

ANNUAL REPORT

of the

OFFICE OF THE INDEPENDENT ADMINISTRATOR

of the

**KAISER FOUNDATION HEALTH PLAN, INC.
MANDATORY ARBITRATION SYSTEM**

for

DISPUTES WITH HEALTH PLAN MEMBERS

January 1, 2021 - December 31, 2021

Table of Contents

	Page
Report Summary	i
I. INTRODUCTION & OVERVIEW	1
A. Goals of the Arbitration System	2
B. Format of This Report.	2
II. DEVELOPMENT AND CHANGES IN THE SYSTEM.	4
A. AOB Extends Temporary Rules in Response to COVID-19	4
B. Discussion about Video Hearings.	4
C. AOB and OIA Committed to Improve Diversity of the OIA Panel of Neutral Arbitrators	4
D. Mandatory Update for OIA Neutral Arbitrators.	6
E. Update on Neutral Arbitrator Information Packets.	6
F. AOB Expresses Concern with <i>Pro Per</i> Dissatisfaction with Arbitration Process	6
III. PANEL OF NEUTRAL ARBITRATORS	7
A. Turnover and Size of the Panel.	7
B. Practice Background of Neutral Arbitrators.	8
C. Participation of All Neutral Arbitrators	9
1. The Number Named on a List of Possible Arbitrators	9
2. The Number Who Served	9
3. The Number Who Wrote Awards.	9
4. The Number Who Have Served After Making a Large Award	9
5. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times with Cases Closed by Other Neutral Arbitrators	10
IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA.	11

A.	Types of Claims	11
B.	Length of Time Kaiser Takes to Submit Demands to the OIA.	12
C.	Claimants With and Without Attorneys	12
V.	SELECTION OF THE NEUTRAL ARBITRATORS	12
A.	How Neutral Arbitrators are Selected.	13
B.	Joint Selections vs. Strike and Rank Selections	14
C.	Status of Cases with Postponements.	15
D.	Status of Cases with Disqualifications	16
E.	Length of Time to Select a Neutral Arbitrator	17
1.	Cases with No Delays	18
2.	Cases with Postponements	18
3.	Cases with Disqualifications.	18
4.	Cases with Postponements and Disqualifications.	18
5.	Average Time for All Cases	19
F.	Cases with Party Arbitrators.	19
VI.	MAINTAINING THE CASE TIMETABLE	19
A.	Neutral Arbitrator’s Disclosure Statement	20
B.	Arbitration Management Conference	20
C.	Mandatory Settlement Meeting	20
D.	Hearing and Award.	21
E.	Status of Open Cases	21
VII.	THE CASES THAT CLOSED	22
A.	How Cases Closed	23
1.	Settlements – 45% of Closures	23

2.	Withdrawn Cases – 26% of Closures	23
3.	Abandoned Cases – 2% of Closures	23
4.	Dismissed Cases – 5% of Closures	23
5.	Summary Judgment – 13% of Closures	24
6.	Cases Decided After Hearing – 9% of Closures	24
	a. Who Won	24
	b. How Much Claimants Won	24
	c. How Long it Took.	24
7.	Video Hearings	25
B.	Cases Using Special Procedures	26
	1. Expedited Procedures	26
	2. Complex Procedures	27
	3. Extraordinary Procedures	27
	4. Rule 28 Extensions	27
	5. COVID-19 Extensions	28
VIII.	THE COST OF ARBITRATIONS	29
	A. What Fees Exist in OIA Arbitrations	29
	B. Mechanisms Claimants Have to Avoid These Fees	29
	1. How to Waive the \$150 Arbitration Filing Fee	29
	2. How to Waive Both the Arbitration Filing Fee and the Neutral Arbitrators’ Fees and Expenses	29
	3. How to Waive Only the Neutral Arbitrators’ Fees and Expenses	30
	C. Number of Cases in Which Claimants Have Waived Their Fees	30
	1. The \$150 Arbitration Filing Fee	30

2.	The \$150 Arbitration Filing Fee and the Neutral Arbitrators’ Fees and Expenses	30
3.	The Neutral Arbitrators’ Fee Allocation.....	31
D.	The Fees Charged by Neutral Arbitrators.....	31
IX.	ANALYSIS OF LIEN CASES.....	32
X.	EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM.....	32
A.	The Parties Evaluate the Neutral Arbitrators	32
B.	The Neutral Arbitrators Evaluate the OIA System.....	34
C.	The Parties Evaluate the OIA System and Ease of Obtaining Medical Records	36
XI.	THE ROLE OF THE ARBITRATION OVERSIGHT BOARD	38
A.	Membership	38
B.	Activities.....	39
XII.	TRENDS AND DATA OVER THE YEARS OF OPERATION OF THE OIA	40
A.	The Number of Demands for Arbitration	40
B.	The Number of Neutral Arbitrators	41
C.	The Number Who Served	41
D.	The Number Who Wrote Awards.....	42
E.	The Number Who Have Served After Making a Large Award	42
F.	Types of Claims	43
G.	Claimants Without Attorneys	43
H.	Joint Selection vs. Strike and Rank Selection.....	44
I.	Parties’ Use of Options During Selection of Neutral Arbitrator	44
J.	How Cases Closed	45
K.	The Results After Hearing	46

L.	How Long it Took to Close	46
M.	Cost of Arbitration	47
N.	Evaluations of Neutral Arbitrators and the OIA System	47
O.	Conclusion	48

Exhibits

Exhibit A:	Description of OIA Staff.	E-1
Exhibit B:	<i>Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator, Amended as of January 1, 2020 .</i>	E-4
Exhibit C:	Temporary Rules.	E-30
Exhibit D:	Qualifications for Neutral Arbitrators and Neutral Arbitrator Application	E-32
Exhibit E:	OIA Panel of Neutral Arbitrators	E-45
Exhibit F:	OIA Demographic Form and Report	E-51
Exhibit G:	List of Awards to Claimants	E-55
Exhibit H:	Party or Attorney Evaluation of Neutral Arbitrator	E-57
Exhibit I:	Questionnaire for Neutral Arbitrators.	E-62
Exhibit J:	Party or Attorney Evaluation of Arbitration System	E-65
Exhibit K:	Kaiser Arbitration Oversight Board Comments on the Annual Report . .	E-67

Charts And Tables

Table 1	Number of Neutral Arbitrators by Region	7
Table 2	Percentage of Practice Spent as a Neutral Arbitrator	8
Table 3	Percentage of Practice Spent as an Advocate	8
Table 4	Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times vs. Cases Closed with Other Neutral Arbitrators.	10
Chart 1	Types of Claims	11

Chart 2	Claimants With and Without Attorneys	12
Chart 3	How Neutral Arbitrators were Chosen	14
Chart 4	Status of Cases with Postponements.	16
Chart 5	Parties' Use of Options During Selection.	17
Chart 6	Status of Open Cases	22
Chart 7	How Cases Closed	25
Chart 8	Average Days for Cases to Close, by Manner of Disposition	26
Chart 9	Length of Time in Days to Close Cases by Type of Procedure	28
Chart 10	Neutral Arbitrators' Fee Allocation	31
Table 5	Parties' Evaluations of Neutral Arbitrators	33
Chart 11	Parties Would Recommend Their Arbitrator to Another Person	33
Table 6	Neutral Arbitrators' Opinions Regarding the OIA System	34
Chart 12	Neutrals Compare Cases in OIA & in Superior Court	35
Table 7	Parties' Evaluations of the OIA System	36
Chart 13	Parties Compare Cases in OIA & in Superior Court	37
Table 8	Parties Compare the OIA System & Superior Court	37
Chart 14	Year to Year Comparison of Number of Demands Received by the OIA.	41
Chart 15	Subsequent Service of NAs Who Made Large Awards	43
Table 9	Year to Year Comparison of No Delay vs. Delays: Percentage and Average Number of Days to Select Neutral Arbitrators	45
Table 10	Year to Year Comparison of How Cases Closed	46
Table 11	Year to Year Comparison of Average Number of Days to Close, by Disposition	47

REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2021. The OIA administers the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.¹ From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing a fair, timely, and low cost arbitration process that protects the privacy of the parties.

Status of Arbitration Demands

The total number of demands for arbitration decreased for the second year in a row. Most of the claims were for medical malpractice. The percentage of claimants proceeding without attorneys, in *pro per*, decreased.

- 1. Number of Demands for Arbitration.** The OIA received 473 demands, 17 less than last year. No lien cases were received. See pages 11, 32, and 40 – 41.
- 2. Types of Claims.** Ninety-five percent (95%) of the cases involved allegations of medical malpractice. Less than one percent (<1%) presented benefit and coverage allegations. The remaining cases were based on allegations of premises liability and other torts. See page 11.
- 3. Twenty-six Percent (26%) of Claimants Did Not Have Attorneys.** Claimants in 124 cases, or 26%, were not represented by counsel, a 7% decrease from last year. See pages 12 and 43.

How Cases Closed

In the majority of cases, the parties resolved their claims. In cases that went to hearing, all were decided by a single neutral arbitrator. No case proceeded with party arbitrators.

- 4. Almost Three-Quarters (73%) of Cases Closed by the Parties' Action.** The parties settled 45% of cases. Thirty-seven cases settled at the Mandatory Settlement Meeting (MSM). Of the cases that settled at the MSM, two claimants were in *pro per*. Claimants withdrew 26% of cases and abandoned 2% by failing to pay the filing fee or get the fee waived. See pages 22 – 23 and 45 – 46.
- 5. More than One-Quarter (27%) Closed by Decision of the Neutral Arbitrator.** Nine percent (9%) of cases closed after an arbitration hearing, 13% were closed through summary judgment, and 5% were dismissed by neutral arbitrators. See pages 23 – 24 and 45 – 46.

¹Kaiser has arbitrated disputes with its California members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's arbitration system, saying that it fostered too much delay in the handling of members' demands and should not be self-administered. The OIA has administered the system since 1999.

6. **Almost Half (48%) of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (45%) or when they are successful after a hearing (3%). See pages 23, 24, and 45 – 46.
7. **Nine Percent (9%) of Cases Went to Hearing.** Claimants prevailed in 34% of these cases. The average award was \$556,144, and the range was from \$19,500 to \$1,741,016. See pages 24, 46, and Exhibit G.
8. **All Cases Were Heard by a Single Neutral Arbitrator.** All of the hearings involved a single neutral arbitrator. See page 19.

Meeting Deadlines

The *Rules* allow the parties to delay the neutral arbitrator selection process and extend the arbitration completion date. Even with such delays, the process is expeditious.

9. **Over Half (58%) of Neutral Arbitrator Selections Proceeded Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but over half (58%) of the neutrals were selected without the parties exercising this option. This year, the claimants made all but twelve of the requests for a 90-day postponement. California law gives parties the opportunity to timely disqualify neutral arbitrators. In three percent (3%) of the cases, parties disqualified the neutral arbitrator. In two percent (2%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 22 neutral arbitrators and Kaiser disqualified 12. See pages 15 – 16 and 18.
10. **Average Length of Time to Select a Neutral Arbitrator is 58 Days.** The time to select a neutral arbitrator in cases with no delay was 23 days. The time to select a neutral with a 90 day postponement was 107 days. In cases with only a disqualification, it was 54 days. In cases with both a postponement and disqualification it was 149 days. The overall average length of time to select a neutral arbitrator for all cases was 58 days, 14 days less than last year. See pages 17 – 19 and 44 – 45.
11. **On Average, Cases Closed in Fourteen Months.** Cases closed, on average, in 418 days, 62 days more than last year.² No case closed beyond the deadline required by the *Rules*. Seventy-four percent (74%) of the cases closed within 18 months (the deadline for “regular” cases) and 54% closed in a year or less. See pages 22, 26, and 46 – 47.

²Many neutral arbitrators extended deadlines, some multiple times in a given case, because of the COVID-19 pandemic. See Section VII.B.5.

12. **On Average, Cases With Hearings Were Completed in a Little More than Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 784 days (26 months). This average includes cases that were designated complex, extraordinary, or that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 431 days (a little over 14 months). See pages 24, 26, and 47.

Panel of Neutral Arbitrators

More than half (60%) of the OIA panel spend all of their time acting as neutral arbitrators. More than half (62%) of the neutral arbitrators served on a case. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties to select anyone they collectively want. The majority of neutral arbitrators jointly selected by the parties were from the OIA panel.

13. **The Neutral Arbitrator Panel.** The OIA has 164 neutral arbitrators on its panel, 18 fewer than last year. Forty-five percent (45%) of them, or 73, are retired judges. See page 7.
14. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 98 arbitrators, or 60%, spend all of their time acting as neutral arbitrators. The remaining members divide their time by representing plaintiffs and defendants, though not necessarily in medical malpractice litigation. Ninety-three percent (93%) of the neutral arbitrators report having medical malpractice experience. See page 8.
15. **More Than Half (62%) of Arbitrators Served on a Case.** Sixty-two percent (62%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged two assignments each. Thirty-five neutrals, including arbitrators not on the OIA panel, decided the 50 awards made. Twenty-nine arbitrators (83%) wrote a single award. See pages 9 and 41 – 42.
16. **Majority of Neutral Arbitrators Selected by the Parties were Members of the OIA Panel (94%).** Eighty percent (80%) of neutral arbitrators were selected through the strike and rank process. Fourteen percent (14%) of the arbitrators jointly selected were members of the OIA panel. The other 6% of the jointly selected arbitrators were not members of the OIA panel. See page 14.

Neutral Arbitrator Fees

While the OIA arbitration filing fee is less than the comparable court filing fee, claimants in arbitration can be faced with neutral arbitrator fees, which do not exist in court.

17. **Kaiser Paid the Neutral Arbitrators' Fees in 91% of Closed Cases that had Fees.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. Kaiser paid the neutral arbitrators' fees in 91% of closed cases that had fees. See page 31.
18. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$1,200/hour, with an average of \$585/hour. For the 483 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$8,950. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$9,418. The average fee in cases decided after a hearing was \$39,732. See pages 31 – 32.

Evaluations

When cases conclude, the OIA sends questionnaires to the parties or their attorneys asking them about the OIA system, and if the cases closed by neutral arbitrator actions, an evaluation of the neutral arbitrators. Of those responding, the parties gave their neutral arbitrators and the OIA system positive evaluations. When cases close by neutral arbitrator actions, the OIA also sends the neutral arbitrators a questionnaire about the OIA system. Neutral arbitrators gave positive evaluations of the OIA system.

19. **Positive Evaluations of Neutral Arbitrators by Parties.** Most parties who responded to the OIA evaluation expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.2 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably. See pages 32 – 33.
20. **Positive Evaluations of the OIA by Neutral Arbitrators.** Ninety-nine percent (99%) of the neutral arbitrators reported that the OIA experience was the same as or better than the court system and 1% said it was worse. See pages 34 – 35.
21. **Positive Evaluations of the OIA by Parties.** Eighty-eight percent (88%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system and 12% said it was worse. See pages 36 – 38.

Development and Changes in the System

The OIA and the Arbitration Oversight Board (AOB) continuously strive to improve the arbitration system.

