FOURTH 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, 2002 - December 31, 2002

REPORT SUMMARY

Kaiser Foundation Health Plan, Inc., has arbitrated disputes with its California members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's system, saying that it should not be self-administered and fostered too much delay in the handling of member's claims. In response, Kaiser appointed a distinguished Blue Ribbon Panel ("BRP") to study the system. Implementing BRP recommendations, Kaiser first named a citizen advisory board, and then Kaiser and the board selected the Law Offices of Sharon Lybeck Hartmann to create the Office of the Independent Administrator ("OIA") and operate the system. This is the fourth annual report on the results of the OIA's independent administration. It describes the system as it stood on December 31, 2002. Here are some of the highlights:

1. **OIA Contract Assigned to Arbitration Oversight Board.** To institutionalize the independence of the OIA, in June 2002, Kaiser assigned its contract with the OIA to the Arbitration Oversight Board ("AOB"). The AOB is an unincorporated association registered with the Secretary of State that is composed of stakeholders in the system and distinguished public members. A separate trust, established and fully funded by Kaiser, provides the source of the money with which the AOB can meet the contractual obligations to the OIA for payment. See pages 2, 50-51.
2. **New Independent Administrator Selected.** This year, Sharon Lybeck Hartmann gave notice to the AOB and to Kaiser that she planned to retire and, therefore would not renew her contract as Independent Administrator when it expired in March 2003. The AOB, with input from Hartmann and Kaiser, selected Sharon Oxborough as the new Independent Administrator. Oxborough, a highly experienced and accomplished California attorney, has worked on the OIA system since its inception. Oxborough's contract contains guarantees of independence, just as Hartmann's did. Oxborough will retain the same address, phone number, staff and tracking software for the OIA. However, she will have a new website, www.oia-kaiserarb.com. See pages 2-3, 52.

3. **State Adopts Mandatory Ethics Standards for Neutral Arbitrators.** In July 2002, California implemented the first mandatory ethics code for arbitrators in the country. As the legislature directed, the Standards were drafted by the Judicial Council. In December, the Judicial Council amended the Ethics Standards in major ways. In response, the OIA *Rules* which had not changed since the system came into existence were amended twice in 2002 to meet the changing requirements of the Standards. See pages 3, 6-7.

4. **52 Day Average to Selection of Neutral Arbitrator.** At the end of 2001, there was a 50 day average to selection of a neutral arbitrator in the total of all cases ever handled by the OIA. At the end of 2002, this same overall average is 52 days. The OIA is moving thirteen times faster than the 674 day period to perform the same task, which

the *Engalla* Court reported was average for the old Kaiser system. However, the OIA selection process was significantly slowed down in the last six months of 2002 by a single provision of the new Ethics Standards implemented in July. This section was eliminated in December amendments. However, in the short six months of its existence, the provision slowed the OIA from an average of 54 days to appointment in the first half of 2002 to an average of 81 days in the second half of the year. We are grateful that provision was deleted by the Judicial Council or our time to appointment of a neutral arbitrator would have been greatly lengthened by the time of the next annual report. See pages 3-4, 26-27.

5. **Number of Annual Arbitration Demands Remains Stable.** Between 1999 and 2002, Kaiser forwarded a total of 4,021 demands for arbitration to the OIA. This averages to about 89 a month. In the year 2002, we received 1,053 demands or an average of 88 a month. The average reported in 2001 was 90 a month. These numbers have remained relatively constant over the past four years even though Kaiser's California membership has risen. See page 17.

6. **Increase in Open Cases.** As of December 31, 2002, the OIA was administering 912 open cases, a rise from 766 open cases at the end of 2001 and 617 cases at the end of 2000. This rise may be due to the fact that 89% of the open cases at the end of 2002 had been brought under contracts which required the use of the OIA as administrator, as opposed to requiring use of the old Kaiser system of administration as the former contracts did. See pages 18, 34.

7. **Hearings Completed Within a Year.** Arbitrators have closed cases by making a decision following an evidentiary hearing in 15% of all closed OIA cases (350 of 2,292 cases). At the OIA, the hearing ended an average of 345 days after the demand was received. Under the old Kaiser system, the *Engalla* Court stated that such a hearing did not begin on average until 863 days after the demand was received and that thereafter hearings were often interrupted and therefore conducted over lengthy periods. Almost without exception, OIA evidentiary hearings are completed on successive days. See pages 39-40, 62.

8. **Cases Close on Time.** The average time to closure of all OIA cases is 273 days, or 9 months. This overall average is about the same as it was at the end of 2001. All but six of the closed cases have closed on time under OIA *Rules*; four of the six late cases were less than a week beyond their deadline. See pages 35-36.

9. **Two-Thirds of Cases Settled or Withdrawn; About One Third Closed by Decision of Neutral Arbitrator.** Of the closed cases, 44% settled. This has been

the average percentage for three years now. Another 22% were withdrawn by the claimants. Twelve percent were closed through summary judgment and 3% were dismissed. As noted above, only 15% of cases closed after an evidentiary hearing. In the cases which went to such a hearing, claimants prevailed in 39%, and respondent prevailed in 61%. See pages 37-40.

10. **Large Neutral Arbitrator Panel in Active Service**. We have 297 neutral arbitrators on our panel. Ninety-three of them, or 31%, are retired judges. Eighty-seven percent of them have served on a case in the OIA system. Arbitrators have averaged eight assignments each in 45 months. See pages 11-14.

11. **Claimants Elect to Have Kaiser Pay the Neutral Arbitrator.** Claimants have elected to have Kaiser pay the cost of the neutral arbitrator in at least 43% of all cases administered by the OIA. See page 45.

12. **Nearly All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** Most OIA cases are proceeding with a single neutral arbitrator rather than a panel of three, composed of one neutral and two party arbitrators. Only 27 of the 350 awards made after a hearing – about 8% -- have been signed by party arbitrators. The other 323 were decided by a single neutral. See pages 44-45.

13. **Most Cases Medical Malpractice.** Approximately 90% of the cases in our system are medical malpractice. Only 2% present benefits and coverage issues. See pages 27-29.

14. **One Quarter of Claimants Do Not Have Attorneys.** Twenty-five percent of claimants are not represented by counsel. This percentage has been stable for about three years. At pages 37 to 40 we report the types of outcome for them. See pages 30, 37-40.

15. **Positive Party Evaluation of Neutral Arbitrators.** At the end of each case, all parties are asked to evaluate their neutral anonymously. About half accept the invitation. For the third year, both claimants' and respondents' counsel reported that they would recommend their neutral to another individual with a similar case. See pages 14-17.

16. **Positive Evaluation of OIA Procedures by Neutrals.** Neutral arbitrators continue to evaluate OIA procedures positively. For example, we ask them at the end of each case whether they have experience in a similar Superior Court case, and if so, whether they would rank their experience in the particular OIA case just closed as better, worse, or about the same. In 774 OIA cases, neutrals responded that they had such

parallel experience. Forty percent said that the OIA experience was better. Fifty-eight percent said it was about the same. Only two percent of those responding said the OIA experience was worse. See pages 46-49.

17. **Most Blue Ribbon Panel Recommendations Achieved**. The Blue Ribbon Panel convened by Kaiser after *Engalla* made 36 recommendations for change in the arbitration system. Thirty-two of those recommendations have been essentially accomplished. Only two have not been, those involving mediation and the audit of the OIA. About two we have no information since they do not involve the OIA. See Exhibit B throughout, and page 74.

Complete copies of this report are available to the public. Hard copies can be obtained from the OIA at (213) 637-9847 or the report can be read at or downloaded from the OIA website, www.slhartmann.com/oia.

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Exhibits

Graphs & Tables

A Note About Numbers

There are a lot of numbers in this report. To make it somewhat easier to read, we offer the following information.

For most items reported we give average, median, mode and range. Here are definitions of those terms:

Average:	The mean. The sum of the score of all items being totaled divided by the number of items included.
Median:	The midpoint. The middle value among items listed in ascending order.
Mode:	The single most commonly occurring number in a given group.

Range: The smallest and largest number in a given group.

We have rounded percentages. Therefore, the total is not always exactly 100%.

If there are items which you do not understand and would like to, call us at 213-637-9847, and we will try to give you answers.

