Peterson	
Mr.	Alexander	S.	Polsky	Esq.
Ms.	Victoria		Pynchon	Esq.
Mr.	Byron		Rabin	Esq.
Mr.	James		Reynolds	Esq.
Mr.	Charles	D.	Richmond	Esq.
Mr.	Gene	E.	Royce	Esq.
Judge	Michael B.		Rutberg	(Ret.)
Mr.	Robert	F.	SaintAubin	Esq.
Mr.	Daniel R.		Saling	Esq.
Mr.	Michael	F.	Saydah	Esq.
Mr.	Peter	J.	Searle	Esq.
Judge	Tully	H.	Seymour	

## OIA Panel of Neutral Arbitrators

### San Diego

<b>Title</b>	<b>First</b>	<b>Middle</b>	<b>Last</b>	<b>Suffix</b>
Mr.	Thomas E.		Sharkey	Esq.
Judge	Sherman W.		Smith	Jr.
Judge	John Leo		Wagner	
Judge	Raymond	F.	Zvetina	

# **EXHIBIT F**

## **Qualifications for Neutral Arbitrators**

**Qualifications for Neutral Arbitrators  
for Kaiser Permanente's Mandatory Arbitration System**

1. Neutral arbitrators shall be members of the State Bar of California, members of the state bar of another state with extensive practice in California during the past five years, or retired state or federal judges.
2. Neutral arbitrators shall not have received public discipline or censure from the state bar of California or any other state bar in the past five years. In the case of former judges, they shall not have received public discipline or censure from any government body that has authority to discipline judges in the past five years.
3. Neutral arbitrators shall
  - (a) have been admitted to practice for at least ten years, with substantial litigation experience; AND
  - (b) have had at least three civil trials or arbitrations within the past five years in which they have served as either (i) the lead attorney for one of the parties or (ii) an arbitrator; OR
  - (c) have been a state or federal judge; OR
  - (d) have completed within the last five years a program designed specifically for the training of arbitrators.
4. Neutral arbitrators shall provide satisfactory evidence of ability to act as an Arbitrator based upon judicial, trial, or legal experience.
5. Neutral arbitrators shall not have served as party arbitrators on any matter involving Kaiser Permanente, or any affiliated organization or individual, within the last three years.
6. Neutral arbitrators shall not presently serve as attorney of record or an expert witness or a consultant for or against Kaiser Permanente, or any organization or individual affiliated with Kaiser Permanente, or have had any such matters at anytime within the past three years.
7. Neutral arbitrators shall successfully complete an application provided by the Independent Administrator.
8. Neutral arbitrators shall follow applicable arbitration statutes, substantive law of the issues addressed, and procedures of the Independent Administrator.
9. Neutral arbitrators shall comply with the provisions of code of ethics selected by the Office of the Independent Administrator.
10. Neutral arbitrators shall administer Kaiser arbitrations in a fair and efficient manner.

# **EXHIBIT G**

**List of 2008 Awards to Kaiser Members  
(Redacted)**

### List of All Awards to Claimants (Redacted)

<b>Case Number</b> (not actual OIA case number)	<b>Amount of Awards</b>	<b>Month/Year</b>
1	\$70,000.00	01/08
2	\$636,252.00	01/08
3	\$318,944.00	01/08
4	\$280,000.00	02/08
5	\$10,000.00	02/08
6	\$179,154.56	03/08
7	\$641,570.00	03/08
8	\$115,000.00	03/08
9	\$172,500.00	04/08
10	\$827,901.00	04/08
11	\$187,500.00	04/08
12	\$567,048.00	05/08
13	\$543,923.00	05/08
14	\$22,000.00	05/08
15	\$262,059.00	05/08
16	\$50,000.00	06/08
17	\$305,359.00	07/08
18	\$250,000.00	07/08
19	\$361,679.96	08/08
20	\$204,783.00	08/08
21	\$959,700.00	09/08
22	\$257,800.00	10/08
23	\$150,000.00	10/08
24	\$252,319.46	10/08
25	\$383,312.00	11/08
26	\$25,000.00	11/08
27	\$139,537.00	12/08
28	\$98,000.00	12/08
29	\$2,060,569.00	12/08
30	\$119,346.00	12/08
31	\$381,113.00	12/08