22. **AOB Extends Temporary Rules.** In response to COVID-19, Temporary Rules 4 and 9 were extended. All other temporary rules have been lifted. See pages 4, 39, and Exhibit C.
23. **Video Hearings.** In response to inquiries by the AOB, the OIA provided information about hearings held by video, in addition to hearings held by a combination of in-person and video. See pages 4 and 25.
24. **AOB and OIA Commitment to Diversity.** The AOB and the OIA continue discussions on OIA efforts to improve the diversity of the panel of neutral arbitrators. See pages 4 – 6 and 39 – 40.
25. **Mandatory Update for OIA Neutral Arbitrators.** Neutral arbitrators were required to update their applications. Those neutrals who did not provide the update were removed from the panel. See pages 6 and 7.
26. **Update on Neutral Arbitrator Information Packets.** The OIA website has been updated with photos of neutral arbitrators. In addition, the OIA added search by name and filter by regions functions on its website. See page 6.
27. **AOB Expresses Concern with *Pro Per* Dissatisfaction.** The AOB and OIA had several discussions regarding the dissatisfaction experienced by *pro pers* and have scheduled a presentation by a neutral arbitrator who accepts *pro per* cases to better understand the challenges facing *pro pers*. See pages 6 – 7 and 40.

Conclusion

The goal of the OIA is to provide a fair, timely, and low cost arbitration process that protects the privacy of the parties. To summarize:

- Neutral arbitrators are selected expeditiously, and the cases close faster than in court.
- Parties can, and do, disqualify neutral arbitrators they do not like.
- The filing fee is lower than in court, and parties can, and do, shift the costs of the neutral arbitrators to Kaiser.

- OIA arbitrations are confidential, and the OIA does not publish the names of individual claimants or respondents involved in them.
- Neutral arbitrators on the OIA panel have plaintiff, defendant, and judicial backgrounds. The cases are distributed among them.
- Neutral arbitrators and the OIA system receive mostly positive evaluations.
- The OIA provides information on its website about its cases in compliance with California law. In addition, the OIA maintains a table that is no longer required about all its cases since January 1, 2003.
- The OIA publishes annual reports since 1999 which are all available on the OIA website.

I. INTRODUCTION & OVERVIEW

The Office of the Independent Administrator (OIA) issues this report for 2021.¹ It describes the arbitration system that handles claims brought by members of Kaiser Foundation Health Plan, Inc. (KFHP) against KFHP or its affiliates, collectively Kaiser.² Marcella A. Bell, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board, the OIA maintains a panel of neutral arbitrators to hear Kaiser cases and independently administers the arbitration system between Kaiser and its members. The contract also requires that Ms. Bell write an annual report. This report describes the goals of the system, the actions being taken to achieve them, and the degree to which they are being met. While this report mainly focuses on what happened in the arbitration system during 2021, the final section compares this year with earlier years.

The Arbitration Oversight Board (AOB), an unincorporated association registered with the California Secretary of State, provides ongoing oversight of the OIA and the independently administered system. Its activities are discussed in Section XI.

The arbitrations are administered pursuant to the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of January 1, 2020 (Rules)*. The *Rules* consist of 54 rules in a 21 page booklet and are available in English, Spanish, and Chinese.³ Some important features include:

Procedures for selecting a neutral arbitrator;⁴

Deadlines requiring that most cases be resolved within 18 months;⁵

¹This report, along with the prior annual reports, the *Rules*, various forms, and other information, including OIA disclosures, are available on the OIA website, www.oia-kaiserarb.com. The OIA can be reached by calling 213-637-9847, faxing 213-637-8658, or e-mailing oia@oia-kaiserarb.com. A description of the OIA's staff is attached as Exhibit A.

²Kaiser is a California nonprofit health care service plan that arranges for health care services and other benefits for its enrolled members. Since 1971, it has required that its members use binding arbitration. Kaiser arranges for medical benefits by contracting with The Permanente Medical Group, Inc. (Northern California) and Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals, a nonprofit corporation. Almost all of the demands for arbitration received by the OIA are based on allegations against these affiliates.

³The *Rules* are attached as Exhibit B.

⁴Exhibit B, Rules 16 and 18.

⁵Exhibit B, Rule 24.

Procedures to adjust these deadlines when required;⁶ and

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

The 18-month timeline that the *Rules* establish for most cases is displayed on the next page. Details about each step in the process are discussed in the body of this report.

A. Goals of the Arbitration System

The system administered by the OIA is expected to provide a fair, timely, and low cost arbitration process that respects the privacy of the parties. These goals are set out in Rule 1. The data in this report are collected and published to allow the AOB and the public to determine how well the arbitration system meets these goals.⁸

B. Format of This Report

Section II discusses developments and changes in the system. Sections III and IV look at the OIA's panel of neutral arbitrators, and the number and types of cases the OIA received. The parties' selection of neutral arbitrators is discussed in Section V. Section VI summarizes the methods for monitoring compliance of open cases, and Section VII analyzes how cases are closed and the length of time to close. Section VIII discusses the cost of arbitration. Section IX presents the analyses for lien cases.⁹ The parties' evaluations of neutral arbitrators and the parties' and neutral arbitrators' evaluations of the OIA system are summarized in Section X. Section XI describes the AOB's membership and activities. Finally, Section XII compares the operation of the system over time.

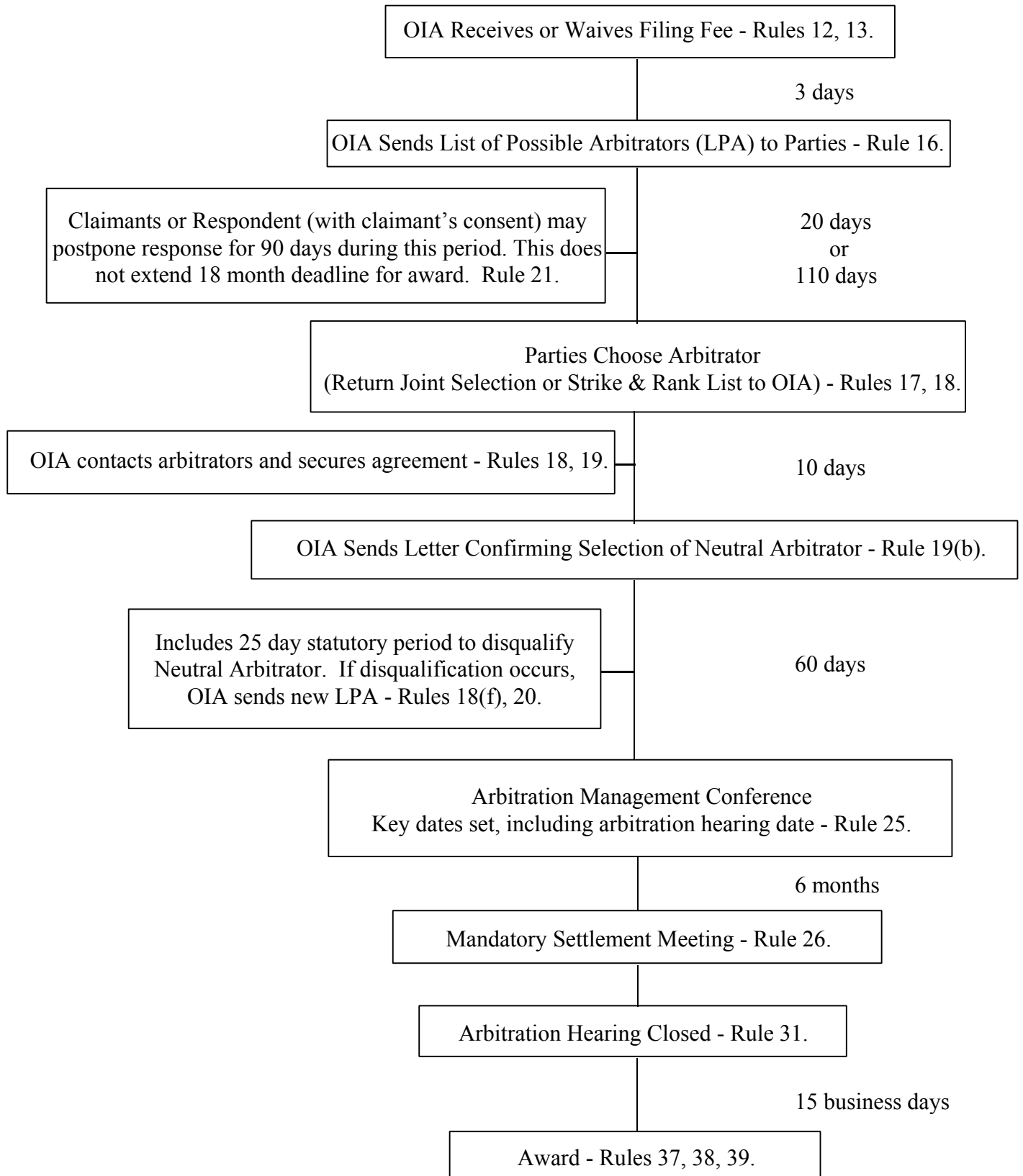
⁶Exhibit B, Rules 24, 28 and 33.

⁷Exhibit B, Rules 14 and 15.

⁸The OIA was created in response to the recommendation of a Blue Ribbon Panel (BRP) and began operating March 28, 1999. Ms. Bell has served as the Independent Administrator since March 29, 2015. The OIA met all of the recommendations that pertain to it since its first operating year. A full copy of the BRP report and the current status of each recommendation is available on the OIA website.

⁹Lien cases are brought by Kaiser against its members to recover costs of medical care provided to a member who received a third party recovery. No lien cases were received this year.

Timeline for Arbitrations Using Regular Procedures



MAXIMUM OF 18 MONTHS*

*Unless Rule 24(b), 24(c), or 28 applies.

II. DEVELOPMENT AND CHANGES IN THE SYSTEM

A. AOB Extends Temporary Rules in Response to COVID-19¹⁰

On March 20, 2020, the OIA, in concurrence with the Chair of the AOB, enacted 11 temporary rules to address COVID-19 concerns.¹¹ All but two of the temporary rules have been lifted over the course of the last year. Temporary Rules 4 and 9 remain in effect.

Temporary Rule 4 provides neutral arbitrators with the authority to serve decisions and/or orders electronically, rather than by mail. (Rule 39.)

Temporary Rule 9 provides claimants with the ability to send their demands for arbitration to the OIA electronically. The OIA forwards these demands for arbitration to Kaiser on behalf of claimants. (Rule 8.)

B. Discussion about Video Hearings

The AOB was interested in the number of cases where hearings were held by video.¹² Pursuant to California Code of Civil Procedure §1281.96(a)(9), the OIA is required to post on its website whether the hearing was conducted in-person, by telephone or video, or only by documents submission. The first case reported a hearing held by video was a motion for summary judgment on July 24, 2020.¹³ This year, neutral arbitrators in 43 cases reported hearings held by video, or a combination of hearings held in-person and by video.¹⁴

C. AOB and OIA Committed to Improve Diversity of the OIA Panel of Neutral Arbitrators

The AOB and the OIA continue discussions on OIA efforts to improve the diversity of the panel of neutral arbitrators. The OIA continues its participation in virtual events focused on diversity, access, and inclusion, and continues discussions with neutral arbitrators about how to provide outreach to diverse arbitrators and encourage participation.

¹⁰COVID-19 is the abbreviation for coronavirus disease 2019, a highly contagious respiratory disease responsible for a global pandemic.

¹¹See Exhibit C for a list of the temporary rules.

¹²Neutral arbitrators reported using Zoom, Webex, and other remote platforms to conduct hearings.

¹³This was the first report even though the statute had been in effect since January 1, 2015. This is likely in response to the COVID-19 “safer at home” public health orders issued in March 2020.

¹⁴See Section VII.A.7. for discussion of hearings held by video this year.

Also, in a meeting arranged by AOB Board Member Tony Rodriguez with Tamara Morgan, Senior Counsel and Strategic Leader of Equity Inclusion and Diversity at Kaiser, suggestions were made with regard to the OIA qualifications and the application for neutral arbitrators.¹⁵ After a thorough discussion, the OIA amended qualification 3.(b). Among other requirements, neutral arbitrators shall 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 or have equivalent experience for one of the parties. (Emphasis added.) By including “equivalent experience,” the OIA can broaden the approach to inclusivity, without diminishing the importance of the qualification.

Ms. Morgan also noted that the OIA qualifications require neutral arbitrators to have participated in at least three civil trials or arbitrations in the past five years. However, the neutral arbitrator application requests that the applicant submit five civil trials or arbitrations. The neutral arbitrator application has now been amended so that it is consistent with the qualifications providing for three of the applicant’s most recent cases. The application was also updated to permit the applicant to specify gender identity.

Additionally, the OIA has compiled a list of programs specifically designed for arbitrator training for those applicants who may not have participated in three civil trials or arbitrations. This provides quick access to applicants who may need to satisfy an additional qualification before applying.

At the AOB’s request, the OIA identified neutral arbitrators who may be able to provide guidance on how to encourage attorneys and retired judges from diverse backgrounds to apply for inclusion on the OIA panel. OIA neutral arbitrators have also directly contacted the OIA and provided suggestions for how the OIA may enhance diversity. The OIA has also contacted minority bar association leaders across the state to provide information about the OIA and its recruitment effort.

The OIA has also sought guidance and input from the California State Bar’s Office of Access and Inclusion which suggested the OIA add a “diversity rider” on its website where parties making selections for neutral arbitrator may view it.¹⁶ The parties are now strongly encouraged to rank highly a fair representation of diverse neutral arbitrators on the List of Possible Arbitrators.

The Office of Access and Inclusion also suggested that the OIA focus its recruitment effort on retired judicial candidates rather than practicing attorneys. AOB Board Member Carlos Camacho offered to provide names of retired judicial candidates from several counties. Once the

¹⁵See Exhibit D for OIA qualifications and application for neutral arbitrators.

¹⁶Section V. discusses the neutral arbitrator selection process.

names are provided, the OIA will contact these candidates and provide them with information about how to apply to become a member of the OIA panel of neutral arbitrators.

D. Mandatory Update for OIA Neutral Arbitrators

Neutral arbitrators are required to update their applications every two years.¹⁷ The update has nine sections and requires neutrals to, among other items, provide most recent case information, pending and closed cases, and whether they are Kaiser members. These updates allow parties access to more recent case information. This year, the OIA required neutral arbitrators who have been on the panel for 15 years or more to submit an updated new application. In addition, the OIA asked all neutral arbitrators to submit a profile photo or professional head shot, which have been posted on the OIA website.

E. Update on Neutral Arbitrator Information Packets

In 2020, the OIA began providing parties with password-protected online access to the information packets for OIA neutral arbitrators.¹⁸ The packets include the neutral arbitrator's application, fee schedule, and any application updates. If a neutral arbitrator has served in prior OIA cases, it will include any evaluations submitted by parties within the last five years. Additionally, if a neutral arbitrator has issued an award or decision within the last five years, the redacted award or decision is also included.¹⁹

This year, the OIA added profile photos of neutral arbitrators to accompany the information packets. The OIA website now also allows parties the ability to search by name and filter by region and panel.²⁰

F. AOB Expresses Concern with *Pro Per* Dissatisfaction with Arbitration Process

The AOB and OIA had several discussions regarding the dissatisfaction with the arbitration process experienced by *pro pers*. The AOB understands the complexity of medical malpractice claims, and that attorney representation is strongly encouraged, but looked to the OIA for suggestions on how to improve *pro pers*' satisfaction. The OIA suggested that the AOB

¹⁷See Section III.A. for the number of neutral arbitrators who failed to return the mandatory update.