I. INTRODUCTION & OVERVIEW

This is the fourth annual report issued by the Office of the Independent Administrator ("OIA"),[1] describing an arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. ("Kaiser") or its affiliates.[2] The Law Offices of Sharon Lybeck Hartmann has acted as the OIA since October 1998, when Kaiser and the Arbitration Advisory Committee first contracted with the firm to act as the independent administrator of Kaiser's mandatory member arbitration system in California. The OIA began accepting demands for arbitration in 1999.

Under that contract, which was assigned to the Arbitration Oversight Board in 2002, the OIA maintains a pool of neutral arbitrators qualified to hear Kaiser cases and independently administers arbitration cases brought by Kaiser members. It works, as well, to assure that the system conforms with newly enacted legislation. The contract also requires that the OIA write an annual report describing the arbitration system. The report must describe the goals of the system, the actions being taken to achieve them, and the degree to which are being met.[3] This fourth report focuses on our work from January 1 through December 31, 2002 and compares that activity with the OIA's earlier years.[4] It finds that the system is continuing to achieve the goals set by the Blue Ribbon Panel in 1998.

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[1]Since its creation, the OIA has been located within the Law Offices of Sharon Lybeck Hartmann, 3580 Wilshire Boulevard, Suite 2020, Los Angeles, California 90010, 213.637.9847 (telephone), 213.637.8658 (facsimile), oia@slhartmann.com (e-mail). The OIA has a website, www.slhartmann.com/oia, where this report can be downloaded, along with our first, second and third annual reports, and our rules, forms, procedures and much other information, including that required by new statutes, enacted or effective in 2002. A firm profile and a description of the OIA's staff are attached as Exhibit A.

[2]Kaiser Foundation Health Plan, Inc. is a California nonprofit health benefit corporation and a federally qualified HMO. Since 1971, it has required that its members use binding arbitration to resolve disputes. Kaiser arranges for medical benefits by contracting exclusively with the The Permanente Medical Group, Inc. (Northern California) and the Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals, another California nonprofit public benefit corporation.

[3]Contract §D(15)(i) at 10. Copies of the contract may be obtained from the OIA.

[4]The first annual report covered the period from March 29, 1999 through March 28, 2000. The second report covered the remainder of calendar year 2000, March 29, 2000 through December 31, 2000. The third annual report covered January 1, 2001 through December 31, 2001.

A. Background Information

In 1997, the California Supreme Court criticized Kaiser's longstanding arbitration system in *Engalla v. Permanente Medical Group*.[5] In part, the Court said that Kaiser should not administer the system itself, as it had done in the past, and that there was too much delay in the handling of members' claims. In a voluntary response to the Court's evaluation, Kaiser convened a Blue Ribbon Panel of outside experts to examine the entire process and recommend improvements. The Blue Ribbon Panel issued its report in January 1998.[6] It recommended 36 specific changes in how the system operated. Kaiser accepted the recommendations, and in implementing them, created the Arbitration Advisory Committee ("AAC") in 1998 to assist it in the process. Seeking an independent administrator for the system, Kaiser and the AAC issued a widely advertised Request for Proposal, interviewed a number of those who responded, and selected the Law Offices of Sharon Lybeck Hartmann to create and operate the new system.

In 2001, Kaiser publicly announced the appointment of the Arbitration Oversight Board ("AOB"), made up of thirteen representatives of stakeholder interests and distinguished public members. The AOB replaced and expanded upon the role of the AAC. The AOB, an unincorporated association registered with the California Secretary of State, will permanently provide ongoing oversight of the independently administered system.

B. Major Events of 2002 at the OIA

In 2002, Kaiser established a trust to fund the Arbitration Oversight Board, and the contract which formerly existed between Hartmann and Kaiser was then assigned by Kaiser to the AOB. At the same time, the final authority for rule-making for the OIA rules was transferred from the OIA to the AOB. The AOB was created and funded to ensure that the OIA would remain independent of Kaiser in the future. AOB members meet quarterly, receive regular reports on the operation of the system, visit the OIA offices, speak regularly with OIA staff, and review and comment upon copies of this annual report before its general release.[7]

Also in 2002, Sharon Lybeck Hartmann informed Kaiser and the AOB that she planned to retire soon, and thus she did not wish to continue in her role as Independent Administrator beyond the end of her present contract term which expires on March 28, 2003. The AOB, with input from Kaiser

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[5] 15 Cal.4th 951, 64 Cal Rptr.2d 843, 938 P.2d 903.

[6] Copies of the Blue Ribbon Panel's report can be obtained from the OIA. It contains 36 recommendations for improvement in the old Kaiser arbitration system. Exhibit B to this Fourth Annual OIA Report contains the full text of all the Panel's recommendations along with an item by item response on what has been accomplished.

[7] The composition and role of the AOB is further discussed at section V.A-B, p. 49 below.

and Hartmann, sought a new Independent Administrator and selected California attorney Sharon Oxborough. She has worked with Hartmann for twenty years, has been Of Counsel to the Hartmann law firm since 1994 and has consulted on the OIA project from its inception. Oxborough drafted the original *Rules*, Guidelines and forms for the OIA system and understands it thoroughly.[8] Oxborough will become Independent Administrator of the OIA system on March 29, 2003, and will continue to operate at the same address and phone number and with the staff previously employed by Hartmann. Oxborough's contract with the OIA will be available from the OIA by request, as Hartmann's always has been. It is the expectation of all concerned that the OIA will continue to operate in the future as it has in the past.

Another major event of the year 2002 was California's promulgation and implementation of mandatory ethics standards for neutral arbitrators. At the direction of the legislature, the Judicial Council created the *Ethics Standards for Neutral Arbitrators in Contractual Arbitrations* ("Ethics Standards").[9] The California Judicial Council is an administrative unit of the state courts appointed by the Chief Justice and chaired by him.

The Ethics Standards went into effect July 1, 2002, but were subsequently amended in mid-December. The OIA commented extensively in both of the comment periods which the Council afforded to the public. The mandatory standards, which are the first of their kind in the United States, greatly expanded the neutral arbitrator's duties of disclosure, and in so doing, increased the possibility that arbitration awards could be vacated.[10] The OIA staff has been heavily involved this past year in insuring that all OIA arbitrators were informed about these changes and understood what they meant in our system.[11] OIA *Rules* were changed twice this past year, first, when the Ethics Standards were adopted and then again when they were amended, in order to stay in step. The biggest news of our year is how much the initial version of the Standards slowed down the OIA system. The following chart on page 4 illustrates the delay.

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[8]As set forth in the First Annual Report, the *Rules* and the Guidelines were the product of extensive consultation between the OIA, the AAC and Kaiser. However, Oxborough was the primary researcher, the draftsperson and the reporter on this project. She has also drafted all the amendments to the *Rules* made since.

[9]A copy of the second version of the Ethics Standards approved by the Judicial Council in December 2002, and effective January 1, 2003 (hereafter "2003 Ethics Standards") is attached as Exhibit F and is available at the OIA website as well as in hard copy as Division VI of the Appendix to the *California Rules of Court.*

[10]Cal. Code of Civil Proc. §§1281.9 & 1286.2.

[11]See Exhibit H, Memo to Arbitrators and Exhibit N, "Out in the Open: California's new ethics code for arbitrators, the country's first, sets standards for disclosure and disqualification throughout the process" an article about the Ethics Standards written for the *Los Angeles Daily Journal*, May 31, 2002 by Hartmann.

Impact of Standard 10 of the 2002 Ethics Standards
on
Average Time to Appointment of Arbitrators

	2001	Jan-June 2002	July-Dec 2002	1999-2002 TOTAL
Most Cases (No Postponement; No Disqualification)	23 Days	22 Days	34 Days	25 Days
Cases with Postponement Only	104 Days	106 Days	121 Days	109 Days
Cases with Disqualification Only	61 Days	53 Days	78 Days	64 Days
Cases with Postponement & Disqualification	143 Days	159 Days	167 Days	160 Days
ALL CASES	50 Days	54 Days	81 Days	52 Days

At the end of 2002, the OIA also prepared and posted on its website the organizational disclosures required by the Ethics Standards and prepared certain other reports of information to be given to parties at the outset of each case. Details of these changes and their impact on our system will be taken up below.

