

If You Do Not Have An Attorney

What are my responsibilities when proceeding without a lawyer?

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”. The following information provides some facts and answers some questions most commonly asked by such persons. This handout does not replace the *Rules for Kaiser Member Arbitrations Administered by the Office of the Independent Administrator (Rules)*. Everyone is responsible for following the *Rules*.

If you represent yourself you must do all of the tasks that a lawyer would do, including:

- Understand and comply with the *Rules* governing Kaiser member arbitrations administered by the Office of the Independent Administrator (OIA),
- Learn the California law that applies in your case,
- Find and subpoena witnesses you need,
- Find, hire, and pay expert witnesses you need, and
- Write and deliver all documents that the *Rules*, California law, or the Neutral Arbitrator directs you to prepare.

Some of these tasks take time, are difficult, and have deadlines. We encourage people to get a lawyer to represent them.

What is the Office of the Independent Administrator?

The OIA administers the arbitration process used by Kaiser and its members. The OIA is neutral. It is not a part of Kaiser Permanente. The *Rules* and California law control the arbitrations. If you represent yourself, the OIA will tell you what the *Rules* mean. However, the OIA cannot advise you on how the *Rules* might affect your specific case. Neither the OIA nor the neutral arbitrator can give you legal advice or help you find an expert witness. If you have questions about the *Rules*, call the OIA at (213) 637-9847 or visit the website at www.oia-kaiserarb.com.

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. Arbitrators hear the evidence and act as the judges. Arbitrators decide cases based on the evidence presented by both sides and the law. The Arbitrator’s 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 a proceeding where evidence is presented similar to a case in court. In mediation, parties solve their dispute with the help of a neutral person called the “mediator”, who tries to help the parties reach an agreement and end their dispute. Mediation is an attempt to settle the dispute voluntarily. A mediator cannot force the parties to accept a decision.

What is discovery?

Before the arbitration hearing, all parties have the right to conduct discovery. This means both sides can send written requests for information, usually in the form of Requests for Admissions, Interrogatories, and Requests for Production of Documents. Both sides can also issue subpoenas for records and set depositions. You will be responsible for following the procedures in the California Code of Civil Procedure or any discovery procedure that the arbitrator may set up.

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

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

Are any other expert witnesses needed?

Sometimes. For example, if you are asking for lost wages or future damages, you may need an economist or other financial expert to testify. Other experts may be needed depending on the nature of your claims.

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

Yes, an unpaid friend or family member may accompany you and assist you, if in the judgment of the neutral arbitrator your personal circumstances warrant such assistance. This person may not represent you. As in court, you may only be represented by yourself or a lawyer.

What is a party arbitrator and when are party arbitrators used?

Party arbitrators are used when the claimant or Kaiser prefer to have three arbitrators decide the case rather than the neutral arbitrator alone. If you claim more than \$200,000 in damages, both sides have the right to select a party arbitrator. If you choose to have a party arbitrator, you will have to find and pay the party arbitrator. You must also pay one-half of the neutral arbitrator’s fees, unless you qualify for a fee waiver under Rule 13.

If both sides give up their right to a party arbitrator, a single neutral arbitrator will hear your case. The other side 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 see Rules 13, 14, 15, and 22. Having your case heard by a single neutral arbitrator does not limit the amount of damages you can claim.

Most Kaiser arbitrations are decided by a single neutral arbitrator.

What is an *ex parte* communication?

Ex parte communication occurs when one party communicates with the neutral arbitrator (in writing, by telephone, or in person) without giving the other side 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 and send a copy of the letter to the other side. You may also ask for a conference call with the neutral arbitrator and the other side.

What is summary judgment and why is it important to my claim?

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 there other resources to help people who represent themselves?

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

If you have any questions, please call the OIA at (213) 637-9847. Copies of the *Rules* for Kaiser member arbitrations, forms, and other helpful items can also be found at the OIA website at www.oia-kaiserarb.com