¹⁸Although online access has been well received by the parties, the OIA accommodates parties who request to receive the information by U.S. mail.

¹⁹The information packets are for informational use only and are provided to assist the parties in the neutral arbitrator selection process. They are not neutral arbitrators' statutory disclosures. Neutral arbitrators are required to provide the parties with their statutory disclosures within ten days of their selection. See California Code of Civil Procedure §1281.9. See also Section V. for a description of the neutral arbitrator selection process.

²⁰Section III.A. discusses how members of the OIA panel are distributed into geographical regions.

may benefit from the experience of a neutral arbitrator who accepts *pro per* cases and can identify a skill set or frame of mind needed to enable a better experience. This meeting was held in March, 2022.

III. PANEL OF NEUTRAL ARBITRATORS

A. Turnover and Size of the Panel

At the end of the year, there were 164 people on the OIA’s panel of neutral arbitrators. Of those, 73 were former judges, or 45%.

Members of the OIA panel are distributed into three geographic panels: Northern California, Southern California, and San Diego. See Table 1. Members who agree to travel without charge may be listed on more than one panel. Exhibit E contains the names of the members of each panel.

Table 1 - Number of Neutral Arbitrators by Region

Total Number of Arbitrators on the OIA Panel:	164
Northern California Total:	85
Southern California Total:	92
San Diego Total:	45
The three regions total 222 because 39 arbitrators are on more than one panel; 19 on all three panels, 1 on No. Cal & So. Cal, and 19 on So. Cal & San Diego.	

During the year, 23 arbitrators voluntarily left the panel²¹ and 12 additional arbitrators were removed. Two were removed because they no longer met the qualifications required for neutral arbitrators,²² seven for failing to update their applications,²³ and three for failing to comply with the mandated Ethics Standards for Neutral Arbitrators in Contractual Arbitration. Nineteen neutral arbitrators joined the panel, and two applicants were rejected.²⁴

²¹For the neutrals who provided reasons, the most common reason given for resigning was retirement.

²²See Exhibit D for the qualifications for neutral arbitrators.

²³Neutral arbitrators are required to update their applications every two years.

²⁴If the OIA rejects an application, we inform the applicant of the qualification(s) he or she failed to meet.

B. Practice Background of Neutral Arbitrators

The neutral arbitrator application requires applicants to estimate the percentage of their practice spent in various professional endeavors. On average, OIA neutral arbitrators spend their time as follows: 74% of the time acting as a neutral arbitrator, 6% as a claimant (or plaintiff) attorney, 7% as a respondent (or defense) attorney, 12% in other forms of employment (including non-litigation legal work, teaching, mediating, etc.) and 1% acting as a respondent’s party arbitrator, a claimant’s party arbitrator, or an expert.

More than half (60%) of the panel, 98 members, report that they spend 100% of their practice acting as neutral arbitrators. The full distribution is shown in Table 2.

Table 2 - Percentage of Practice Spent as a Neutral Arbitrator

Percent of Time	0%	1 – 25%	26 – 50%	51 – 75%	76 – 99%	100%
Number of NAs	3	31	16	4	12	98

On average, the members of the OIA panel spend 12% of their time as litigators. See Table 3 for the full distribution.

Table 3 - Percentage of Practice Spent as an Advocate

Percent of Practice	Number of NAs Reporting Claimant Counsel Practice	Number of NAs Reporting Respondent Counsel Practice
0%	140	140
1 – 25%	10	7
26 – 50%	8	10
51 – 75%	2	2
76 – 100%	4	5

Finally, while the qualifications do not require that members of the OIA panel have medical malpractice experience, 93% of them do. At the time they filled out or updated their applications, 152 reported that they had medical malpractice experience, while 12 did not. Of the 12 who reported no medical malpractice experience, 9 of them have since served as a neutral arbitrator in an OIA case and may now have acquired medical malpractice experience.

C. Participation of All Neutral Arbitrators²⁵

The first four parts of this section consider the number of neutral arbitrators named on the List of Possible Arbitrators; the number who served; the number who wrote awards; and the number who have served after making a large award. The final section compares cases closed by neutral arbitrators selected ten or more times with cases closed by other neutral arbitrators.

1. The Number Named on a List of Possible Arbitrators

All OIA neutral arbitrators were named on at least one List of Possible Arbitrators (LPA) sent to the parties.²⁶ The average number of times Northern California arbitrators appeared on a LPA was 30. The range of appearances was 1 – 47 times. In Southern California, the average number of appearances was 26. The range was 2 – 35. In San Diego, the average number of appearances was 8. The range was 1 – 14.

2. The Number Who Served

This year, 115 different neutral arbitrators were selected to serve in 433 cases. The majority (102) were members of the OIA panel. Thus, 62% of the OIA panel were selected to serve in a case. The number of times a neutral on the OIA panel was selected ranges from 0 – 19. The average number of appointments for members of the panel was two.

3. The Number Who Wrote Awards

Thirty-five neutral arbitrators wrote 50 awards. Twenty-nine neutrals (83%) wrote a single award, while three wrote two each, and two wrote three each. One neutral wrote nine awards, three in favor of claimants and six in favor of Kaiser.

4. The Number Who Have Served After Making a Large Award

Concerns have been raised as to whether Kaiser will allow neutral arbitrators who have made large awards to serve in subsequent arbitrations, since its attorneys could strike them from LPAs or disqualify them if selected. Therefore, annual reports describe what has happened to neutral arbitrators after making an award of \$500,000 or more.

²⁵This section includes statistics for all neutral arbitrators selected, including those neutrals who are not members of the OIA panel.

²⁶In addition to chance, the number of times a neutral arbitrator is listed is affected by how long in a given year the arbitrator has been on the panel, the number of members on each panel, and the number of demands for arbitration submitted in the geographical area for that panel. The number of times an arbitrator is selected also depends on whether the individual will hear cases when the claimant has no attorney (*pro per* cases). Twenty-seven percent (27%) of the panel will not hear *pro per* cases.

This year, five neutral arbitrators made six awards for more than \$500,000. The awards ranged from \$532,521 to \$1,741,016. Four neutrals made their first award this year, one made two. The remaining neutral had previously made a large award. Two have been selected to serve again after making the award.²⁷

5. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times with Cases Closed by Other Neutral Arbitrators

Each year, the OIA compares how cases closed by neutral arbitrators selected ten or more times with cases closed by other neutral arbitrators. There were eight neutral arbitrators who were selected ten or more times this year. Table 4 shows the comparison of cases closed with these eight neutral arbitrators versus cases closed with other neutral arbitrators.

Table 4 - Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times vs. Cases Closed with Other Neutral Arbitrators

Cases Closed 2020 – 2021	Cases with Neutral Arbitrators Selected 10 or More Times in 2021		Cases with Other Neutral Arbitrators	
Settled	115	52%	325	46%
Withdrawn	45	20%	178	25%
Summary Judgment	25	11%	116	16%
Awarded to Respondent	15	7%	36	5%
Awarded to Claimant	7	3%	16	2%
Dismissed	13	6%	38	5%
Total	220		709 ²⁸	

²⁷Of the three who were not selected, the awards were made in the last quarter of the year, two were made in October and one in December

²⁸Two cases, representing less than 1%, were consolidated and are not included in these numbers.

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

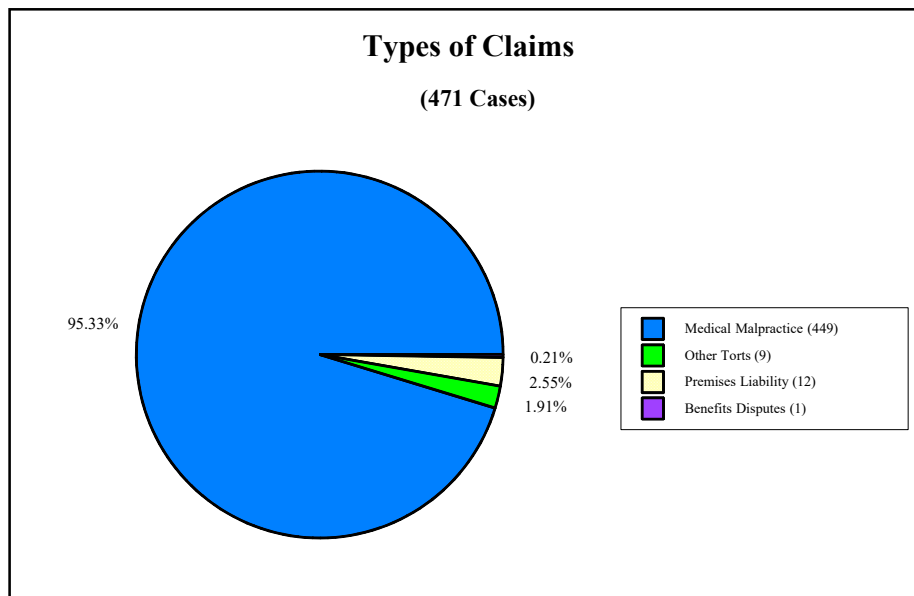
Kaiser submitted 473 demands for arbitration. Geographically, 240 demands for arbitration came from Northern California, 198 came from Southern California, and 35 came from San Diego.²⁹

A. Types of Claims

The OIA administered 471 new cases.³⁰ The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage. Medical malpractice cases make up 95%, or 449 cases. Benefits and coverage cases represent less than half of a percent (one case).

Chart 1 shows the types of new claims the OIA administered during the year.

Chart 1



²⁹The allocation between Northern and Southern California is based upon Kaiser’s corporate division. Roughly, demands based upon care given in Fresno or north are in Northern California, while demands based upon care given in Bakersfield or south are in Southern California or San Diego. Rule 8 specifies where to serve demands for Northern and Southern California, including San Diego.

³⁰A few of these demands submitted by Kaiser are “opt in” cases – based on a contract that required arbitration but not the use of the OIA. There were four “opt in” cases. Two claimants chose to have the OIA administer their claims, one was withdrawn, and one was settled.

B. Length of Time Kaiser Takes to Submit Demands to the OIA

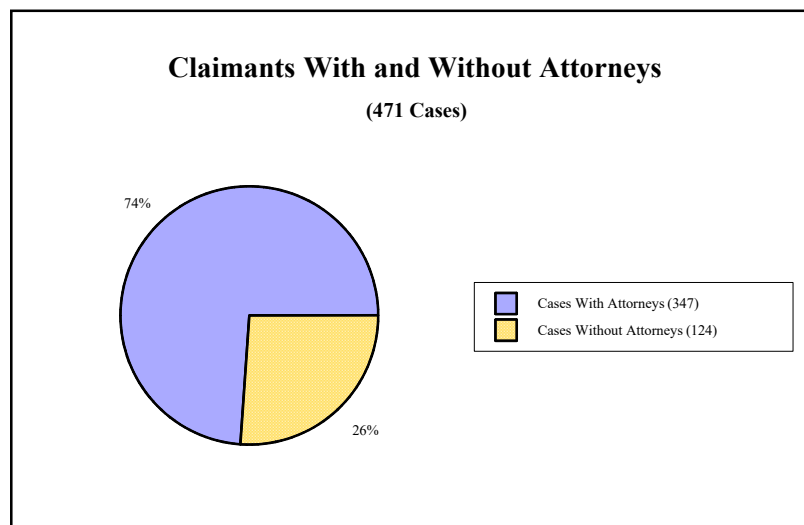
The *Rules* require Kaiser to submit demands for arbitration to the OIA within ten days of receiving them.³¹ The average length of time that Kaiser took to submit demands to the OIA was six days. The range was 0 – 292 days.³²

There were 36 cases in which Kaiser took more than 10 days to submit the demand. The average in these cases was 36 days, and the range was 11 – 292 days.

C. Claimants With and Without Attorneys

Claimants were represented by counsel in 74% of new cases (347 of 471). In 26% of cases, the claimants represented themselves (or acted in *pro per*).

Chart 2



V. SELECTION OF THE NEUTRAL ARBITRATORS

One of the most important steps of the arbitration process occurs at the beginning: the selection of the neutral arbitrator. Sub-section A describes the selection process in general. The next four sub-sections discuss different aspects of the selection process in detail: whether the parties selected the neutral arbitrator by joint selection or by striking and ranking the names on

³¹Exhibit B, Rule 11.

³²The case that took Kaiser 292 days to send to the OIA was mistakenly not sent with a transmission form for 10 months. See Rule 11.

their LPA; the cases in which the parties decided to postpone the selection of the neutral; the cases in which the parties disqualified a neutral arbitrator; and the amount of time it took the parties to select the neutral arbitrator. Finally, the report examines cases in which parties have selected party arbitrators.

A. How Neutral Arbitrators are Selected

The process for selecting the neutral arbitrator begins after the OIA receives a claimant's demand for arbitration and the \$150 arbitration filing fee or a waiver of that fee. The OIA sends both parties an LPA. The LPA contains 12 randomly computer-generated names of neutral arbitrators from the appropriate geographical panel.

Along with the LPA, the OIA provides the parties with password-protected access to information about the neutrals named on the LPA.³³ The information includes each neutral arbitrator's application and fee schedule, and subsequent updates to the application, if any.³⁴

The information also includes copies of any evaluations that have been submitted about the arbitrator by previous parties within the last five years, and any redacted awards or decisions the neutral arbitrator has written within the last five years.

The parties have 20 days to respond to the LPA.³⁵ Parties can respond in one of two ways. First, both sides can jointly select a neutral arbitrator. This person does not have to be named on the LPA, be on the OIA panel, or meet the OIA qualifications.³⁶ Provided the person agrees to follow the *Rules* and completes the OIA Demographic Form³⁷, the parties may jointly select anyone they want to serve as neutral arbitrator.

³³The OIA accommodates parties who request to receive the information by U.S. mail.

³⁴Neutral arbitrators are required to update their applications every two years. Neutral arbitrators were required to update this year. If an arbitrator has not served on the panel for at least two years, he/she may not have an update.

³⁵A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

³⁶Neutral arbitrators who do not meet the OIA qualifications may serve as jointly selected neutral arbitrators so long as they agree to follow the *Rules*. There is, however, one exception: If, pursuant to California's Ethics Standards, a neutral arbitrator has promised not to take another case with the parties while the first remains open and the OIA knows the case is still open, the OIA would not allow the person to serve as a neutral arbitrator in a subsequent case.

³⁷The AOB requested collection of demographic data from jointly selected neutral arbitrators not on the OIA panel. This data is included in the aggregate on the OIA website. See Exhibit F for the form and report.

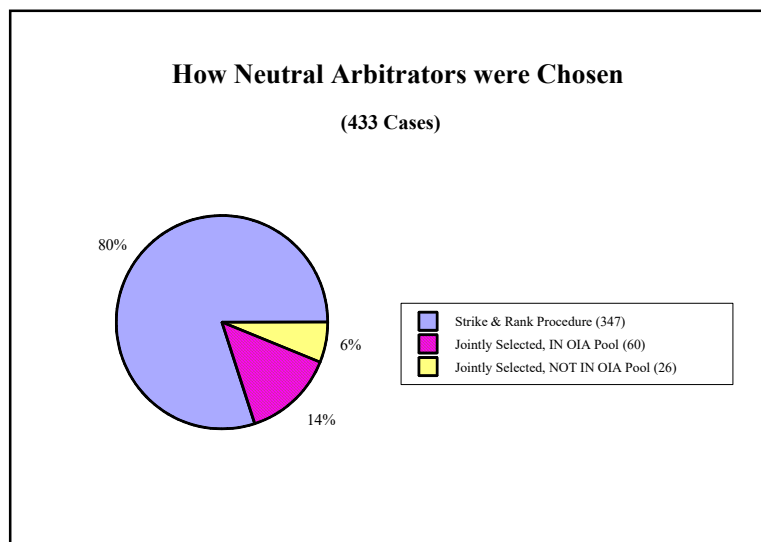
Second, if the parties do not jointly select a neutral arbitrator, each side returns the LPA, striking up to four names and ranking the remaining eight names in order of preference, with “1” as the top choice. When the OIA receives the LPAs, the OIA eliminates any names that have been stricken by either side and then totals the scores of the names that remain. The person with the best score³⁸ is asked to serve. This is called the “strike and rank” process.