# **EXHIBIT H**

## **Party and Attorney Evaluations of Neutral Arbitrators**





7. The neutral arbitrator understood the facts of my case.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

8. The neutral arbitrator served his/her decision within a reasonable time.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

9. The fees billed by the neutral arbitrator were consistent with those described in his/her application materials which I received from the OIA at the beginning of case.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

10. The fees charged by the neutral arbitrator were reasonable given the work performed.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

11. I would recommend this arbitrator to another person or another lawyer with a case like mine.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

# OIA - Party Evaluation / Total Counts

Report Date Range: 1/1/2008 through 12/31/2008

## General Counts

	<u>Sent</u>	<u>Received</u>	<u>Percent</u>
Total Count of Evaluations	900	466*	52%
Count of Pro Pers	81	25	31%
Count of Claimant Counsel	369	157	43%
Count of Respondents	450	278	62%
Count of Anonymous		6	

## Counts of Received

	<u>Blanks</u>	<u>By Disposition</u>			
Blank	8	Withdrawn	48	Hearing - Claimant	42
Blank and Settled or Withdrawn Early	0	Settled	197	Hearing - Respondent	59
		Dismissed by NA	11	Hearing	0
		MSJ	50	Other	1

## By Method Chosen

Joint	130
Strike and Rank	297

\*8 of these are Blank



# **EXHIBIT I**

## **Neutral Arbitrator Evaluations of OIA Procedures and Rules**



4. Based on my experience in this case, I found the that the following characteristics of the system **worked well**. (Check all that apply):

- manner of neutral arbitrator's appointment
- early management conference
- availability of expedited procedures
- award within 15 days of hearing
- claimant's ability to have respondent pay cost of neutral arbitrator

- the system's rules overall
- hearing within 18 months
- availability of complex/extraordinary procedures
- other (please describe): \_\_\_\_\_

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Based on my experience in this case, I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

- manner of neutral arbitrator's appointment
- early management conference
- availability of expedited procedures
- award within 15 days of hearing
- claimant's ability to have respondent pay cost of neutral arbitrator

- the system's rules overall
- hearing within 18 months
- availability of complex/extraordinary procedures
- other (please describe): \_\_\_\_\_

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Have you had experience with a similar case in Superior Court?  Yes  No  
If yes, what was your role? \_\_\_\_\_  
If yes, was your experience in this system with this case:  
 better  worse  about the same?

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Please give us any suggestions you may have for improving the communications with our office.

\_\_\_\_\_  
\_\_\_\_\_

8. Please set forth any suggestions for improving the system administered by this office.

\_\_\_\_\_  
\_\_\_\_\_

9. Please set forth any suggestions for improvement or change in the rules.

\_\_\_\_\_  
\_\_\_\_\_

## NA Questionnaire / Count by Disposition - 2008 Responses

<b>Disposition</b>	<b>Count</b>	<b>Percent</b>
Decided After Hearing	91	21%
Decided After MSJ	55	12%
Dismissed by NA	14	3%
Settled	216	49%
Withdrawn	42	10%
Unidentified	24	5%
No Questions Answered	63	14%
<b>Total Returned</b>	442	
<b>Total Mailed</b>	450	