Finally, the California legislature entertained a large number of statutes that impacted the OIA this past year. Hartmann and Dr. David Werdegar, the Chair of the AOB, testified on the operation of the OIA system as neutral committee witnesses before a joint session of the Assembly Judiciary and Health Committees in March. Thereafter, the Judiciary Committee issued a package of five bills, several of which were ultimately enacted, although in modified form. Keeping track of these bills and their potential effects on the system took much time in 2002. Their eventual major impact on the OIA was to require the posting on the internet in computer searchable format a great deal of information about cases decided including arbitrator, attorneys, award, time elapsed to decision, etc.[12] The OIA

[12]Cal. Code Civ Pro §1281.96; some of this material duplicates the requirements of Standard 8 of the January 1, 2003 Ethics Standards (hereafter "2003 Ethics Standards") which we also posted, effective January 1, 2003. However, the two sets of requirements differ from each other in significant ways and are posted separately on the OIA website.

began its posting on January 1, 2003, having spent considerable time, in the fourth quarter of 2002, modifying its software in order to perform this task.

These events have created a great deal of extra work and are reported on in detail later in the report in areas where they have affected operation. Suffice it to say at this point, that the OIA has been in full conformity at the implementation date of each of these requirements and has been recognized as a leader in compliance in each area.[13]

C. Goals of the OIA System

Consistent with the recommendations of the Blue Ribbon Panel, the OIA attempts to offer a fair, timely, low cost arbitration process that respects the privacy of all who participate in it within the new requirements of the law for the posting of certain information. These goals are set out in Rules 1 and 3 of the OIA system.[14] As set out in the balance of this report, we believe that the goals are presently being achieved.

II. DEVELOPMENT AND CHANGES IN THE SYSTEM

A. Rules for Kaiser Member Arbitrations Overseen by the OIA

In previous reports we have described the creation and development of the OIA *Rules*. They consist of 53 rules in a fifteen page booklet and are available in English, Spanish and Chinese. They are attached as Exhibit C. Some important features they contain include:

> Procedures under which claimants may choose to have Kaiser pay all the fees and expenses of the neutral arbitrator;[15]
>
> Deadlines requiring that the majority of cases be resolved within eighteen months;[16]

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[13]Exhibit H; *see also*, Exhibit N.

[14]The OIA *Rules* are attached as Exhibit C and are always available on the OIA website. Exhibit C is underlined to mark the rule changes which were made in 2002 and which have survived into 2003. We have not included a set of the *Rules* in effect between July and the end of December 2002 which met the initial requirements of the Ethics Standards. However, if you would like such a set, contact the OIA.

[15]Exhibit C, Rules 14 and 15; *see also* Exhibit B, recommendation 7.

[16]Exhibit C, Rule 24.

Procedures to shorten or lengthen time for cases that require either less or more than eighteen months;[17]

Deadlines requiring that most cases must have an arbitrator in place as rapidly as the law permits after the OIA receives the demand for arbitration.[18]

The *Rules* were not changed at all for three years. However, in 2002, the OIA, the AOB and Kaiser consulted together to amend them ***twice***, once effective on July 1, 2002 and a second time on January 1, 2003.[19] Urgent changes were driven by the promulgation of the new Ethics Standards for neutral arbitrators which were first implemented in July and then significantly amended in December. Other rule amendments were required by new statutes first enacted in September and effective only three months later in January 2003. A third group of changes was made in response to comments which the OIA has received over the years.

In both July and January, the newly amended *Rules* were immediately mailed to all neutral arbitrators and to all parties in open cases. Thereafter, the OIA staff spent considerable time on the phone answering questions both about our own rule amendments and about the underlying legislation and regulation which had required the changes.

1. Rule Changes Caused by the Ethics Standards

Major changes were made in the *Rules* in July to accommodate the Ethics Standards and particularly the notice and objection requirements of Ethics Standard 10(d). In January, those amendments were removed from the *Rules* when Standard 10(d) was dropped from the code by the Judicial Council.[20] We also changed Rule 4 to require that neutral arbitrators use the state mandated Ethics Standards, but left in place the use of the *AAA Code of Ethics for Arbitrators in Commercial Disputes* for party arbitrators and for neutrals appointed before July 1, 2002, since they are not covered by the state's new code. We lengthened the deadline by which the arbitration scheduling conference must be held from 45 to 60 days after selection of a neutral in order to avoid the neutral having to schedule a meeting before it was certain that s/he would be handling the case.[21] We

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[17]Exhibit C, Rules 24 and 33.

[18]Exhibit C, Rules 16 and 18 and Guideline 14b. The total time the OIA sets for routine placement of a case is 33 days. The present average OIA time for such placements is 25 days. See section IV.A, p. 20 below. Rule 43 explains how days are counted in the system. There are various exceptions to the 33 day rule.

[19]None of the changes affected the features listed above.

[20]The record of how much delay 10(d) caused in the OIA system is set forth at note 32, p. 9 and section IV.A, pp. 20-27 below. Among the *OIA Rules* affected were 16 through 19.

[21]Rule 25.

specified that our cases are consumer arbitrations within the meaning of the Ethics Standards to avoid any contrary finding by a neutral.[22] We added the requirement that parties list more than one joint selectee as arbitrator.[23] We required that parties making a joint selection also submit strike and ranked lists. Finally, we added a provision to Rule 53 to inform parties of the organizational data that the Ethics Standards now require be made public and to state that the OIA would post this on its website.[24] These changes and others not listed here are discussed elsewhere in this report at the points when they become relevant.

2. Rule Changes Caused by New Statutes

This was a busy year in the legislature as far as arbitration was concerned, and our rule changes reflect that fact. We changed Rule 12 on filing fees to reflect that a person may now waive our $150 filing fee merely by submitting a statement that the household earns less than 300% of the federal poverty level.[25] We changed Rule 3 on confidentiality to say that we would disclose information about individual arbitrations as required by law. Formerly, we promised confidentiality. Now, the state requires that much information be posted on the internet or given to subsequent parties. However, individual names need not be revealed although a number of other facts about specific cases must be.[26] We amended Rule 53 to inform parties of the statutory reporting requirement.[27] Finally, we changed Rule 48 to require that neutral arbitrators tell the OIA what they have charged in specific cases and to which party they allocated their fees and expenses[28] since those are items of information which we must now post.

3. Rule Changes Requested by Arbitrators and Parties

As for other more general rule changes, they were largely house-keeping matters. For example, in response to requests from the neutral arbitrators, the OIA changed Rule 37 to enlarge the time in which a neutral must serve an award on the parties from ten days after the close of the hearing to fifteen business days. It also clarified the definition of the close of a hearing. Rules 25 and 26 were

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[22]Exhibit C, Rule 2.

[23]Exhibit C, Rule 17.

[24]2003 Ethics Standards at 8. See also note 26 below.

[25]Cal. Code Civ. Pro. §1284.3.

[26]Cal. Code Civ. Pro. §1281.96; 2003 Ethics Standard 8 also requires public disclosure of certain types of information by organizations which supply arbitrators. Both sets of disclosures appear on the OIA website.

[27]Cal Code Civ. Pro. §1281.96

[28]Cal. Code Civ. Pro. §1281.96

changed from requiring the presence of both attorneys and parties at the arbitration scheduling conference and the mandatory settlement meeting to permitting only the attendance of attorneys. The OIA's memo of advice to claimants representing themselves (*"pro pers")* has now become part of Rule 54. Rule 28, permitting extensions of time for extraordinary circumstances, was amended to require a motion procedure and to make it clear that the failure of an individual to keep the scheduled hearing date free of other appointments does not constitute such a circumstance.

Finally, Rule 50 was changed to transfer the authority to make rule changes from the OIA to the AOB, except in emergency circumstances. The power has been transferred to the Arbitration Oversight Board in consultation with the OIA and Kaiser as the rule now states. That change is in keeping with the construct that the AOB is an independent body composed of stakeholders and public interest members who now control the system and are funded by a trust.

B. Maintenance of the Panel of Neutral Arbitrators

The first three annual reports discussed the creation, expansion and organization of our panel of neutral arbitrators. The panel is large in response to a recommendation of the Blue Ribbon Panel.[29] As of December 31, 2002, we had 297 neutral arbitrators. Most of these neutrals joined our panel during the first and second years of the OIA. However, throughout our existence, we have continued to recruit neutrals and admit them to our panel. In 2002, we received 37 requests for applications, fifteen of which were completed and returned (40% of those requested).[30] Individuals who had made their requests previously also submitted applications. Through this process, we added fifteen new neutrals to our panel in 2002.[31]

[29]Exhibit B recommendation 9.