Before a neutral has been selected, claimant can request a postponement of the LPA deadline under Rule 21. In addition, after the neutral arbitrator is selected, but before he or she begins to serve, California law allows either party to disqualify the neutral arbitrator. A number of cases close before a neutral arbitrator is selected. Forty-seven cases either settled (26) or were withdrawn (21) without a neutral arbitrator in place.³⁹

B. Joint Selections vs. Strike and Rank Selections

Of the 433 neutral arbitrators selected, 86, or 20%, were jointly selected by the parties and 347, or 80%, were selected by the strike and rank process. Of the neutral arbitrators jointly selected by the parties, 60, or 14%, were members of the OIA panel, though not necessarily on the LPA sent to the parties. In 26 cases, or 6%, the parties selected a neutral arbitrator who was not a member of the panel. See Chart 3. One neutral arbitrator who is not part of the OIA panel accounts for 18 of the joint selections.

Chart 3



³⁸For example, a person who was ranked “1” by both sides – for a combined score of “2” – would have the best score.

³⁹This includes cases with attorneys and cases where the claimant was in *pro per*. For *pro per* cases, seven settled and 14 were withdrawn. For represented cases, 19 settled and 7 were withdrawn.

C. Status of Cases with Postponements

Under Rule 21, a claimant has a unilateral right to a 90-day postponement of the deadline to respond to the LPA. If a claimant has not requested one, the respondent may do so, but only if the claimant agrees in writing. The parties can request only one postponement of up to 90 days. They cannot, for example, get a 40-day postponement at one point and a 50-day postponement later. There are times when parties request a postponement of less than 90 days.

Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines for good cause. The OIA has used this authority occasionally to extend the deadline to respond to the LPA. A Rule 28 extension is generally short – two weeks if the case is settled or withdrawn⁴⁰ – though it may be longer if, for example, it is based on the claimant’s medical condition, or a party has gone to court for some reason.

There were 211 cases where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their LPAs, or both. In 188 of these cases, the parties obtained a Rule 21 postponement. The claimants made all but 12 of these requests. There were 15 cases that received Rule 21 postponements and Rule 28 extensions.⁴¹ There were 8 cases that may have received a Rule 21 postponement in prior years but received a Rule 28 extension this year. One of these cases received two Rule 28 extensions without a prior Rule 21 postponement.⁴²

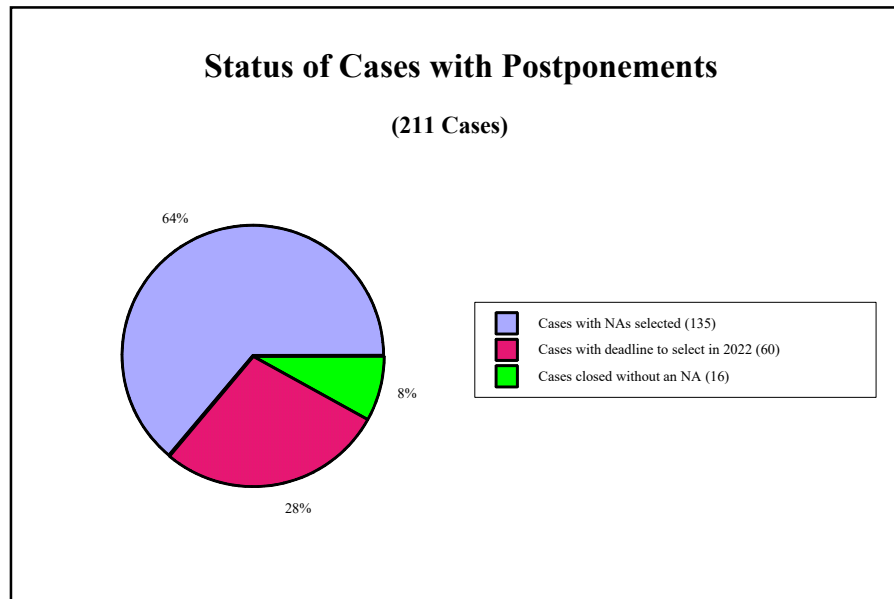
Chart 4 shows what happened in those 211 cases where the parties obtained a postponement of the deadline to return their LPA. Sixty-four percent (64%), 135 cases, have a neutral arbitrator in place. Sixteen cases closed before a neutral arbitrator was selected but after a request for postponement was made. For the remaining 60 cases, the deadline to select a neutral arbitrator was after December 31, 2021.

⁴⁰The extension allows the claimant to send written notice of settlement or withdrawal without a neutral arbitrator being selected, which generally reduces expenses.

⁴¹Claimants made all of the requests for Rule 21 postponement. The majority of Rule 28 extensions were made by parties stipulation.

⁴²Generally, parties must use a 90-day postponement under Rule 21 before the OIA will extend the deadline under Rule 28. In this case, Kaiser agreed to give claimant two extensions of time so that the claimant could request a 90-day postponement. Claimant did not submit a request, and the OIA selected a neutral arbitrator.

Chart 4



D. Status of Cases with Disqualifications

California law gives the parties in arbitration the opportunity to disqualify neutral arbitrators.⁴³ Neutral arbitrators are required to make various disclosures within ten days of their selection.⁴⁴ After they make these disclosures, the parties have 15 days to disqualify the neutral arbitrator. Additionally, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can timely disqualify neutral arbitrators in a given case. However, under Rule 18(f), after two disqualifications, the OIA randomly selects subsequent neutral arbitrators who have not been named on prior LPAs.

Neutral arbitrators were disqualified in 21 cases. Claimants disqualified 22 neutral arbitrators and Kaiser disqualified 12. Nineteen cases had a single disqualification. One case

⁴³California Code of Civil Procedure §1281.91; see also Exhibit B, Rule 20.

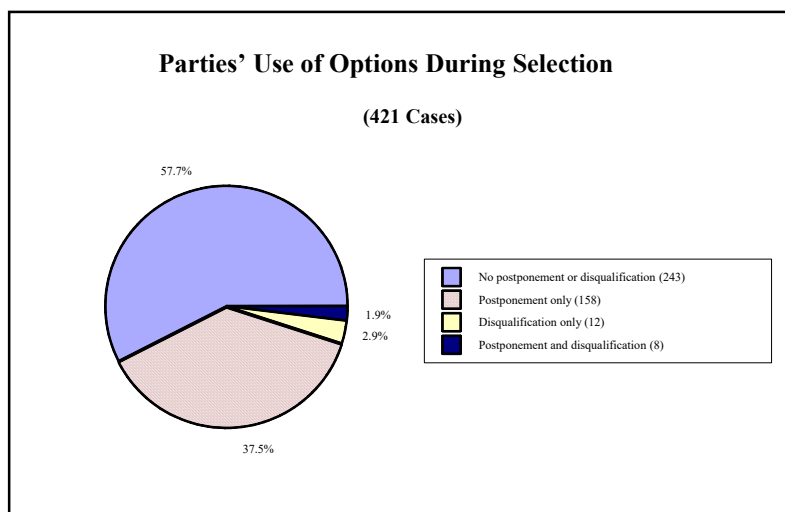
⁴⁴See California Code of Civil Procedure §1281.9, especially §1281.9(b). In the OIA system, the ten days are counted from the date of the letter confirming service which the OIA sends to the neutral arbitrator, with copies to the parties, after the neutral arbitrator agrees to serve.

had two disqualifications and one case had 13 disqualifications.⁴⁵ In all of the cases with a disqualification, a neutral arbitrator had been selected.

E. Length of Time to Select a Neutral Arbitrator

This section considers 421 cases in which a neutral arbitrator was selected⁴⁶ and divides the selections into four categories when discussing the length of time to select a neutral arbitrator. The first category is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was postponed. The third category is those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator was selected. The fourth category is those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. The last three categories may include cases where the request for postponement and/or the disqualification was made in prior years, but the neutral arbitrator was selected this year. Finally, we give the overall average length of time to select a neutral arbitrator for all four categories. Chart 5 displays the categories.

Chart 5



⁴⁵In cases with multiple disqualifications, one of the parties may petition the Superior Court to select a neutral arbitrator. If the court grants the petition, a party is only permitted to disqualify one neutral arbitrator without cause; subsequent disqualifications must be based on cause. See California Code of Civil Procedure §1281.91(2). Kaiser petitioned the Superior Court to select a neutral arbitrator in a case where the *pro per* claimant disqualified ten neutral arbitrators, and Kaiser disqualified three. The hearing on the petition is scheduled for March 2022.

⁴⁶Twelve cases in which a neutral arbitrator was selected are not included in this section. In these cases, a neutral arbitrator had previously been appointed, had begun acting as the neutral arbitrator, and later recused themselves. Because we count time from the first day that the arbitration process was initiated, these cases are not included in these computations of length of time to select a neutral arbitrator.

1. Cases with No Delays

There were 243 cases where a neutral arbitrator was selected in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator in these cases was 23 days, and the range was 2 – 33 days. This category represents 58% of all neutral arbitrators selected.

2. Cases with Postponements

There were 158 cases where a neutral arbitrator was selected and the only delay was a 90 day postponement and/or an OIA extension of the deadline under Rule 28. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in these cases was 107 days, and the range was 25 – 175 days.⁴⁷ This category represents 38% of all cases which selected a neutral arbitrator.

3. Cases with Disqualifications

There were 12 cases where a neutral arbitrator was selected and the only delay was one or more disqualification(s) of a neutral arbitrator. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is only one disqualification is 96.⁴⁸ The average number of days to select a neutral arbitrator was 54 days, and the range was 45 – 66 days. Disqualification only cases represent 3% of all cases which selected a neutral arbitrator.

4. Cases with Postponements and Disqualifications

There were 8 cases where a neutral arbitrator was selected after a postponement and a disqualification of a neutral arbitrator. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is both a 90-day postponement and a single disqualification is 186 days. The average number of days to select a neutral arbitrator in these cases was 149, and the range was 136 – 175 days. These cases represent 2% of all cases which selected a neutral arbitrator.

⁴⁷In the case that took 175 days to select a neutral arbitrator, the *pro per* claimant first obtained a 90-day postponement. The parties then stipulated to an additional 60-day postponement before a neutral arbitrator was selected.

⁴⁸The 96 days is comprised of the 33 days to select the first neutral arbitrator under the *Rules*; the 30 days for the statutory periods for disclosure, disqualification, and service under the California Code of Civil Procedure; and then 33 days to select the second neutral arbitrator. The amount of time increases if there is more than one disqualification.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases was 58 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*⁴⁹ that the old Kaiser system averaged 674 days to select a neutral arbitrator.

F. Cases with Party Arbitrators

In medical malpractice cases, if the amount of damages exceeds \$200,000, a California statute gives parties a right to proceed with three arbitrators: one neutral arbitrator, and two party arbitrators.⁵⁰ The parties may waive this right. The Blue Ribbon Panel (BRP) that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with two more participants in the arbitration process. The BRP, therefore, suggested that the system create incentives for cases to proceed with a single neutral arbitrator.

Rules 14 and 15 provide such an incentive. Kaiser pays the full cost of the neutral arbitrator if claimant waives the statutory right to a party arbitrator, as well as, any court challenge to the arbitrator on the basis that Kaiser paid him/her. If both claimant and Kaiser waive party arbitrators, the case proceeds with a single neutral arbitrator.

Few party arbitrators are used in the OIA system. All the cases that went to hearing were decided by a single neutral arbitrator.

Of the cases that remained open at the end of the year, parties have designated party arbitrators in five cases.

VI. MAINTAINING THE CASE TIMETABLE

This section summarizes the methods for monitoring compliance with deadlines and then looks at the actual compliance at various points during the arbitration process. The OIA monitors its cases in two different ways.

First, through its software, the OIA tracks whether key events set out in the *Rules* – service of the arbitrator’s disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – occur on time. If arbitrators fail to notify the

⁴⁹15 Cal. 4th 951, 64 Cal. Rptr. 2d 843, 938 P.2d 903. The California Supreme Court’s criticism of the then self-administered Kaiser arbitration system led to the creation of the Blue Ribbon Panel.

⁵⁰California Health & Safety Code §1373.19.

OIA that a key event has taken place by its deadline, the OIA contacts them and asks for confirmation that it has occurred. In most cases, the events have occurred and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In instances where the event has not occurred and/or confirmation is not received, the OIA suspends the neutral arbitrator from receiving new cases until confirmation is received and the case is in compliance with the *Rules*.⁵¹

Second, the OIA looks at cases overall and their progress toward closing on time. When a case enters the system, the OIA calendars a status reminder for 12 months. As discussed in Section VII, most cases close in less than 14 months. For those that remain open, the OIA contacts the neutral arbitrators to ensure that the hearing is still on calendar and the case is on track to be closed in compliance with the *Rules*. In addition, the Independent Administrator holds monthly meetings to discuss the status of all cases open more than 15 months.

A. Neutral Arbitrator's Disclosure Statement

Once neutral arbitrators have been selected, California law requires that they make written disclosures to the parties within ten days. The *Rules* require neutral arbitrators to serve the OIA with a copy of these disclosures. The OIA monitors all cases to ensure that disclosures are timely served, and that they include statutory disclosure reports provided by the OIA. No neutral was suspended for failing to timely serve disclosures.

B. Arbitration Management Conference

The *Rules* require neutral arbitrators to hold an Arbitration Management Conference (AMC) within 60 days of their selection.⁵² Neutrals are also required to return an AMC form to the OIA within five days of the conference. The schedule set forth on the form establishes the deadlines for the case. It also allows the OIA to see that the hearing has been scheduled within the time allowed by the *Rules*. No neutral was suspended for failing to return the AMC form.

C. Mandatory Settlement Meeting

Rule 26 instructs the parties to hold a Mandatory Settlement Meeting (MSM) within six months of the AMC. It states that the neutral arbitrator should not be present at this meeting. The OIA provides the parties with an MSM form to complete and return, stating that the meeting took place and its result. The OIA received notice from the parties in 267 cases that they held a

⁵¹When neutral arbitrators are suspended, the OIA removes the neutral arbitrators' names from the OIA panel until they take the necessary action. Suspended neutrals are not listed on any LPA and cannot be jointly selected by the parties.

⁵²Exhibit B, Rule 25.

MSM. Thirty-seven of them reported that the case had settled at the MSM. Two cases involved *pro per* claimants. In 27 cases, neither party returned the MSM form by the end of the year.⁵³

D. Hearing and Award

The neutral arbitrator is responsible for ensuring that the hearing occurs and an award is served within the time limits set out in the *Rules*.