## Neutral Arbitrator Questionnaire - Responses to Questions 1 thru 3 - 2008 Responses

Count	Disposition	Procedures Worked Well	Would Participate Again	OIA Accommodated Questions/Concerns
		Q1	Q2	Q3
92	Decided After Hearing Count	90	89	89
	Decided After Hearing Average	4.9	5.0	4.9
	Decided After Hearing Median	5.0	5.0	5.0
	Decided After Hearing Mode	5.0	5.0	5.0
	Decided After Hearing Min	4.0	4.0	1.0
	Decided After Hearing Max	5.0	5.0	5.0
55	Decided After MSJ Count	50	50	49
	Decided After MSJ Average	4.7	5.0	4.9
	Decided After MSJ Median	5.0	5.0	5.0
	Decided After MSJ Mode	5.0	5.0	5.0
	Decided After MSJ Min	2.0	4.0	3.0
	Decided After MSJ Max	5.0	5.0	5.0
14	Dismissed by NA Count	9	9	9
	Dismissed by NA Average	4.6	4.8	5.0
	Dismissed by NA Median	5.0	5.0	5.0
	Dismissed by NA Mode	5.0	5.0	5.0
	Dismissed by NA Min	3.0	3.0	5.0
	Dismissed by NA Max	5.0	5.0	5.0
216	Settled Count	171	172	172
	Settled Average	4.8	4.9	4.9
	Settled Median	5.0	5.0	5.0
	Settled Mode	5.0	5.0	5.0
	Settled Min	4.0	4.0	4.0
	Settled Max	5.0	5.0	5.0
42	Withdrawn Count	33	33	34
	Withdrawn Average	4.9	5.0	4.7
	Withdrawn Median	5.0	5.0	5.0
	Withdrawn Mode	5.0	5.0	5.0
	Withdrawn Min	4.0	5.0	3.0
	Withdrawn Max	5.0	5.0	5.0
24	BLANK Count	21	20	21
	BLANK Average	5.0	5.0	4.7
	BLANK Median	5.0	5.0	5.0
	BLANK Mode	5.0	5.0	5.0
	BLANK Min	4.0	5.0	2.0
	BLANK Max	5.0	5.0	5.0
442	Total Count	374	373	374
	Total Average	4.9	4.9	4.9
	Total Median	5.0	5.0	5.0
	Total Mode	5.0	5.0	5.0
	Total Min	2.0	3.0	1.0
	Total Max	5.0	5.0	5.0

## NA Questionnaire / Count of Questions 4-5

4. I found that the following characteristics of the system **worked well**. (Check all that apply):

5. I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

Report Date Range: 1/1/2008 through 12/31/2008

	<b>4. Worked Well</b>	<b>5. Needs Change/Improvement</b>
a.) manner of neutral arbitrator's appointment	268	2
b.) early management conference	282	1
c.) availability of expedited procedures	71	1
d.) award within 15 business day of hearing	85	10
e.) claimant's ability to have respondent pay cost of neutral arbitrator	186	10
f.) the system's rules overall	255	5
g.) hearing within 18 months	131	2
h.) availability of complex/extraordinary procedures	26	2
<b>Other)</b>	3	3
<b>COMMENTS:</b>		
	<b>Positive</b>	0
	<b>Negative</b>	0
	<b>Both</b>	0

## NA Questionnaire / Results of Question 6

6. Have you had experience with a similar case in Superior Court?

If yes, what was your role?

If yes, was your experience in this system with this case Better, Worse, or About the Same?

Report Date Range:  
1/1/2008 through 12/31/2008

<u>Role</u>	<u>CntQ6a is Yes</u>	<u>Cnt Better</u>	<u>Cnt Worse</u>	<u>Cnt Same</u>	<u>Cnt BLANK</u>
	17	5	0	8	4
<i>6b BLANK</i>	1	1	0	0	0
<i>Attorney</i>	51	22	3	18	8
<i>Judge</i>	186	94	1	75	16
<i>Mediator</i>	2	1	1	0	0
<i>Neutral Arbitrator</i>	8	5	0	5	0
<i>Party Arbitrator</i>	1	0	0	1	0
<b>TOTALS</b>	<b>266</b>	<b>128</b>	<b>5</b>	<b>107</b>	<b>28</b>

# **EXHIBIT J**

## **Kaiser Arbitration Oversight Board Comments on the Tenth Annual Report**