[30]A copy of the application is attached as Exhibit D and one is available on the website.

[31]Overall, about 77% of all arbitrators who have completed and returned the application have been admitted to the OIA panel (411 of 531). When the OIA receives a completed application, it applies the criteria which were jointly decided upon at the outset, and makes the decision on admission. The qualifications are posted on the website.

Total Number of Application Requests Received:	**2,219**
Total Number of Completed Applications Received:	**531**
Total Number of Arbitrators in the OIA Panel:	**297***
Southern California Total:	**168**
Northern California Total:	**110**
San Diego Total:	**42**

***The three regions total 320 because 23 neutral arbitrators are on two panels.**

The overall number of neutral arbitrators on our panel has decreased by nine since December 31, 2001. Nine died, retired, asked for temporary leave or were removed for violation of the rules. Fifteen resigned. At one point in the year, we thought that a much higher number of our neutrals might leave because of requirements of the Ethics Standards dealing with work for repeating parties.[32] In

[32]Standard 10 in the July 1, 2002, version of the Ethics Standards ("2002 Ethics Standards") caused most of the controversy. It required that when an arbitrator planned to entertain offers of additional work from a party or law firm then before him/her, the neutral had to initially disclose that fact. The parties could then disqualify the neutral on that basis alone. If the neutral did not make such a disclosure s/he was barred from accepting any such new work for the balance of the pending case. 2002 Ethics Standard 10(b). If such work was subsequently offered, the arbitrator had five days after each offer to inform the parties in prior cases, and they then had seven days to object to the neutral accepting the new work. If a party objected, the neutral could not accept the new case. 2002 Ethics Standard 10(d). Since all cases in the OIA system have Kaiser as a repeating party, and a number of our arbitrators have more than one case, this provision, with its extensions of time for mailing, could extend the time to appoint a neutral by 22 days even if nobody made an objection. Such an extension threatened to double the OIA's time to place an arbitrator in a routine case. If objections began, the extension of time could be well-neigh infinite as one arbitrator after another was objected to.

Attorneys criticized Standard 10 on the basis that third parties could deprive them of their jointly selected neutrals. Arbitrators objected to this provision on the basis of the amount of paperwork it generated and the elaborate conflict checking it required since all kinds of alternative dispute resolution work was covered. (Formerly, such disclosure had been limited to arbitration only.) Several OIA neutrals resigned and others put themselves on temporary suspension while they overhauled their office procedures and altered their software. In its comments to the Judicial Council, the OIA pointed out the potential for delay in appointment of neutrals before the Standards were initially implemented. Nevertheless, the Council put Standard 10 into place in July. When the Council reopened the public comment period on the Standards after initial adoption, criticism of Standard 10 poured in.

June, when the first set of standards appeared, three did ask to be removed on that basis. However, in December, the Council reversed itself on the controversial portion, and all three returned. Five of the panelists who resigned did so because of the Judicial Council's new policy that a retired judge may no longer both sit by assignment in the courts and serve as a private arbitrator for compensation. That policy took effect on January 1, 2003, as did the resignations.

1. Qualifications

The OIA qualifications for neutral arbitrators did not change in 2002. They are attached as Exhibit E and available from the OIA website. However, in 2002, members of both the claimants' and respondents' bars approached the OIA about changes which might broaden the pool of prospective applicants. Therefore, the qualifications may be reviewed and altered somewhat in 2004.

In keeping with the Blue Ribbon Panel's recommendations in this area, the qualifications are broad and designed to recruit a large, diverse, unbiased panel. They include the following:

- Arbitrators must have been admitted to the practice of law for at least ten years and have substantial litigation experience;

- they must provide satisfactory evidence of their ability to act as arbitrators based upon judicial, trial or other experience or training;

- they must not have served as attorneys of record or party arbitrators either for or against Kaiser within the last five years.

In order to make the panel as large as possible, and also to approximate the experience of parties in a courtroom setting, the qualifications do not contain a requirement that the potential arbitrator have medical malpractice experience.

Notwithstanding this decision, many parties and their counsel prefer to have an arbitrator who is experienced in malpractice matters. To that end, defense and claimants' attorneys often make joint selections, and both bars have inquired about whether the provision eliminating anyone who has appeared either for or against Kaiser in the past five years could be shortened in time or altered in some other fashion to make available for service a group of attorneys who occasionally handle Kaiser matters

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On December 12, 2002, only six months after its first appearance, the Council amended it, making the change effective in only three weeks, on January 1, 2003. While the Council retained the original disclosure of willingness to entertain new work, it eliminated entirely the provision requiring the parties to be informed and giving them the opportunity to object. 2003 Ethics Standard 12. The Council reasoned that making the initial disclosure and giving parties the opportunity to disqualify then on this basis provided an adequate safeguard.

and therefore have malpractice experience. The OIA and the AOB have been informed that such a proposal will be made in 2003, and they look forward to its arrival.

2. Application

The application to join the OIA pool of arbitrators is extensive.[33] Applicants must provide education, work experience, legal and arbitration experience and detailed information about any previous involvement with Kaiser. They must provide names and contact information from all parties in five recent arbitrations. At the outset of a new case, when the OIA provides parties with a list of 12 possible arbitrators so that they can strike names and rank their selections, each party receives a complete copy of each arbitrator's application.

At the same time, the parties also receive the arbitrator's terms of payment. Neutrals may not change their fees in the course of a given year or during the entire pendency of a specific case. Annually, they are given one opportunity to set new fees for the coming year in new cases. Other than these requirements, they are free to set their fees as they see fit. The range is very wide.[34]

3. The Panel as of December 31, 2002

For the convenience of the parties and to reduce the cost of arbitration, the panel of neutral arbitrators maintained by the OIA is divided into three parts, Northern California, Southern California and San Diego.[35] As of December 31, 2002, there were 297 neutral arbitrators admitted to the OIA panel, 110 in Northern California, 168 in Southern California and 42 in San Diego.[36] Thirty-one percent, or 93 members of the total panel, are retired judges. There are 41 retired judges in the Northern California division, or 37%; there are 46 retired judges in the Southern California division, or 27%. There are eleven retired judges in the San Diego division, or 26%. In comparison with 2001, the percentage of judges overall and in each division has fallen slightly.[37]

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[33]It is attached as Exhibit D and is on the website.

[34]Claimants may also elect to have Kaiser pay the entire cost of the neutral arbitrator. Exhibit C, Rules 14 and 15, and section IV. L, p. 45 below for further information.

[35]For the history of the San Diego Panel, see Third Annual Report at p. 7, note 24.

[36]The total number of neutrals in the three panels equals 320 because 23 of the 297 arbitrators serve on more than one panel.

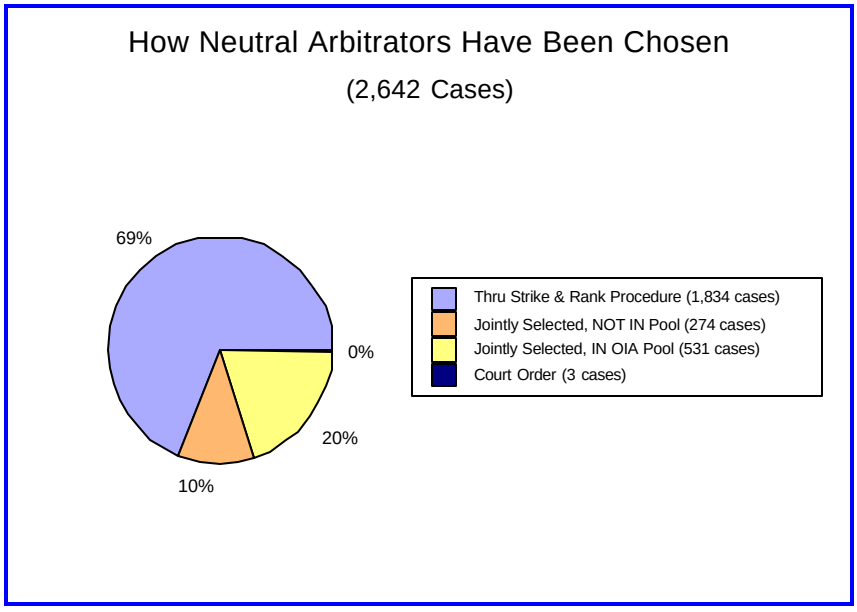
[37]The 2001 percentages and numbers of retired judge-arbitrators were: statewide: 33% or 102 ex-judges; Northern California: 46 judges or 39%; Southern California: 47 judges or 29% and San Diego: 9 judges or 32%.