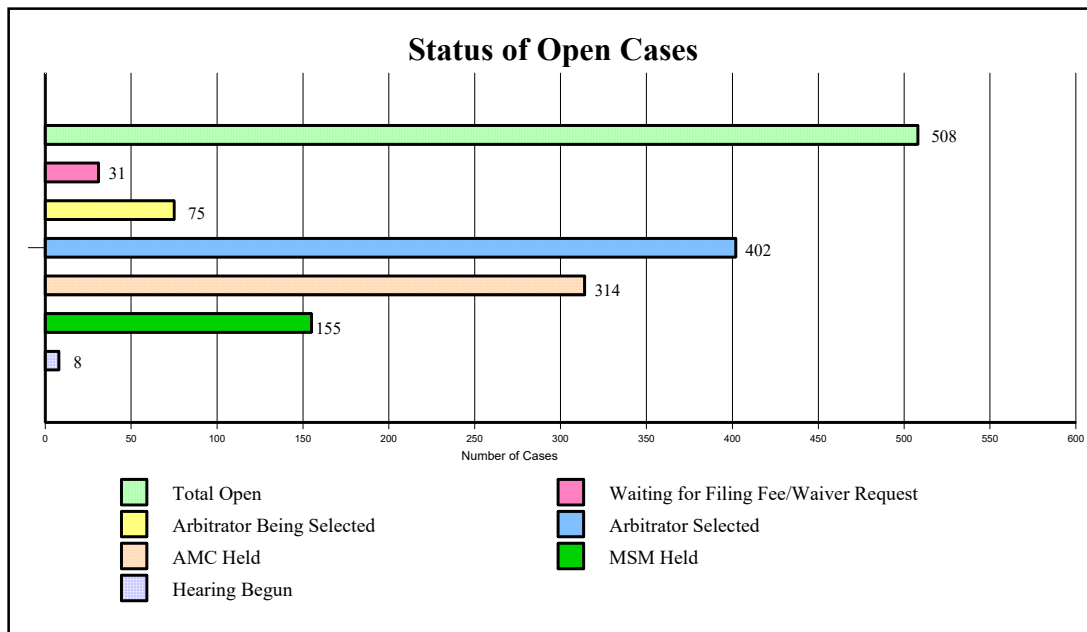
One neutral arbitrator was suspended in two cases for failing to issue orders extending the deadline to serve the award. The same neutral was then suspended for failing to return the questionnaire as required by Rule 48 and for failing to provide the amount of the fee and the fee allocation required by California Code of Civil Procedure §1281.96. The neutral has complied in both cases.

E. Status of Open Cases

There were 508 open cases at the end of the year. In 31 cases, the LPA had not been sent because the filing fee had not yet been paid or waived. In 75 cases, the parties were in the process of selecting a neutral arbitrator. In 402 cases, a neutral arbitrator had been selected. Of these, the AMC had been held in 314. In 155 cases, the parties had held the MSM. In eight cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the award. Chart 6 illustrates the status of open cases.

⁵³While the OIA contacts the parties requesting the MSM form, it has no power to compel them to report or to meet. A neutral arbitrator, on the other hand, can order the parties to meet if a party complains that the other side refuses to do so.

Chart 6



VII. THE CASES THAT CLOSED

Cases close either because of action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of the filing fee), or action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). This discussion looks at each of these methods, how many closed, and how long it took. It also discusses the number of hearings conducted by video and/or in-person. The discussion of cases that closed after a hearing also includes the results: who won and who lost. See Charts 7 and 8.

The second half of this section discusses cases that applied special rules to either have the cases decided faster or slower than most. Under the *Rules*, cases must ordinarily be closed within 18 months. Seventy-four percent (74%) of the cases are closed within this period, and 54% closed in a year or less. If a claimant needs a case decided in less time, the case can be expedited. If the case needs more than 18 months, the neutral arbitrator and/or parties can classify the case as complex or extraordinary under Rule 24. The neutral arbitrator can also order the deadline to be extended under Rule 28 for good cause.⁵⁴ See Chart 9.

⁵⁴A complex case can also be the subject of a Rule 28 extension if it turns out the case requires more than 30 months to close. Twenty-two cases that closed were both complex and had a Rule 28 extension.

A. How Cases Closed

1. Settlements – 45% of Closures

Settlements occurred in 242 cases. This represents 45% of closed cases. The average time to settle was 418 days. The range was 11 – 1,880 days.⁵⁵ In 13 settled cases, or 5%, the claimant was in *pro per*. Thirty-seven cases settled at the mandatory settlement meeting.

2. Withdrawn Cases – 26% of Closures

Withdrawal notices were received in 139 cases. This represents 26% of closed cases. In 55 of these cases, or 40%, the claimant was in *pro per*. We categorize a case as withdrawn when a claimant executes a notice of withdrawal form, writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice. When we receive a “dismissal with prejudice,” we contact the parties to ask whether the case was “withdrawn,” meaning voluntarily dismissed, or “settled” and enter the closure accordingly.

The average time it took for a party to withdraw a claim was 305 days. The range was 3 – 1,450 days.⁵⁶

3. Abandoned Cases – 2% of Closures

Claimants failed to either pay the filing fee or obtain a fee waiver in 10 cases.⁵⁷ These cases were deemed abandoned for non-payment. In seven of the 10 cases, the claimants were in *pro per*. Before cases are closed for non-payment of the filing fee, claimants receive three notices from the OIA, and each time are offered the opportunity to apply for fee waivers.

4. Dismissed Cases – 5% of Closures

Neutral arbitrators dismissed 26 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise conform to the *Rules* or applicable statutes. Twenty-three (23) of these closed cases involved *pro pers*.

⁵⁵The case that took 1,880 days to settle was designated complex 9 months after the neutral arbitrator was selected. At the request of the parties, the hearing was continued nine times so the parties could mediate the case. The matter then settled prior to the start of the arbitration hearing.

⁵⁶The case that took 1,450 days to close was originally designated complex but 20 months later was designated extraordinary by stipulation. The hearing was continued three additional times before the matter was withdrawn by the claimant.

⁵⁷The arbitration filing fee is \$150 regardless of the number of claimants or claims. This is significantly lower than court filing fees except for small claims court. If a claim is within the small claims court’s jurisdiction, it is not subject to arbitration and is not administered by the OIA. Both the OIA and Kaiser inform these claimants of their right to go to small claims court.

5. Summary Judgment – 13% of Closures

Summary judgment was granted in Kaiser's favor in 69 cases. In 55 cases, or 80%, the claimant was in *pro per*. The reasons given by neutral arbitrators for granting motions for summary judgment were: failure to file an opposition (34 cases), failure to have an expert witness (18 cases), no triable issue of fact (11 cases), no causation (3 cases), and exceeded the statute of limitations (3 cases).

The average number of days to close a case by summary judgment was 403 days. The range was 179 – 1,025 days.⁵⁸

6. Cases Decided After Hearing – 9% of Closures

a. Who Won

Fifty cases (9%) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 33 of these cases, or 66%. In two cases, the claimant was in *pro per*. The claimant prevailed in 17 cases, or 34%. None was a *pro per* claimant.

b. How Much Claimants Won

Seventeen cases resulted in awards to claimants. The range was \$19,500 - \$1,741,016. The average amount of an award was \$556,144. A list of the awards made is attached as Exhibit G.

c. How Long it Took

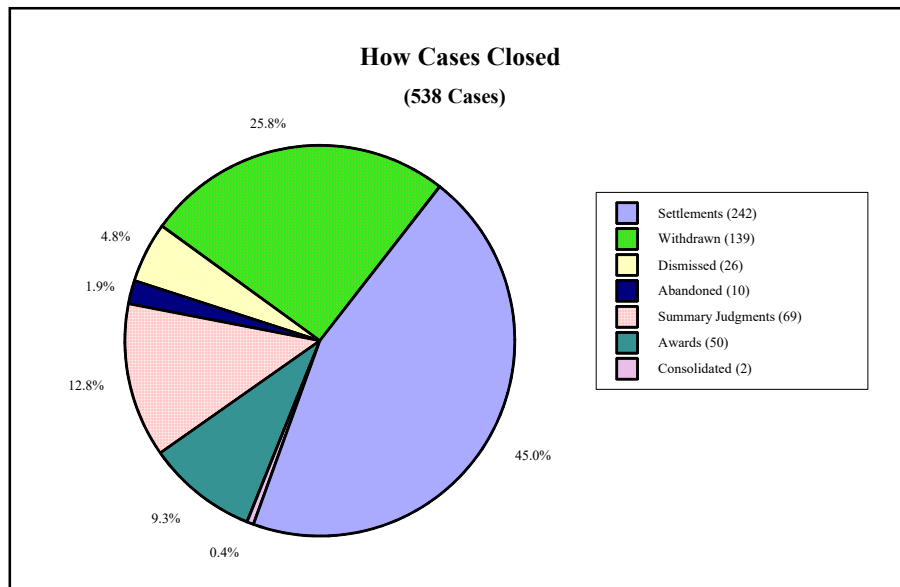
The 50 cases that proceeded to a hearing, on average, closed in 784 days.⁵⁹ The range was 327 – 1,846 days.⁶⁰ Cases that go to a hearing are the most likely to employ the special procedures discussed in the next section to give the parties more time to complete the case.

⁵⁸In the case that closed in 1,025 days, the claimant attorney disqualified the neutral arbitrator and then obtained a 90-day postponement. After the second neutral was selected, the arbitration hearing was continued several times before the motion for summary judgment was heard and granted.

⁵⁹Fourteen of them are considered “regular” cases and closed in 431 days (about 14 months). The deadline for “regular” cases is 18 months. See Rule 24(a).

⁶⁰In the case that took 1,846 days to close, the first neutral arbitrator recused himself 2 years after his selection, and 9 months later the second neutral died. The third neutral was selected nearly three years after the first neutral. The hearing was then continued a number of times before going forward nearly two years after the third neutral was selected, resulting in a judgment in favor of the claimant for \$404,066.

Chart 7



7. Video Hearings⁶¹

Of the 50 arbitration hearings, 28 were held by video, and 11 were held partially in-person and partially by video. The remaining 11 hearings were held in-person.

Of the 69 summary judgments, 63 were held telephonically. Three were held by submission of documents, while the other three were held by video.

Of the 26 cases dismissed by neutral arbitrators, 21 were held telephonically. One was held by video, three by submission of documents, and one was held in-person.

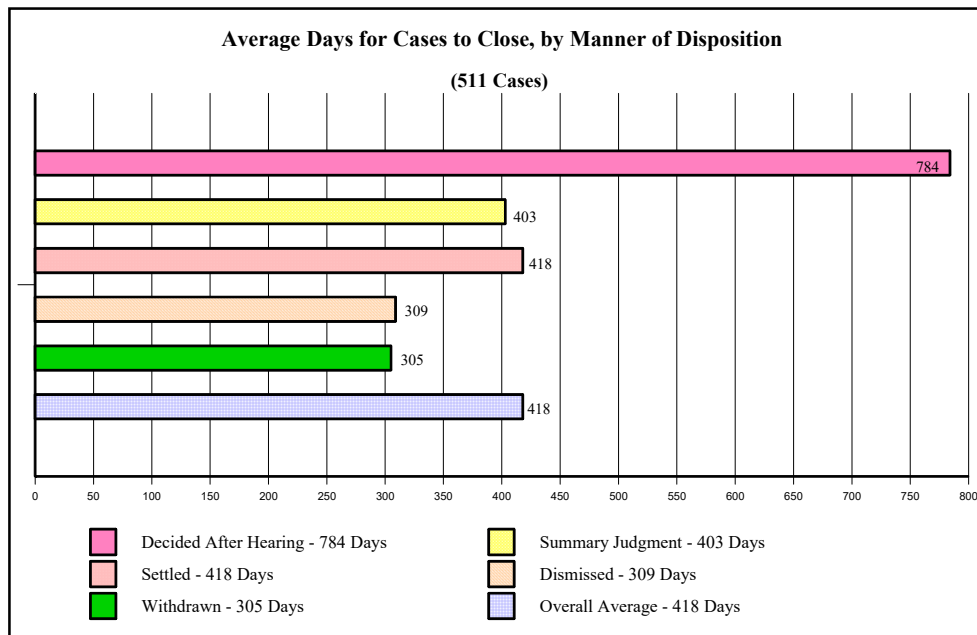
As shown on Chart 8, cases closed on average in 418 days.⁶² The range was 3 – 1,880 days.⁶³ No case closed after its deadline, i.e., none was “late.”

⁶¹The first case reported a hearing held by video was a motion for summary judgment on July 24, 2020. This is likely in response to the COVID-19 “safer at home” public health orders issued in March 2020. This year, neutral arbitrators in 43 cases reported conducting hearings by video or a combination of in-person and video.

⁶²Chart 8 refers to 511 closed cases, not 538, because the OIA does not begin measuring the time until the fee is either paid or waived. This excludes 10 abandoned cases, 15 cases that were withdrawn or settled before the fee was paid, and two cases that were consolidated.

⁶³The case that took 1,880 days to close is described in footnote 55.

Chart 8



B. Cases Using Special Procedures

1. Expedited Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expediting a case include a claimant’s illness or condition raising substantial medical doubt of survival, a claimant’s need for a drug or medical procedure, or other good cause.⁶⁴

Claimants made four requests for expedited procedures to the OIA. Kaiser objected to all the requests. One case was withdrawn. The remaining three were denied⁶⁵ without prejudice to make the request to the neutral arbitrator.

One request for expedited procedures was made to the neutral arbitrator. It was denied.

One expedited request was granted in court as part of an order compelling the case into arbitration.

⁶⁴Exhibit B, Rules 33 – 36.

⁶⁵All three failed to provide sufficient reasons or evidence for the request under Rule 33(a).

The OIA had two open expedited cases pending during the year. One expedited case made their request the prior year and has settled. The other case was extended by Rule 28 and is counted in that section.⁶⁶

Although originally designed to decide benefit claims quickly, none of the expedited cases involved benefit or coverage issues.

2. Complex Procedures

The *Rules* also include provisions for cases that need more time to be completed. In complex cases, the parties believe that they need 24 – 30 months.⁶⁷ The designation does not have to occur at the beginning of a case. It may be made as the case proceeds and the parties develop a better sense of what evidence they need. There were 59 cases designated complex. Forty-seven complex cases closed.⁶⁸ The average length of time for complex matters to close was 612 days. The range was 259 – 917 days (31 months).⁶⁹

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.⁷⁰ Twenty-four cases were designated extraordinary, and 23 cases closed. The average time to close an extraordinary case was 926 days. The range was 441 – 1,450 days (about 4 years).⁷¹

4. Rule 28 Extensions

Rule 28 allows neutral arbitrators to extend the deadline to close the case for good cause. Neutral arbitrators made Rule 28 determinations of good cause in 109 cases. There were 104 cases with a Rule 28 extension that closed. The average time to close cases with a Rule 28 extension was 728 days. The range was 181 – 1,880 days.⁷²

⁶⁶See Section VII.B.4.

⁶⁷Exhibit B, Rule 24(b).

⁶⁸Twenty-two cases were extended by Rule 28 and are counted in that section.

⁶⁹The arbitration hearing in the complex case that took 917 days to close was bifurcated and continued several times over the course of a year to accommodate the substitution of an attorney for the *pro per* claimant. The first phase of the bifurcated hearing went forward and resulted in an award for Kaiser.

