

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.