A complete list of neutral arbitrators as of December 31, 2002 is attached as Exhibit G. It also appears on the OIA website and is updated regularly there.

Under the *Rules*, the parties can either jointly select any person who agrees to follow the *Rules* to act as the neutral arbitrator, or they can each strike and rank the list of twelve names provided by the OIA.[38] Since the OIA first began operation, a neutral has been selected in 2,642 cases. In 805 of these cases, or about 31%, the parties have jointly selected the neutral arbitrator, while in 1,834 of these cases, or about 69%, the parties have used the list supplied by the OIA. The state court has appointed arbitrators in three cases, none of them in 2002.

In 2002, a neutral was selected in 804 cases. Of the 804, 220 were joint selections (27%) and 584 of the 804 were strike and rank (73%).

The parties have jointly selected 805 arbitrators since the OIA began operating. Of that group, 66% belong to the OIA's panel (531 of 805), although they may not have appeared on the specific list generated for that particular case. The remaining 34% of jointly selected arbitrators (274 of 805), are not part of the OIA's pool.[39] In 2002, 141 of the 220 jointly selected neutrals or 64% were in the OIA panel and 79 of 220, or 36%, were not.



[38]Exhibit C, Rules 16-18; see also Exhibit B at Recommendations 14 and 15.

From June to December, the OIA *Rules* provided for a list of fourteen names because of the potential for disqualification and objection stemming from Ethics Standard 10, described in note 32 pp. 9-10 above. When Standard 10 was altered in December, the *Rules* were changed to return to a list of twelve potential arbitrators.

[39]The OIA has always invited neutral arbitrators who are jointly selected and not part of our pool to complete an application for membership. Some have. Others do not because they believe that they already have enough work. A number of them have served as neutrals in OIA cases more than once.

4. Materials Available to Help Parties Make Their Selection of a Neutral

As noted above, parties receive copies of each potential arbitrator's application whenever their names appear on a randomly computer generated list of possible arbitrators. In addition, if a listed potential arbitrator has previously decided a case in the OIA system, copies of each written decision (with the names of individuals removed) are also sent to the parties. Furthermore, after a case closes, the OIA asks both of the parties to evaluate anonymously their experience with the neutral. We include copies of all of the completed evaluations that the OIA has received in the packets sent to the parties at the time that they make their selection.

If parties are considering joint selection of an arbitrator who is not on their list, but who is in our pool, and they ask us for that person's file, we supply it. If they ask us specific questions about any individual's service in this system, we do our best to give them the information.

Finally, before his/her final appointment, the statutes of California require that a selected arbitrator make elaborate disclosures within ten days of his/her selection and serve them on the parties.[40] The content of the disclosures has been greatly expanded by the Ethics Standards this past year.[41] Furthermore, the new requirements impose a duty of continuing disclosure during the pendency of the arbitration and state the penalty for failure to disclose as the vacating of the award.[42] Parties are free to disqualify an arbitrator on the basis of any disclosure made without stating a reason as long as the disqualification is served within ten days of the date of the disclosure.[43] All of these provisions maximize the information about the neutral arbitrator which is in the hands of parties before an arbitrator begins to hear their matter and during the pendency of the entire case. If an arbitrator is disqualified, the selection process begins again.[44]

5. How Many of the Panel of Arbitrators Have Served?

One of the recurring concerns expressed about arbitration of this type is the possibility of a "captive," defense-oriented pool of arbitrators. The theory is that defendants are repeat players whereas claimants are not; defendants therefore have the capacity to bring more work to arbitrators where claimants do not. If the pool is small, some arbitrators may become dependent on the defense

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[40] Cal. Code of Civ. Proc. §1281.9.

[41] Exhibit N (citing statutes and standards); Exhibit F, 2003 Ethics Standards 7-8

[42] Exhibit F, 2003 Ethics Standards 7 (f); see also Standard 1 Comment; Cal. Code of Civ. Proc. §1286.2(a)(6)(A).

[43] Exhibit F, 2003 Ethics Standards 8 & 10(b); Cal. Code Civ. Proc. §1281.91.

[44] Exhibit C, Rule 18.g.

for their livelihood. A large pool of people available to serve as neutrals, and actively serving as such, is therefore an important tool to avoid this problem. If the cases are spread out, nobody depends on the defendant for his/her income and impartiality is better served. On December 31, 2002, 87% of the OIA panel (258 of 297) had served or were serving as neutral arbitrators in a case overseen by the OIA. In 2002 alone, 67%, have been appointed to serve in a case (199 of 297). Both of these percentages are somewhat higher than they were last year.

The number of individual assignments to cases on the OIA's panel ranges from zero to 86. Parties have *jointly selected* the neutral arbitrator who is at the high end of this range 66 times. The average number of appointments per neutral is eight. The median number of appointments is four. The mode is zero. The parties' actions – in how they strike and rank their choices, whom they jointly select, and whether they disqualify a proposed neutral arbitrator – ultimately control how many times each panelist serves as a neutral arbitrator.

In the year 2002, the range of assignments per arbitrator was zero to 20. The average number of appointments per arbitrator was three. The median number was one. The mode was zero.

All but one of our neutrals have been named at least once on a list of possible arbitrators sent to the parties by the OIA.[45] The average number of Northern California arbitrators appearing on a list is 95; the median number is 102, and the mode is 131. The range of appearances is from one to 158 times.[46] In Southern California, the average number of appearances is 54; the median is 61, and the mode is 79. The range is from zero to 113. In San Diego, the range of appearances is from four to 64. The average is 38; the median is 35, and the mode is 53.

6. The Parties or Their Counsel Evaluate the Neutral Arbitrators

Under Rule 49, at the close of an arbitration in which a neutral arbitrator has been appointed and held an arbitration management conference, the OIA sends an evaluation form to each attorney, or to the claimant if that person does not have an attorney. The form asks them to evaluate their experience with the neutral appointed in the matter in eleven different categories including fairness, impartiality, respect shown for all parties, timely response to communications, understanding of the law and facts of the case, and fees charged.[47] Most important, they are asked whether they would

[45]The one neutral who has not been listed joined the panel on December 26, 2002, just five days before the cut off date for this report.

[46]The range is affected by how long a given arbitrator has been in the pool. Some have been here since we started; others have joined within a week of this report date. The number of times an arbitrator is selected also depends on whether the individual will hear cases where the claimant has no attorney (*pro per* cases). Thirteen percent of the panel will not.

[47]A copy of the evaluation form is attached to this report as Exhibit L along with an analysis of the responses.

recommend this neutral to another person with a similar case. All inquiries appear in the form of statements, and all responses appear on a scale of agreement to disagreement with 5 being agreement and 1 disagreement.

On December 31, 2002, the OIA had received responses from about 47% of the parties who had been sent evaluations (1,433 returned of 3,034 mailed). Four hundred and ninety-six or 36% identified themselves as claimants (84) or claimants' counsel (412), and 885 or 64% identified themselves as respondent's counsel.[48]

Considering only those evaluations sent out this year, 53% responded (358 of 682). Of the 358 received, 36% (130) were from claimants (21) and claimants' counsel (108), and 60% or 216 of 358 were from respondent's counsel.[49]

The responses have been quite positive overall, and they are encouragingly similar for both claimants and respondents.

Here are the responses to some of the inquiries.

Respond from 5 (Agree) to 1 (Disagree).

Item 2: "The neutral arbitrator treated all parties with respect." – 4.7 Average

The average of all responses is 4.7 out of a possible maximum of 5. Claimants counsel averaged 4.7. *Pro pers* averaged 4. Respondents counsel averaged 4.9. For the year 2002, the average for all parties for the year is 4.7. Claimants counsel averaged 4.6. *Pro pers* averaged 4, and respondents counsel averaged 4.9.[50] The median and the mode in all three groups for both the total and the annual groups is 5.[51]

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[48]Fifty-two did not specify a side. Their responses are tabulated separately and included only in the total.