⁷⁰Exhibit B, Rule 24(c).

⁷¹The extraordinary case that took 1,450 days to close is described in footnote 56.

⁷²The case that took 1,880 days to close settled and is described in footnote 55.

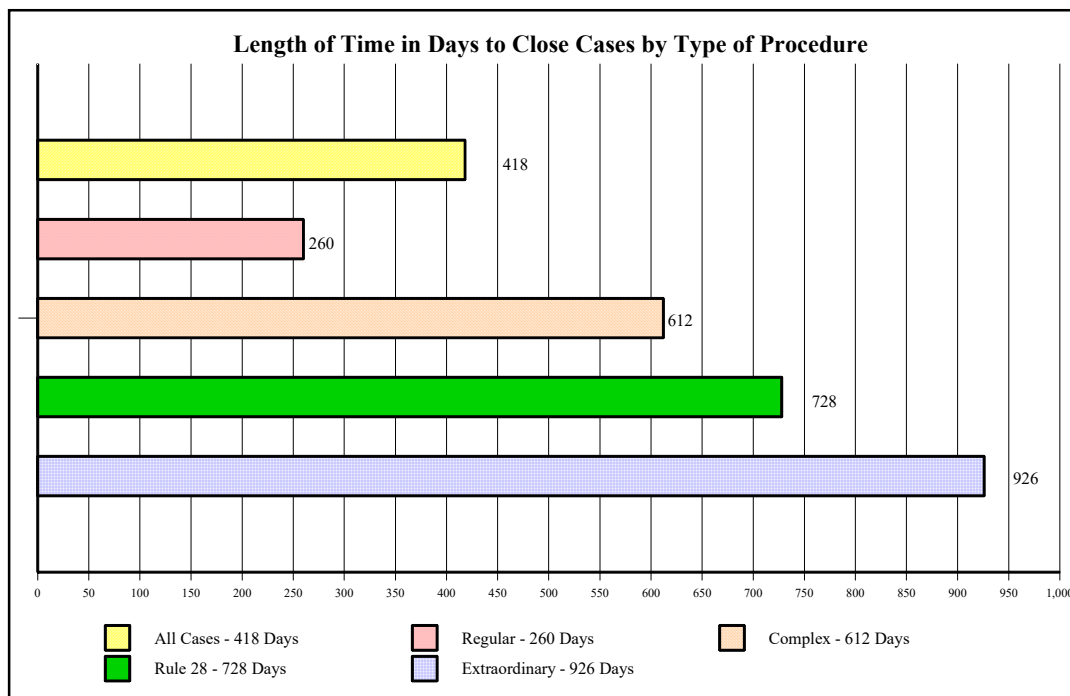
5. COVID-19 Extensions⁷³

A neutral arbitrator may extend the deadline to close the case under Rule 28 for good cause, or by designating the case as complex or extraordinary under Rule 24. Many neutral arbitrators used one or more of these mechanisms in order to extend the deadline because of the COVID-19 pandemic. Some neutral arbitrators extended the deadline multiple times in a given case.

The deadline to close was extended in 49 cases. Eighteen cases were designated complex. Twelve cases were designated extraordinary. The deadline for the remaining 19 cases was extended under Rule 28.

A total of 60 extensions were provided. Ten cases had multiple extensions. Nine cases extended the deadline twice. One case had three extensions. Twenty-three cases have closed. The average time to close cases was 731 days. The range was 441 – 1,025 days.⁷⁴

Chart 9



⁷³These cases are already included in the statistics in Sections 2, 3, and 4 above, but are discussed here in more detail. They include extensions where neutral arbitrators gave the COVID-19 pandemic as a specific reason for the extension.

⁷⁴The case that took 1,025 days to close is discussed in footnote 58.

VIII. THE COST OF ARBITRATIONS

A. What Fees Exist in OIA Arbitrations

Whether in court or private arbitration, parties face certain fees. In an OIA arbitration, in addition to attorney's fees and fees for expert witnesses, a claimant must pay a \$150 arbitration filing fee and half of the neutral arbitrator's fees. State law provides that neutral arbitrator's fees be divided equally between the claimant and the respondent.⁷⁵ State law also provides that if the claim is for more than \$200,000, the matter will be heard by an arbitration panel, which consists of three arbitrators – a single neutral arbitrator and two party arbitrators, one selected and paid for by each side. Parties may waive their right to party arbitrators.

The OIA system provides mechanisms for a claimant to obtain a waiver of either the \$150 arbitration filing fee and/or the claimant's portion of the neutral arbitrator's fees and expenses. When claimants ask for a waiver, they receive information about the different types of waivers and the waiver forms. The claimants can choose which waiver(s) they want to submit.

B. Mechanisms Claimants Have to Avoid These Fees

There are three mechanisms for waiving some or all fees previously described. The first two are based on financial need and required by statute. The third is open to everyone.

1. How to Waive the \$150 Arbitration Filing Fee

This waiver is available to individuals whose gross monthly income is less than three times the national poverty guidelines. The OIA informs claimants of this waiver in the first notice we send to them. They have 75 days to submit this form, from the date the OIA receives their demands for arbitration.⁷⁶ According to statute and Rule 12, this completed form is confidential and only the claimant and claimant's attorney know if a request for the waiver was made, granted or denied. If claimants' income meets the guidelines, the \$150 arbitration fee is waived.

2. How to Waive Both the Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses

This type of fee waiver, which is required by state law, depends upon the claimants' ability to afford the cost of the arbitration filing fee and the neutral arbitrators' fees. Claimants must disclose certain information about their income and expenses. The fee waiver application is based on the form used by state court. According to the *Rules*, the form is served on both the OIA and Kaiser. Kaiser has the opportunity to object before the OIA grants or denies this

⁷⁵California Code of Civil Procedure §1284.2.

⁷⁶California Code of Civil Procedure §1284.3; Exhibit B, Rule 12.

waiver.⁷⁷ If this waiver is granted, claimant does not have to pay either the neutral arbitrator's fees or the \$150 arbitration filing fee. A claimant who obtains this waiver is allowed to have a party arbitrator, but must pay for the party arbitrator.

3. How to Waive Only the Neutral Arbitrators' Fees and Expenses

The *Rules* also contain provisions to shift the claimants' portion of the neutral arbitrators' fees and expenses to Kaiser.⁷⁸ For claims under \$200,000, the claimant must agree in writing not to object later that the arbitration was unfair because Kaiser paid the fees and expenses of the neutral arbitrator. For claims over \$200,000, the claimant must also agree not to use a party arbitrator.⁷⁹ No financial information is required. According to the *Rules*, the waiver forms are served on Kaiser, the neutral arbitrator, and the OIA.

C. Number of Cases in Which Claimants Have Waived Their Fees

1. The \$150 Arbitration Filing Fee

The OIA received 36 request forms to waive the \$150 filing fee. The OIA granted 34 and denied 2.⁸⁰ Eighteen of these claimants also submitted and received a waiver of the filing fee and a waiver of the neutral arbitrators' fees and expenses discussed in the next section. By obtaining the waiver of the filing fee, the neutral arbitrator selection process can begin immediately.

2. The \$150 Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses

The OIA decided 47 fee waiver requests, one was pending from last year. Kaiser objected to one.⁸¹ The OIA granted 46 requests, denied 1.⁸² One request is pending.

⁷⁷See Exhibit B, Rule 13.

⁷⁸See Exhibit B, Rules 14 and 15.

⁷⁹If the claimant waives his/her right to a party arbitrator but Kaiser wants to proceed with party arbitrators, Kaiser will pay all of the neutral arbitrator's fees and expenses.

⁸⁰One had the other fee waiver granted and the other submitted a second request providing additional information and it was granted.

⁸¹The OIA granted the request over Kaiser's objection.

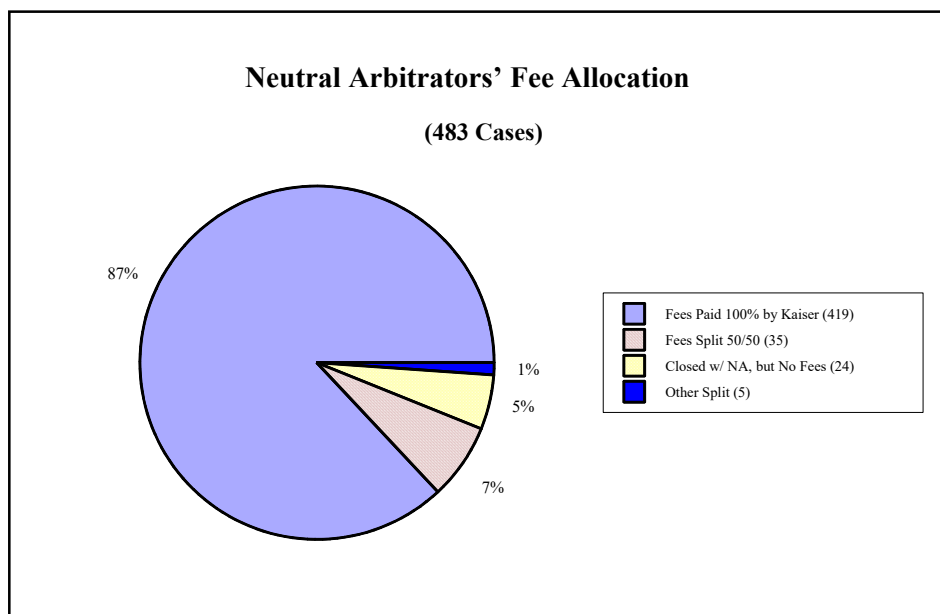
⁸²Claimant's counsel submitted a second request removing conditional language, and it was granted.

3. Neutral Arbitrators' Fee Allocation

State law requires arbitration providers, such as the OIA, to disclose neutral arbitrators' fees and fee allocations for closed cases.⁸³ We received fee information from neutral arbitrators for 481 cases that closed.

Kaiser paid 100% of the neutral arbitrators' fees and expenses in 419 cases. Fees were split 50/50 in 35 cases.⁸⁴ In 24 cases, no fees were charged. See Chart 10.

Chart 10



D. The Fees Charged by Neutral Arbitrators

Neutral arbitrators on the OIA panel set their own fees. They are allowed to raise their fees once a year, but the increases do not affect cases on which they have begun to serve. The fees range from \$150/hour – \$1,200/hour. The average hourly fee was \$585. Some neutral arbitrators also offer a daily fee. This range was \$1,050/day – \$12,000/day. The average daily fee was \$4,907.

In 459 cases where the neutral arbitrators charged fees, Kaiser paid 100% of the neutral arbitrators' fees in 91% of the cases. The average neutral arbitrator fee was \$9,418. The range

⁸³California Code of Civil Procedure §1281.96. This information is available on the OIA website.

⁸⁴Five cases had a different split, with claimants paying 1% – 58%.

was \$392 – \$128,899. This excludes the 24 cases in which there were no fees. The average for all cases, including those with no fees, was \$8,950.

If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee was \$39,732. The range was \$11,350 – \$128,899.

IX. ANALYSIS OF LIEN CASES

This section applies only to lien cases. Lien cases are brought by Kaiser against its members to recoup the costs of medical care provided to a member who received a third party settlement.

No new lien cases were submitted to the OIA.

X. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

When cases close, the OIA sends forms to counsel for the parties and *pro per* claimants asking them questions about the neutral arbitrator, the arbitration process, the OIA, or all of the above. The OIA sends the neutral arbitrator a similar form asking them questions about the OIA and the arbitration process. This section discusses the highlights of the responses we received from the parties and the arbitrators. The copies of the forms are set out in Exhibits H, I, and J, respectively.

A. The Parties Evaluate the Neutral Arbitrators

The OIA sends neutral arbitrator evaluations to counsel for the parties or *pro per* claimants only in cases where the neutral arbitrator made a decision that concluded the case.

The form asks parties to evaluate their experience with the neutral arbitrator in 11 different categories: including, fairness, impartiality, respect shown for all parties, timely response to communications, understanding of the law and facts of the case, and fees charged. Most important, they are asked whether they would recommend this neutral to another person with a similar case. The inquiries appear in the form of statements, and all responses appear on a scale with 5 being agreement and 1 disagreement. The evaluations are anonymous, though the people filling out the forms are asked to identify themselves by category and how the case closed.

The OIA sent 282 evaluations and received 37 responses, or 13%. Four identified themselves as claimants, 8 as claimants' counsel, and 22 as respondents' counsel. Three did not specify a side.

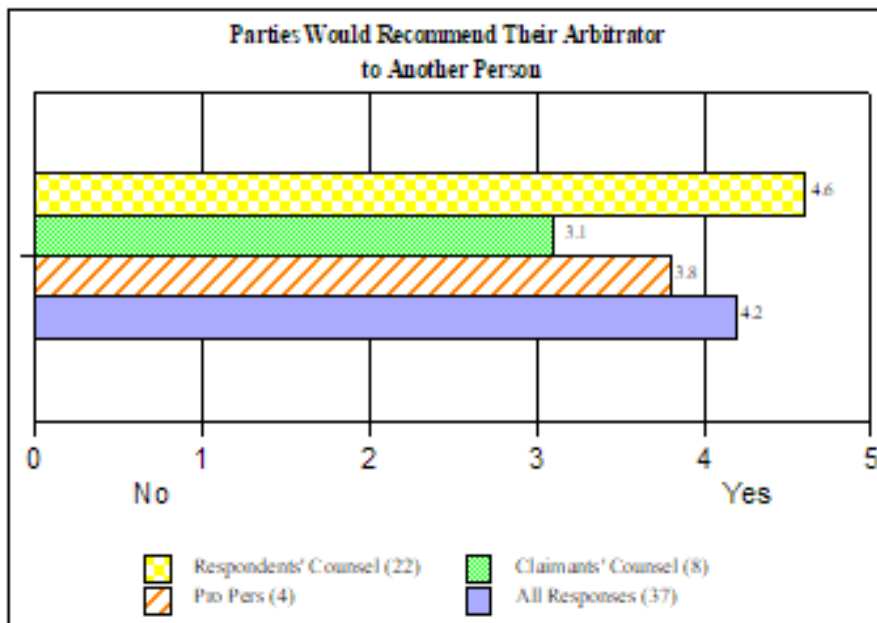
Table 5 highlights the average responses to some of the inquiries.

Table 5 - Parties' Evaluations of Neutral Arbitrators

Question	Claimants' Counsel	<i>Pro per</i>	Respondents' Counsel	Not Specified	Total
Impartial and treated parties fairly	3.5	4.0	4.8	4.3	4.4
Treated parties with respect	3.5	4.3	4.9	5.0	4.5
Explained procedures and decisions clearly	3.6	4.0	4.8	4.7	4.4
Understood applicable law	3.5	3.8	4.8	5.0	4.4
Understood facts of the case	3.4	3.8	4.7	5.0	4.4
Fees reasonable for work performed	3.0	1.0	4.9	5.0	4.6
Would recommend this neutral	3.1	3.8	4.6	4.7	4.2

As shown in Chart 11, the average on all responses when asked whether they would recommend this neutral to another person with a similar case was 4.2.

Chart 11



B. The Neutral Arbitrators Evaluate the OIA System

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and improve the system. As with the evaluations sent to the parties to evaluate the neutral arbitrators, the OIA sends these forms to neutral arbitrators in cases where the neutral arbitrator closed the case. The OIA sent questionnaires in 141 closed cases and received neutral arbitrator responses in all but one case.⁸⁵

The neutrals average 4.9 in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses average 5.0 in saying that based on this experience they would participate in another arbitration in the OIA system. They average 4.9 in saying that the OIA had accommodated their questions and concerns in the specific case.