[49]Thirteen did not identify as one side or the other.

[50]The responses from *pro pers*, while positive, are lower than those from attorneys on either side. This is consistent with the results for the past two years. We believe that this lower score arises from a lesser understanding of the process – how it will work, and what is possible within it. At least some *pro pers* seem to enter arbitration for purposes which approximate therapy. For example, *pro pers* sometimes tell us that they want an opportunity to tell their account of what happened, regardless of the neutral arbitrator's decision in the case. Arbitration is poorly suited to such a goal. In June 2001, the OIA began distributing an information sheet prepared especially for *pro per* claimants. We send it to them when we first receive their demands, and then again when we send the list of potential arbitrators. We comment on it when they call the office with questions. Effective in July 2002, it appears at the end of the *Rules*. See Exhibit C, Rule 54 and following material. While many *pro pers* have thanked us for it, and said that they found it helpful, we still find that many have not read it. We are considering other techniques to call it to their attention. *See also* the arbitrator's comments below at section IV.M p. 49.

[51]When the median and mode are both five, it means that a large number of people responding gave that number as their answer. It was our highest score. This is another measure of satisfaction with our neutral

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

The average of all responses was 4.6 with the median and the mode both at 5. Claimants counsel averaged 4.4. *Pro pers* averaged 3.8. Respondents counsel averaged 4.7. The median and the mode was 5 in all three subgroups.

Just for the year 2002, the overall average was 4.5. Claimant's counsel averaged 4.2. *Pro pers* averaged 3.5. Respondents counsel averaged 4.7. The median and mode in all groupings was 5.

Item 7: "The neutral arbitrator understood the facts of my case." – 4.5 Average

The average of all responses was 4.5 with the median and mode both at 5. Claimants counsel averaged 4.4. *Pro pers* averaged 3.5. Respondents counsel averaged 4.6. The median and the mode were 5 for both claimants and respondents counsel. *Pro pers* had a median of 4 and a mode of 5.

In the year 2002, the overall average was 4.4 with the median and mode both at 5. Claimants counsel averaged 4.2. *Pro pers* averaged 3.2. Respondents counsel averaged 4.6. For both groups of attorneys the median and the mode were both 5. For *pro pers*, the median was 4 and the mode was 5.

Item 11: "I would recommend this arbitrator to another person or another lawyer with a case like mine." – 4.3 Average

The average on all responses to this question was 4.3. Both the median and mode were 5. Claimant attorneys gave an average response of 4.2. *Pro pers* averaged 3.2. Respondents counsel averaged 4.5. The median and the mode in all subgroups was 5.

In 2002, the average of all parties was 4.2. Claimants attorneys averaged 4.0. *Pro pers* averaged 3.3. Respondents counsel averaged 4.4. The median and mode in all subgroups was 5.

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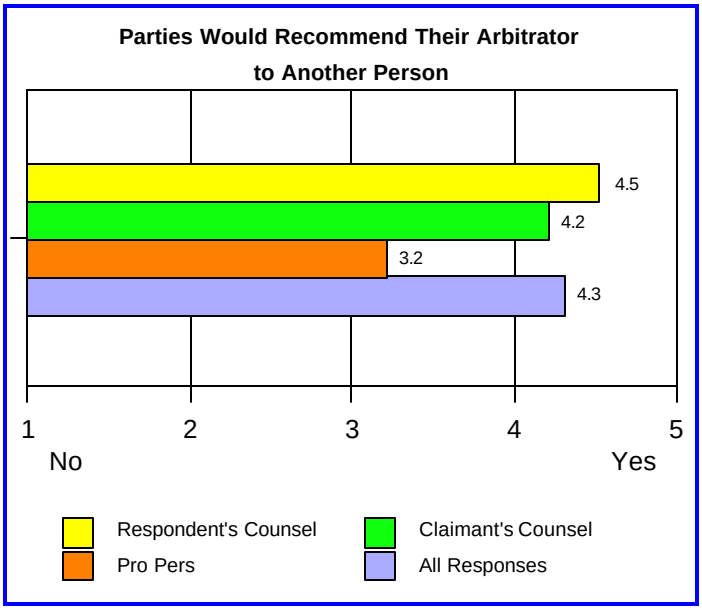
arbitrators.



III. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

The OIA began operations on March 29, 1999. Since then Kaiser has submitted three types of demands for arbitration to us: pre-OIA opt ins, post-OIA opt ins and mandatory cases.[52] Opt-ins predominated through the end of the year 2000. In 2001 and 2002, mandatory demands have become the most common ones. In the entire period of OIA existence, Kaiser has submitted a total of 4,021 demands for arbitration to the OIA. In the year 2002, we received 1,053.

Since the inception of the OIA, we have received 1,928 demands from Northern California, 1,843 demands from Southern California, and 250 demands from San Diego. In the year 2002, 476 demands for arbitration have come from Northern California; 478 have come from Southern California, and 99 have come from San Diego.

[52]The categories are defined as follows. **Opt-ins**: Until 2001, almost all the demands Kaiser sent to the OIA were opt-ins, that is cases where the claimant could choose to remain here or return to Kaiser for administration of the case. **Pre-OIA opt-ins** are cases where Kaiser received the demand before we came into existence. **Post-OIA opt-ins** are cases where Kaiser received the demand after 3/29/99, when the OIA came into existence. **Mandatory cases** are those which arose under contracts dated after 1/1/00, when Kaiser began changing the arbitration clause of its contracts to make the use of the OIA mandatory as opposed to the self-administration which it used to do.

The following sections of this report describe how long it has taken Kaiser to submit demands for arbitration to the OIA after they received them from claimants, the number of cases that are mandatory, and opt-in cases.

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

Under the *Rules*, Kaiser must submit a demand for arbitration to the OIA within ten days of receiving it.[53] Throughout our existence, the average length of time that Kaiser has taken to submit mandatory and post-OIA demands to the OIA is eight days, the same as it was in our last report. The mode is zero which means that usually Kaiser sends the OIA a demand on the day it is received. The median is four days. The range is zero to 330 days.[54] Considering only demands made in 2002, the average is eight days. The mode is one day. The median is five days, and the range is zero to 247 days.

B. Mandatory Cases

As we reported last year, throughout the year 2000, Kaiser amended all its California contracts, covering about six million members, to require that the OIA act as arbitration system administrator.[55] All Kaiser disputes with its members arising from events that occur after December 31, 2000 are subject to OIA administration. On December 31, 2000, 101 claims in the OIA system were mandatory. On December 31, 2001, 826 claims in the system were mandatory. On December 31, 2002, there were 1,748 mandatory claims at the OIA. Of the total, 922 mandatory cases were submitted to the OIA in 2002. Only 131 opt-in cases were submitted in 2002.

C. Opt In Cases[56]

Since it began operation, the OIA has received 2,273 demands for arbitration made by members whose contracts did not require use of the OIA. Of the total, 64% (1,456) have chosen to opt in to OIA administration. Only 44 have affirmatively refused to join the OIA system. However, the

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[53]Exhibit C, Rule 11.

[54]The 330 day demand arrived in 2000 and is explained in the Third Annual Report at page 12, note 37.

[55]Previously, Kaiser self-administered the arbitration system.

[56]**Pre-OIA Opt Ins.** Between March 29, 1999 and December 31, 2002, Kaiser submitted 230 cases to the OIA in which the demand for arbitration was made before March 29, 1999 before the OIA came into existence. The only such case received this year had been with Kaiser for 1,616 days (4.4 years) before arriving at the OIA. The average time for forwarding during the entire OIA period is 482 days; the median is 361 days and the mode is 13 days. On December 31, 2002, there were only two such cases left open at the OIA.

OIA has returned 744 demands (33%) to Kaiser for self-administration under the old process because the claimants or their counsel never informed the OIA that they wished to enter the system.[57]

In 2002, Kaiser forwarded 131 new demands that fell into the opt in category. Of these, 76 or 58% chose to join our system.[58] One affirmatively refused to join and was returned to Kaiser. The OIA returned the remainder to Kaiser because there had been no response to its letters.

IV. REPORTING ON CASES ADMINISTERED BY THE OIA

This section provides a detailed account of the cases administered by the OIA.[59] Section VI.A is particularly notable because it describes the average length of time it takes for neutral arbitrators to be selected in this system.

Other information included in this section provides the number and types of cases, the number of cases with and without attorneys representing claimants, and the number of cases where claimants have sought and obtained fee waivers. This section also provides the number of cases where the parties jointly selected a neutral arbitrator as opposed to using the strike and rank system**,** the status of cases currently pending in the OIA system, and the number of cases resolved thus far and types of resolutions reached. It discusses awards. This section also reports the number of cases using special procedures, the number of cases in which claimants have elected to have Kaiser pay the neutral arbitrator's fees and expenses, the number of cases in which parties have waived party arbitrators, and the number of cases proceeding with party arbitrators. Finally, it reports the results of neutral arbitrator evaluation of the OIA system as it has worked in specific cases thus far.

A. Length of Time for a Neutral Arbitrator to Be Selected

The *Rules* and Guidelines set a 33 day timetable for the steps through which an arbitrator must be selected in a routine case.[60] These times may be extended for various reasons. First, under OIA

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[57]Kaiser settled eight cases and seventeen claimants withdrew their claims before they faced the deadline for deciding whether to opt in.

[58]In 2002, no cases were settled and five withdrew their claims before the deadline. On 12/31/02 four cases were in the process of deciding whether to join the system.

[59]The phrase "cases administered by the OIA" excludes those where the parties are in the process of deciding whether to opt in and those which have been returned to Kaiser. When we refer to cases administered during 2002, we mean that such cases were open for some portion of that year.

[60]*See e.g.* Exhibit C, Rules 16 and 18, Guideline 14(b). All the measurements of time, including the time to select a neutral arbitrator, begin on the date the OIA received a mandatory claim or a claimant opted in AND the OIA received the $150 filing fee or granted a fee waiver application.

Rules a claimant has an absolute right to request a one-time 90 day continuance of the arbitrator selection process.[61] A second form of delay in selection can occur when parties choose more than one arbitrator because the first arbitrator selected is disqualified. As specified by statute and the Ethics Standards, neutral arbitrators make lengthy disclosures about themselves, their families, their legal associates and their past work within the first ten days after they are selected.[62] Each party then has fifteen days in which to disqualify the arbitrator. When such a disqualification occurs, the process begins again. Third, in a small number of cases, both these types of delay have occurred; that is, a party has requested a 90 day postponement and disqualified a neutral arbitrator.[63]

Parties have selected neutral arbitrators in 2,521 out of 3,011 cases administered by the OIA, where the neutral arbitrator selection process has begun.[64] The following table and chart summarize the time to selection of neutral arbitrators. The table compares neutral arbitrator selections in different reporting periods.

[61]Exhibit C, Rule 21. Respondents may also obtain such a 90 day delay, but only with the consent of the Claimant. Claimant does not have to obtain consent.

[62]Cal.Code Civ. Pro. §1281.9; Exhibit F, Ethics Standards 7-8. Exhibit C, Rule 20.

[63]However, the disqualification and/or postponement does not increase the eighteen month time period in which the case must be resolved unless the parties subsequently request and the neutral arbitrator grants a longer timeframe under Rule 24 or 28.

[64]In these 3,011 cases, the claim is either mandatory or the claimant has opted in, and the $150 filing fee has been paid or waived. See Exhibit C, Rules 12 and 13. Once these events occur, the OIA begins the neutral selection process by sending a list of possible arbitrators to the parties. In 369 of these cases, the time for appointing a neutral had not expired on December 31, 2002 or the case was closed before a neutral was selected.

As of December 31, 2002, in addition to the 3,011 cases where the fee had been paid or waived, the OIA had in house 193 cases where neither had occurred. Under Rule 12, the claimant has 75 days to pay the fee or obtain a waiver of it.

COMPARISON
of
Average Number of Days to Selection of Neutral Arbitrator
1999 to 2002

	1999-2000	2001	2002	TOTAL
Majority of Cases (No Postponement; No Disqualification)	25 Days 798 Cases 79%	23 Days 507 Cases 66%	27 Days 410 Cases 54.7%	25 Days 1,705 Case 68%
Cases with Postponements Only	106 Days 157 Cases 16%	104 Days 199 Cases 26%	115 Days 283 Cases 37.7%	109 Days 639 Cases 25%
Cases with Disqualification Only	73 Days 44 Cases 4%	61 Days 44 Cases 6%	62 Days 27 Cases 3.6%	64 Days 116 Cases 5%
Cases with Postponement & Disqualification	167 Days 7 Cases 1%	143 Days 23 Cases 3%	164 Days 30 Cases 4%	160 Days 61 Cases 2%
ALL CASES	41 Days 1006 Cases	50 Days 773 Cases	67 Days 750 Cases	52 Days 2,521 Cases[65]

While this table is complicated, it shows a number of important facts that are worthy of discussion.

First, if we compare years, we see that in 2001 the time to place a neutral declined from that taken earlier in every single category. However, in the year 2002, the length of time to select a neutral arbitrator increased in every category no matter what procedure was followed. The range of increase is from one day to 21 days. The total average increase is seventeen days from 50 to 67 days, or about one third. This is disheartening given the emphasis which the OIA has always placed on getting a case to a neutral arbitrator rapidly.

[65] "All Cases" actually total to 2,529, rather than 2,521. There are eight cases which are double counted in the 2001 - 2002 totals. If you would like an explanation, please call!

However, the major factor in this increase was the impact of Standard 10(d) of the 2002 Ethics Standards which imposed a twelve to 22 day waiting period in any case where the arbitrator already had another case in our system and thus had to obtain the consent of those prior parties before s/he could accept a new case.[66] Given that our system always has a repeating party, the OIA was aware from the first appearance of the draft Ethics Standards in January 2002 that this potential existed. We pointed out the possibility in our third annual report[67] and in both sets of our 2002 comments to the Judicial Council. We believe that this seventeen day gain in the average shows that our concern was valid. However, as noted above, this provision of the Ethics Standards was only in effect from July through December 2002, and was then removed. Therefore, if Standard 10(d) was the primary cause of the increased delay reported here – as the detailed analysis in our following sections strongly suggests that it was -- the year 2003 should once again show a decline in the number of days to appointment by category.[68]

The second major factor shown in this chart continues a trend we commented on last year. Parties are continuing to make increasing use of the options to postpone the selection of a neutral arbitrator that the *Rules* permit. That raises the overall average of time to put an arbitrator into place.[69] As long as this trend continues, next year's overall average will increase although it should fall within categories.

In 2002, the percentage and number of cases requesting a 90 day postponement in the process of selecting an arbitrator rose substantially over 2001 (from 26% percent of all cases to 38% of all cases) and both are higher than the previous time period (16%). However, the percentage of disqualification of arbitrators actually declined somewhat. This is remarkable since the new Ethics Standards greatly expanded the information which an arbitrator must disclose, imposed a duty of continuing disclosure, and reopened the disqualification period whenever a new disclosure was made. Therefore, one would have thought that disqualification was more likely rather than less so. This reduction, rather than a rise, may be a function of the increased number of 90 day postponements. Parties may be taking more time to make the initial selection of the neutral and thus have less need to disqualify.

It is also true, as noted in past reports,[70] that many of our disqualifications appear to arise from the failure of one party to return a strike and rank list of potential arbitrators <u>on time</u>. Under the *Rules*,

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[66] See discussion note 32, pp. 9-10.

[67] Third Annual Report at pp. 21 and 42.

[68] See also, chart on page 34 above.