The questionnaires also includes two questions that ask arbitrators to check off features of the system which worked well or needed improvement in the specific case. The majority identified features of the OIA system that worked well. See Table 6.

Table 6 - Neutral Arbitrators' Opinions Regarding the OIA System

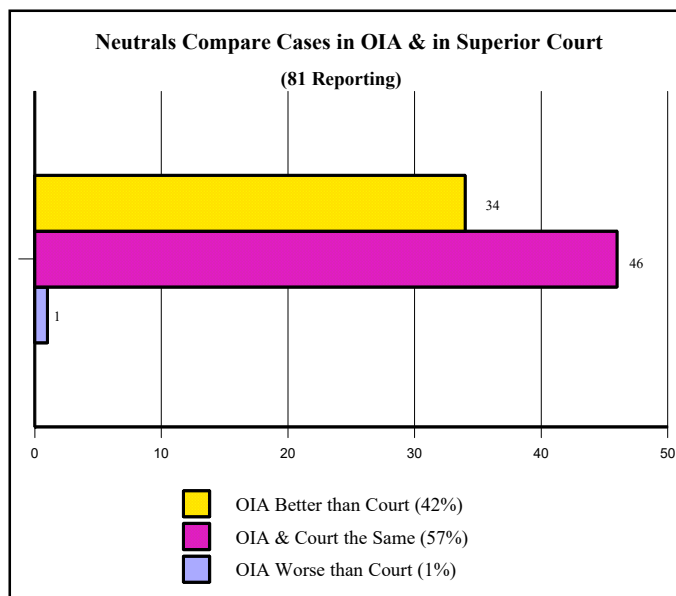
Feature of OIA System	Works Well	Needs Improvement
Manner of neutral arbitrator's appointment	103	0
Early management conference	99	0
Availability of expedited proceedings	35	0
Award within 15 business days of hearing closure	52	6
Claimants' ability to have Kaiser pay neutral arbitrator	100	4
System's Rules overall	107	1
Hearing within 18 months	47	2
Availability of complex/extraordinary proceedings	27	0

Finally, the questionnaires ask the neutrals whether they would rank the OIA experience as better, worse, or about the same as a similar case tried in court. Eighty-one neutral arbitrators made the comparison. Thirty-four neutrals, or 42%, said the OIA experience was better. Forty-

⁸⁵The questionnaire is pending and is due to be returned in the first quarter of 2022.

six neutrals, or 57%, said it was about the same. One neutral (1%) who said the OIA experience was worse may have done so by mistake.⁸⁶ See Chart 12.

Chart 12



Neutral arbitrators praised the OIA as responsive, courteous, and available to resolve issues promptly. They also commended the system itself as more efficient and less cumbersome than court, providing better calendar control and more flexibility to accommodate the needs of the parties. One indicated that there is less uncertainty in the OIA system. A few appreciated the flexibility of the *Rules*, specifically mentioning the ability to continue matters during the pandemic.

While the majority of the comments were compliments of the system, many neutral arbitrators expressed frustration with their *pro per* cases. Some neutrals requested the OIA's assistance with explaining procedures for opposing summary judgments and the need for medical experts, the need to participate in discovery, and the importance of abiding by the *Rules*. Others reported difficulty in collecting their fees in *pro per* cases.

Many neutrals asked for more time for awards, suggesting that 30 days be the standard. One suggested that the OIA provide court reporters for arbitration hearings, and another requested the ability to confer with the OIA by Zoom if circumstances warrant.

⁸⁶The neutral arbitrator checked half of the features as working well and checked none that needed improvement.

Some neutrals asked for rule changes that specifically covered certain circumstances including post arbitration rights; motions for summary judgment; and non-suits. The OIA will monitor these situations and propose rule changes to the AOB if necessary.

C. The Parties Evaluate the OIA System and Ease of Obtaining Medical Records

The OIA sends the parties an additional one page evaluation of the OIA system which includes a question about the ease of obtaining medical records. The form is similar to, but shorter than, the form sent to the neutral arbitrators.

As with the other forms, this asks the recipients, on a scale from 1 to 5, whether they agree or disagree. A “5” is the highest level of agreement.

The OIA sent 964 evaluations and received 95 responses, or 10%. Five identified themselves as *pro per* claimants, 24 as claimants’ counsel, and 48 as respondents’ counsel. Eighteen did not specify a side.

Table 7 highlights the average responses for some of the inquiries.

Table 7 - Parties’ Evaluations of the OIA System

Question	Claimants’ Counsel	<i>Pro per</i>	Respondents’ Counsel	Not Specified	Total
Procedures worked well	4.1	2.5	5.0	4.3	4.5
Obtaining medical records went well	3.9	3.0	5.0	4.2	4.4
OIA responsive to questions/concerns	4.8	3.6	5.0	4.2	4.7

The form also asked the parties if they have had a similar experience in Superior Court and, if so, to compare the two. Of the 76 people who made the comparison, 48 said it was better. Nineteen said it was the same. Nine said it was worse.⁸⁷ See Chart 13 and Table 8 for the breakdown.

⁸⁷Of the nine people who said the OIA experience was worse, six may have done so by mistake as they commented on the flexibility and ease of the OIA. Three responded with complaints about a system which only favors Kaiser or its attorneys, or with complaints about their arbitrator and that arbitration is inherently unfair.

Chart 13

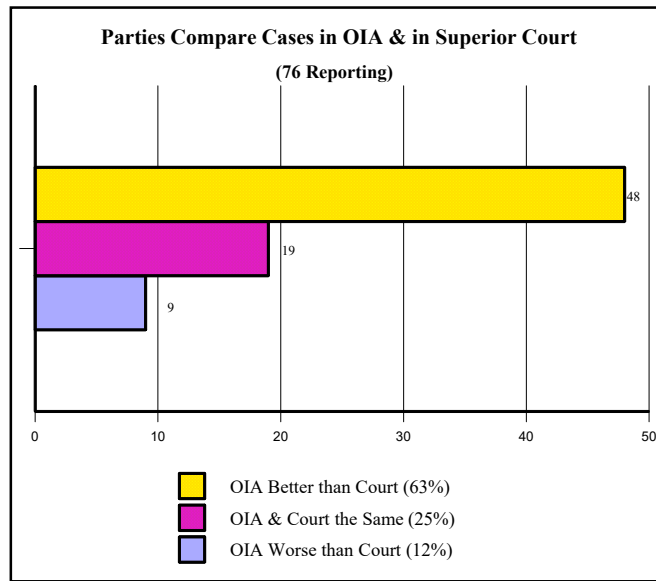


Table 8 - Parties Compare the OIA System & Superior Court

	Made Comparison	Better	Worse	About the Same
Claimants' Counsel	18	8	4	6
<i>Pro per</i>	0	0	0	0
Respondents' Counsel	44	29	5	10
Not Specified	14	11	0	3
Total	76	48	9	19

The parties also praised the OIA system, calling it more efficient than court with easier access to neutral arbitrators and the OIA. They commented that the process is less stressful and receives quicker results.

The most common complaint concerned obtaining medical records. Some claimants reported that despite repeated requests, they never received complete sets. One said the request was denied because it was not submitted in “correct” legal form.⁸⁸ Another suggested that the OIA provide assistance with medical records.

⁸⁸No further explanation was provided by claimant’s counsel.

There were also complaints about arbitration in general. Some said that members should not be subjected to threats of a cost award for bringing their claims, or that these cases belong in Superior Court with a jury. Some suggested a more diverse panel, with less defense attorneys, and others said it should be easier for plaintiff attorneys to qualify for the panel. A few suggested term limits for neutral arbitrators or other limitations on the number of cases a neutral can have.

The parties generally praised the flexibility of the OIA *Rules*. Some suggested rules for a small claims court option, a pre-filing mediation option, and a specific deadline for Kaiser to pay on settlements or judgments. They also suggested that the OIA have the authority to convene an independent panel to decide disqualifications after statutory deadlines have passed. The OIA will monitor these suggestions for any potential or necessary rule changes.

XI. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

The AOB is chaired by Richard Spinello, retired Executive Director of Financial Risk and Insurance, Children's Hospital of Orange County. The vice-chair is Donna Yee, retired Chief Executive Officer of the Asian Community Center of Sacramento Valley.

The membership of the AOB is a distinguished one, comprised of Kaiser Foundation Health Plan members, employers, labor representatives, plaintiff attorneys, defense attorneys, physicians, and other well respected members of the community. No more than four may be Kaiser affiliated. Changing the *Rules* requires the agreement of two-thirds of all the members of the AOB, as well as a majority of the non-Kaiser related board members.

The current membership of the AOB in alphabetical order:

Carlos Camacho, Staff Director for Orange County Labor Federation, AFL-CIO, Orange County.

Doris Cheng, medical malpractice attorney representing claimants, San Francisco.

Patrick Dowling, MD, MPH, Professor and Chair Family Medicine, David Geffen School of Medicine at UCLA, Los Angeles.

Sylvia Drew Ivie, Special Assistant to the President, Charles R. Drew University of Medicine and Science, Los Angeles.

Margaret B. Martinez, MPH, Chief Executive Officer of Community Health Alliance of Pasadena, dba Chap Care, Pasadena.

Honorable Carlos R. Moreno, former California Supreme Court Justice, Los Angeles.

Kenneth Pivo, retired medical malpractice attorney representing respondents, Santa Ana.

Kennedy Richardson, retired Litigation Practice Manager, Kaiser Foundation Health Plan, Oakland.

Tony Rodriguez, Vice President and Assistant General Counsel, Litigation / Legal Department, Kaiser Foundation Hospitals / Health Plan, Oakland.

Richard Spinello, retired Executive Director of Financial Risk and Insurance, Children's Hospital of Orange County.

John Swartzberg, MD, FACP, Clinical Professor, *Emeritus*, University of California Berkeley School of Public Health, Berkeley.

Donna L. Yee, MSW, PhD, retired Chief Executive Officer of the Asian Community Center of Sacramento Valley, Sacramento.

Roxana Heidi Yoonessi-Martin, MD, JD, Compliance Officer and Lead Counsel, Southern California Permanente Medical Group, Pasadena.

B. Activities

The AOB oversees the OIA's administration of the cases in the arbitration system. In quarterly meetings, it reviews and makes recommendations on regular and quarterly reports from the OIA. The AOB also makes requests for supporting information as needed.

The AOB extended Temporary Rules 4 and 9⁸⁹ in response to the COVID-19 pandemic and requested quarterly updates regarding the status of cases impacted by the temporary rules. It requested the number of cases where hearings were held by video, and compared those cases with hearings that went forward in-person.⁹⁰

The AOB discussed at length ideas to improve the diversity of the OIA panel of neutral arbitrators. The AOB receives quarterly reports regarding the demographics of the panel of neutral arbitrators. It also receives quarterly reports regarding the OIA's efforts in recruitment. AOB Board Members are actively assisting the OIA in its efforts to improve diversity on the

⁸⁹See Exhibit C for a list of the temporary rules.

⁹⁰See Section VII.A.7. for detailed discussion regarding how hearings were held.

panel. AOB Board Member Tony Rodriguez arranged an informative and instructive meeting with Tamara Morgan, Senior Counsel and Strategic Leader of Equity Inclusion and Diversity at Kaiser. AOB Board Member Carlos Camacho is compiling a list of retired judicial candidates for the OIA to contact.

The needs of *pro pers* in the system was a topic of concern this year, and the AOB is discussing ways to improve their satisfaction with the arbitration system.

Finally, the AOB reviews the draft annual report and provides comments. Exhibit K is the AOB Comments on the Annual Report for 2021.

XII. TRENDS AND DATA OVER THE YEARS OF OPERATION OF THE OIA⁹¹

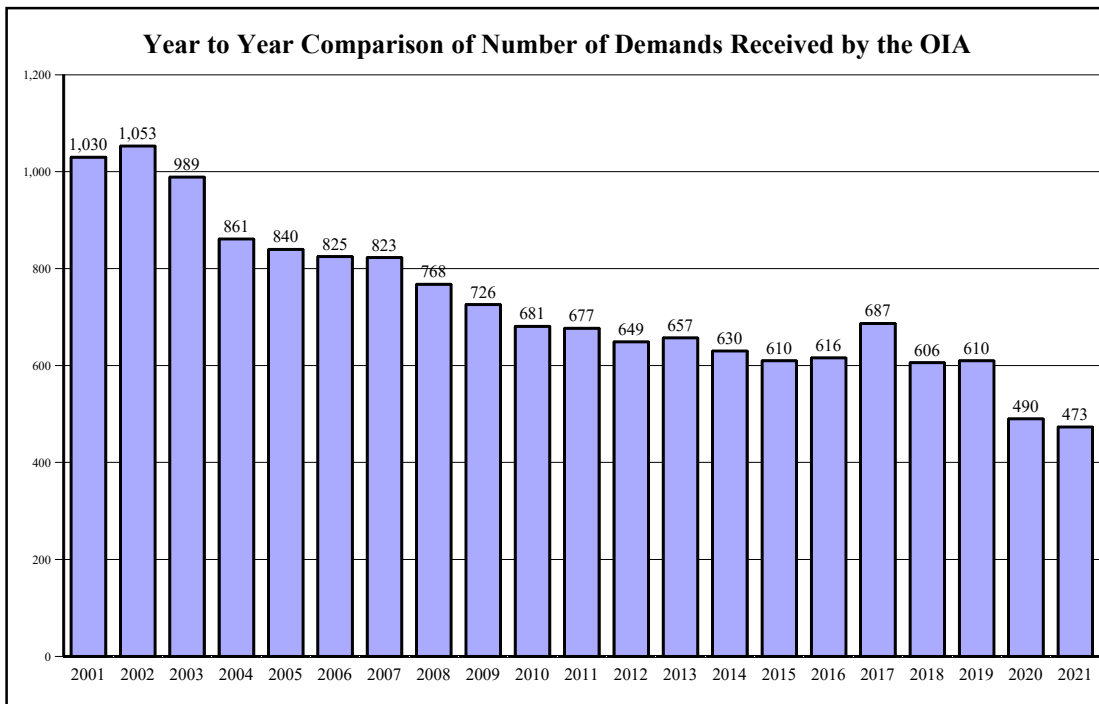
Using the data that the OIA has published in prior reports, this section considers the operation of the OIA over time. As in the preceding sections, lien cases are not considered in Sections G through L.

A. The Number of Demands for Arbitration

In 2021, the OIA received 473 demands for arbitration, 17 less than last year and the lowest number of all time but not the lowest decline in a given year. Chart 14 shows the sharpest decline of demands received occurred between 2003 and 2004 (a decrease of 128) with the largest increase from 2016 to 2017 (an increase of 71).

⁹¹Unless otherwise noted, this section compares data over the years since 2001, the first time the OIA reported on a calendar year. Prior reports covered partial years.

Chart 14



B. The Number of Neutral Arbitrators

There are 164 neutral arbitrators on the OIA panel, 18 fewer than last year when the panel contained 182 neutrals. The panel has ranged from 326 in 2006 to this year’s new low of 164. On average, 39% have been retired judges. This year 45% are retired judges. The composition of the panel of neutral arbitrators includes those who have plaintiff’s side experience and those who have defendant’s side experience. This year, 93% report medical malpractice experience.

C. The Number Who Served

The percentage of neutral arbitrators who have served in any given year remains consistent with the number of demands. It reached a high of 70% in 2003, when the OIA received 989 demands for arbitration and had 287 neutral arbitrators on its panel.⁹² Sixty-two percent (62%) of neutral arbitrators served this year, 5% more than last year, and 10% more than the lowest percentage over all time (52% in 2018).

⁹²By contrast, compared to 2003, this year there were 516 fewer demands for arbitration and 123 fewer neutral arbitrators on the panel.

D. The Number Who Wrote Awards⁹³

The number of neutral arbitrators who have written awards ranged from 22 (in 2020)⁹⁴ to 93 (in 2004), with 68 – 91% writing a single award. This year 35 neutral arbitrators wrote 50 awards. For all neutral arbitrators who wrote awards in 2021, 83% wrote a single award.

E. The Number Who Have Served After Making a Large Award⁹⁵

Since 2000, 109 different neutral arbitrators have made 152 awards of \$500,000 or more in favor of claimants. Most of the neutral arbitrators who made the awards were members of the OIA panel, but ten were not. The awards have ranged from \$500,000 to \$15,007,152.

As Chart 15 illustrates, most neutral arbitrators who have made awards of \$500,000 or more served again. Specifically, 82 neutral arbitrators served 2,193 times after making their awards for \$500,000 or more. In almost half of these cases (977), the parties jointly selected the neutral arbitrator.⁹⁶

Of the 27 neutral arbitrators who were not selected after making their awards, 4 were never on the OIA panel and 20 left the panel. The remaining neutrals who made such awards in 2021 have not served again.⁹⁷

⁹³The OIA began comparing this data in 2003.

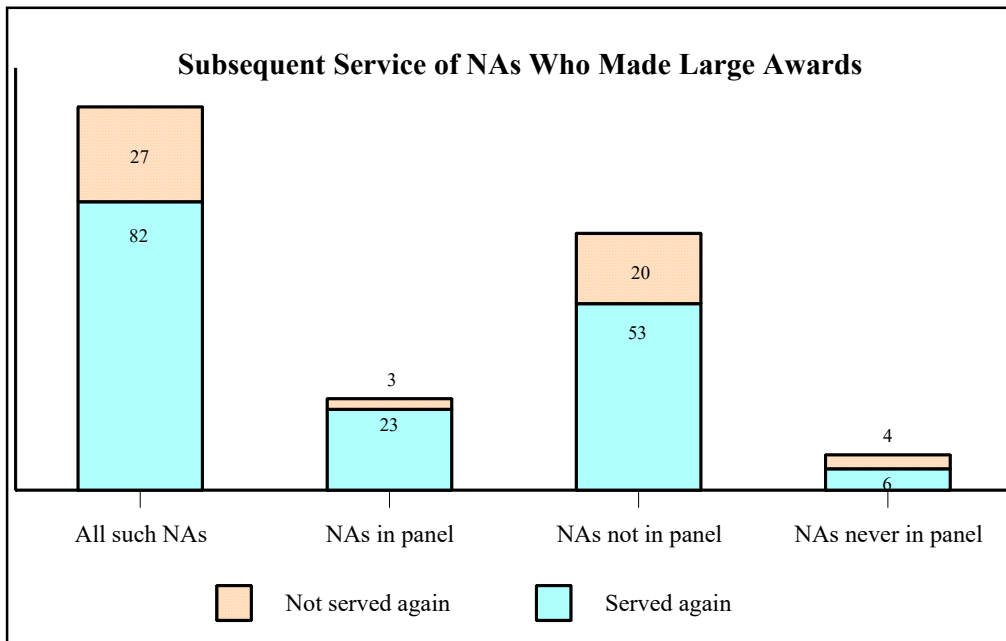
⁹⁴This decrease is likely the result of continued hearings due to the COVID-19 pandemic.

⁹⁵The OIA received its first award over \$500,000 in 2000.

⁹⁶Nineteen neutral arbitrators who made such awards were selected in 100 cases in 2021. In 27 of these cases, they were jointly selected.

⁹⁷The awards were made in the last quarter of the year.

Chart 15



F. Types of Claims

The large majority of demands for arbitration are, and have always been, claims that allege medical malpractice. This has ranged from 86 – 97%.⁹⁸ This year, like last year, 95% of the cases involved allegations of medical malpractice. Benefit claims are generally less than two percent (2%).

G. Claimants Without Attorneys

The average percentage of cases with claimants who are not represented by an attorney is 25%. This year, 26% of claimants did not have an attorney.⁹⁹ Dealing with the concerns raised by *pro per* claimants has been a continuing issue for the OIA, the AOB, and neutral arbitrators. Both the AOB and the OIA have revised forms and the “*pro per* handout” to make them easier for *pro pers* to understand. See Exhibit B, Rule 54.¹⁰⁰

⁹⁸The range may actually be smaller because during the early years, a large percentage of demands gave no specifics and were categorized as “unknown.” Kaiser now provides information as to the type of claim being made.

⁹⁹By contrast, in 2004 only 17% of claimants did not have an attorney, and in 2020, 33% did not have an attorney.

¹⁰⁰The OIA is also readily available by phone and email to answer questions from *pro per* claimants about the filing fee, neutral arbitrator selection, the *Rules*, and related items.

H. Joint Selection vs. Strike and Rank Selection

The *Rules* give both parties the power to determine who their neutral arbitrator will be – or at least, who their neutral arbitrator will not be. The parties can jointly select anyone who agrees to follow the *Rules*, and a party can also timely disqualify neutral arbitrators after the selection. The OIA gives both parties the same access to information about the neutral arbitrators. This includes evaluations of the neutral arbitrators by the parties in earlier cases.

The parties select neutral arbitrators by the strike and rank process in a majority of cases. This year, 20% were jointly selected by the parties, which is the lowest percentage since 2003 and 2013 when it was 26%. The highest percentage of joint selections was in 2015, when it was 35%. The percentage of neutral arbitrators jointly selected who are members of the OIA panel has ranged from 55% (2011) to 84% (2014).¹⁰¹ This year, 70% of the neutral arbitrators jointly selected are members of the OIA panel.

I. Parties' Use of Options During Selection of Neutral Arbitrator

The parties in 34 – 57% of the cases used postponement and disqualification allowing more time to select a neutral arbitrator.¹⁰² Claimants made almost all of the postponements (99%, 6,955 out of 7,014) and the majority of disqualifications (77%, 1,097 out of 1,428).

The length of time to select a neutral arbitrator has remained consistent: 23 – 27 days for cases with no postponements. This year it took 23 days, maintaining the lowest average for 3 years in a row.

This year it took 58 days, 14 days less than last year. While more than half of the claimants use procedures contained in the *Rules* and California law to delay selecting a neutral arbitrator, the time to select a neutral arbitrator remains timely and is many times faster than the pre-OIA system.

¹⁰¹There have only been 17 cases in which the neutral arbitrator was selected by court order.

¹⁰²A member of the OIA staff contacts the parties to remind them of the deadline to return the LPA. When contacting claimants or their attorneys, the OIA reminds them that they may seek a postponement if they are not able to return their responses by the deadline.

See Table 9 for year to year comparison of days to select neutral arbitrators since 2013.

**Table 9 - Year to Year Comparison of No Delay vs. Delays:
Percentage and Average Number of Days to Select Neutral Arbitrators**

	2013	2014	2015	2016	2017	2018	2019	2020	2021
No delay	24 days 48%	25 days 47%	25 days 44%	24 days 51.7%	24 days 51.7%	24 days 51%	23 days 55%	23 days 46%	23 days 58%
Only Postponement	108 days 45%	108 days 46%	109 days 47%	110 days 40.9%	104 days 40.8%	104 days 42%	109 days 40%	108 days 48%	107 days 38%
Only Disqual.	59 days 2%	66 days 3%	62 days 4%	64 days 3.7%	61 days 3.4%	54 days 3%	55 days 2%	67 days 2%	54 days 3%
Postponement & Disqual.	162 days 5%	178 days 4%	173 days 5%	158 days 3.7%	165 days 4.1%	144 days 4%	149 days 3%	210 days 4%	149 days 2%
Total Selections	69 days	71 days	73 days	66 days	64 days	63 days	62 days	72 days	58 days

J. How Cases Closed

The most common way cases close has always been settlement, 40 – 49%. This is followed by cases withdrawn by the claimant, 21 – 28%. This year 45% of cases settled and 26% were withdrawn. This year, 9% of cases were decided after hearing, 5% more last year (4%). Less cases were abandoned (2%) this year and, 3% less than last year. The same percentage were dismissed by neutral arbitrator (5%) as last year. The remaining cases were closed by summary judgment.

Table 10 displays how cases have closed since 2013.

Table 10 - Year to Year Comparison of How Cases Closed¹⁰³

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Settlements	44%	46%	44%	44%	47%	46%	45%	45%	45%
Withdrawn	27%	27%	26%	25%	25%	23%	26%	27%	26%
Abandoned	5%	4%	6%	6%	5%	7%	6%	5%	2%
Dismissed	3%	3%	3%	3%	4%	5%	5%	5%	5%
Summary Judgment	9%	13%	10%	12%	11%	13%	11%	14%	13%
Awards	11%	9%	10%	9%	8%	6%	8%	4%	9%

K. The Results After Hearing

In those cases in which the claimant won after a hearing, the awards have ranged from a single dollar to \$15,007,152. The average is \$501,808. Because the number of cases in any given year is small, the yearly averages can fluctuate greatly from year to year. The lowest average, \$156,001, was in 2001, when the largest award was \$1,100,000. The largest average, \$1,282,547, was in 2015, which had an award of \$11,640,000. This year, the average was \$556,144, and the largest award was \$1,741,016.

Since 2010, the average percentage of cases in which claimants prevailed after a hearing is 34%.¹⁰⁴ This year, 34% of claimants also prevailed. In 2020, 26% of claimants prevailed after a hearing while in 2017, 45% prevailed.

L. How Long it Took to Close

The lowest average for all cases to close was 281 days in 2001. This year it took 418 days, 62 days more than last year. The overall average for all categories increased this year. See Table 11.¹⁰⁵

¹⁰³The totals may not add up to 100% due to rounding up or down.

¹⁰⁴Up until 2009, lien cases were included in this percentage, but are now reported separately in Section IX.

¹⁰⁵Many neutral arbitrators extended deadlines, some multiple times in a given case, because of the COVID-19 pandemic.

Table 11 - Year to Year Comparison of Average Number of Days to Close, by Disposition

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Settlements	318 days	334 days	344 days	376 days	383 days	357 days	386 days	376 days	418 days
Withdrawn	241 days	226 days	227 days	255 days	249 days	230 days	238 days	267 days	305 days
Summary Judgment	336 days	344 days	371 days	363 days	372 days	356 days	388 days	363 days	403 days
Awards	538 days	510 days	584 days	589 days	598 days	653 days	676 days	660 days	784 days
All Cases	325 days	323 days	342 days	363 days	368 days	343 days	366 days	356 days	418 days

The OIA closely follows each case that is open after 15 months to make sure that the case remains in compliance with the *Rules*. Forty cases over all time have closed beyond the deadline set by the *Rules*. None closed late in 2021.

M. Cost of Arbitration¹⁰⁶

California law provides that, absent any other arrangement by the parties, the fees of the neutral arbitrator will be divided evenly between the parties. The *Rules*, however, provide several ways to shift those fees to Kaiser. Kaiser has paid the fees, in cases that had fees, between 81% (2004) and 94% (2020) of the time. This year, 91% of the fees were paid by Kaiser. This is most easily and most commonly done by the claimants signing a form and agreeing not to use party arbitrators. Claimants may also request a waiver based on financial hardship, which exempts them from paying the \$150 filing fee or waiving the right to party arbitrators. California law also allows claimants who meet certain criteria to avoid paying the \$150 filing fee.¹⁰⁷

N. Evaluations of Neutral Arbitrators and the OIA System

Since 2000, the OIA sends the parties evaluations of the neutral arbitrators.¹⁰⁸ The evaluations ask, among other things, whether the neutral arbitrator treated the parties with respect and whether the parties would recommend the arbitrator to others. The responses to the

¹⁰⁶The OIA began reporting this data in 2003 when California law required provider organizations, like the OIA, to report the amount of a neutral arbitrator’s fees and the allocation on their websites.

¹⁰⁷Unlike California Superior Courts, the filing fee has not increased during the OIA’s operation and is lower than court filing fees (other than small claims court).

¹⁰⁸In 2013, the OIA began sending neutral arbitrator evaluations only in cases in which the neutral arbitrator made a decision that concluded the case.

evaluations have generally been quite positive, especially from the attorneys. This year, the overall average increased slightly from 4.1 last year to 4.2 (on a 1 – 5 scale) for whether the parties would recommend the arbitrator to others. In 2014, this average was 3.9, and in 2004, it was 4.7.

The OIA also asks neutral arbitrators to evaluate the OIA system. The questions ask them to identify whether particular features are useful or not, whether the OIA is helpful or responsive, and to compare the OIA system with the court system. The arbitrators' evaluations have always been positive. This year, 99% of the neutral arbitrators who answered the question rated the OIA system the same as or better than the state court system.

In 2009, the OIA began asking parties to evaluate the OIA system and the ease of obtaining medical records. The form is similar to the form sent to neutral arbitrators and also asks parties to compare the OIA system to court. This year, 88% of the parties who answered the question rated the OIA system the same as or better than the state court system. The parties' same rating of the OIA ranged from a low of 86% (2013) to a high of 96% (2018).

O. Conclusion

The goals of the arbitration system as outlined by the Blue Ribbon Panel are set out in Rule 1. They provide for a fair, timely, and low cost arbitration process that respects the privacy of the parties. The *Rules* and OIA procedures were created with these goals in mind.

The annual reports provide more information about arbitrations than any other arbitration provider.¹⁰⁹ The OIA website provides a searchable database of all its cases since January 1, 2003, in addition to the sortable database about cases received in the past five years as required by state law.¹¹⁰

This report describes the ways in which the *Rules* and OIA meet these goals. Some of the highlights are:

Neutral arbitrators are selected expeditiously, and cases close faster than the BRP recommendation.

The arbitration filing fee is lower than in court, and parties can and do shift the cost of neutral arbitrators to Kaiser.

¹⁰⁹A member of the National Academy of Science's Committee on Science, Technology, and Law published an article largely based on the OIA's annual reports. "Can Mandatory Arbitration of Medical Malpractice Claims be Fair? The Kaiser Permanente System," published in the November, 2015 *Dispute Resolution Journal*, Vol. 70, No. 3.

¹¹⁰No names of individual claimants or respondents are included, only corporate entities.

The OIA provides parties with neutral arbitrators' applications and updates; evaluations received from the parties within the last five years; and redacted decisions by OIA neutral arbitrators within the last five years.

Parties may jointly select any neutral arbitrator, so long as the neutral agrees to follow the *Rules*.

Either party can timely disqualify the neutral arbitrator after the selection.

OIA arbitrations are confidential; names of individual claimants and respondents are not disclosed.

The information in this report is collected and published on the OIA website to allow the AOB and the public to determine how well the arbitration system meets the goals in Rule 1 providing a fair, timely, and low cost arbitration process that respects the privacy of the parties.