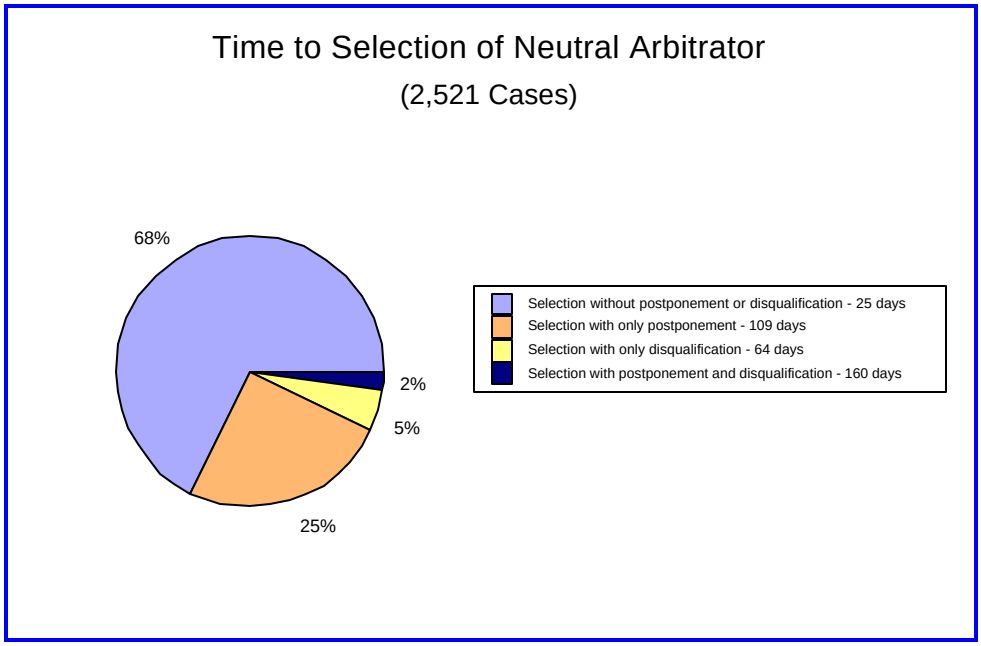
[69] Third Annual Report at pp. 20-21.

[70] Third Annual Report at page 18, note 46.

often a disqualification entered by the untimely side and the process begins anew. All of this is in accord with California statutes. In the effort to avoid this lost time and the bad feeling which it sometimes engenders, fifteen months ago, the OIA began to telephone parties late in the 20 day period which they are allotted to strike and rank lists in order to remind them of the upcoming deadline and of the possibility of a 90 day postponement if they are not yet ready to make a selection. We also call parties who have received the 90 day postponement shortly before the end of the period to remind them of the upcoming deadline. In 2002, the first full year of operation under this procedure, we had fewer missed deadlines and fewer disqualifications. We think that this change in our procedure has made the system a friendlier one for many and has saved time in some instances.

Returning to the table above , those cases with both 90 day postponements and disqualifications remained few in number and low in percentage, 3% in 2001 and 4% in 2002. However, there were 30 in 2002; there had been only 30 in the existence of the OIA before 2002 began. This is a matter for concern since these cases take the longest of all to appointment of a neutral, averaging 160 days.

The number of days it takes to get an arbitrator into place is a sensitive matter for the OIA since it was a focal point of the *Engalla* Court's criticism. Our present average of 52 days is still far below the 674 days to appointment cited and criticized there. However, we will be monitoring this closely and will report on it again next year. Throughout the coming year, we will work to once again see it decline in each category and, we hope, overall.



1. The Majority of Cases

If we look at the majority of cases since the OIA began – those where the parties select the neutral arbitrator without seeking a postponement or disqualifying the neutral, 68% of our cases (1,705 of 2,521) – neutrals were placed in an average of 25 days from the date the OIA received the demand and arbitration fee. This is one day slower than the 24 day average reported last year. The mode is 22 days. The median is 24 days. The range is zero to 101 days.

This number is important because it reports on most of the OIA's cases. In the year 2002, 55% of the OIA's cases fell into this category (410 of 750). The neutral was appointed without a 90 day postponement and without a disqualification. While the percentage is high, it has steadily declined over our reporting periods from a high of 79% originally to 66% in 2001 to 55% in 2002.

In 2002, the year-long average is 27 days to appointment of a neutral, 4 days slower than the 23 days we reported in 2001. The 2002 mode is 22 days. The median is 24 days. The range is zero to 86 days.

As noted above, the Ethics Standards came into effect on July 1, 2002. Here are the numbers for the first and second halves of the year. From January through June of 2002, in the period before the Ethics Standards came into effect with the delay of Standard 10(d), the OIA placed a neutral in an average of 22 days, a day faster than it had in 2001. The median for the first six months was 22 days. The mode was 22 days. The range was zero to 86 days.

For the second half of 2002, with Standard 10(d) in effect, the OIA average for placing a neutral with no postponement and no disqualification was 34 days, a twelve day increase over the first half of the year. The median was 34 days. The mode was 21 days. The range was seven to 62 days.

As noted above, Standard 10(d) has been eliminated. The loss of time attributable to it should be regained in 2003.

2. Cases with 90 Day Postponements

Under Rule 21, claimants may obtain a postponement to select a neutral arbitrator simply by serving a timely request for it on the OIA and the respondent. However, respondents may obtain the postponement only if the claimant agrees in writing. To date, 639 out of 3,011 cases, or about 21%, have sought and received postponement as their only delay in the completed appointment of an

arbitrator.[71] Almost all postponements were obtained by claimants. Only eleven have been obtained by respondents.

There are 639 total OIA cases with postponements only, that is the only delay in appointment of a neutral arbitrator was a 90 day delay permitted under the *Rules*. In these cases, the average time to appointment of a neutral is 109 days. The mode is 112 days. The median is 113 days. And the range is from 20 to 262 days.

In 2002, there were 283 "postponement only" cases. For these cases the average days to appointment was 115. The mode is 112 days. The median is 115. The range was 23 to 242 days.

However, the story does not end there. Here are the numbers for the first and second halves of the year. From January through June of 2002, in the period before the Ethics Standards came into effect with the delay of Standard 10(d), the OIA placed a neutral in a case with a postponement only in an average of 106 days, two days slower than it had in 2001. The median for the first six months was 112 days. The mode was 112 days. The range was 23 to 242 days.

For the second half of 2002, with Standard 10(d) in effect, the OIA average for placing a neutral with a postponement only was 121 days, a fifteen day increase over the first half of the year. The median was 129 days. The mode was 112 days. The range was 34 to 163 days.

This delay attributable to Standard 10(d) will be set forth throughout this section of our report and appears in table form on page 4 above.

3. Cases Where the Parties Disqualified Arbitrators

This section discusses cases in which the parties disqualified one or more neutral arbitrators and did not request a postponement under Rule 21. In these cases, parties have chosen more than one neutral arbitrator because one of them disqualified an earlier choice under the statutory procedure. Each time a neutral is disqualified, the entire selection process begins again, including the requirement that the neutral serve disclosures, and the option for the parties to disqualify.[72]

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[71]More cases – 993 of 3,011 or 31% – have obtained postponements but have not yet appointed a neutral, or have been settled or withdrawn before appointment, or have experienced other forms of delay as well.

[72]In some cases, more than one neutral arbitrator has been disqualified. In 188 cases, the parties have disqualified one arbitrator. In 20 cases, they have disqualified two. In one case, they have disqualified three. In two cases, they have disqualified four, and in one case they have disqualified five.

When one neutral arbitrator is disqualified, the total time to select a neutral arbitrator allowed by rule and statute is 116 days.[73] In the 116 cases with one or more disqualifications, the average number of days to appointment of a neutral is 64 days. The median is 59 days. The mode is 56 days and the range is 26 to 236 days. In 2002, there were 27 such cases, and they averaged 62 days to appointment. Once again, in the second half of the year, under the Ethics Standards, appointment took longer than the first six months. In the first half of the year, the average was 53 days for 17 of the 27 cases. In the second half of the year, it was 78 days for 10 of the 27 cases.

4. Cases with Postponements and Disqualifications

Since the OIA began, the parties in 61 cases have both requested postponements and disqualified one or more neutral arbitrators. During 2002, there were 30 such cases, up from 23 in 2001. The thirty cases this year equals the total of the previous three reporting periods. However, this category remains small, only 4% of the cases this year and 2% of the total.

When a single neutral arbitrator is disqualified and a party has requested a 90 day postponement, the time to select a neutral arbitrator may be extended to 206 days.[74] For our 61 cases we average 160 days to appointment. The median is 155 days; the mode is 141 days and the range is from 78 to 383 days.

In 2002, the average to appointment in such cases was 164 days. The median was 160 days; the mode was 141 days, and the range was 91 to 232 days. Again, it was slower in the second half of the year with the Ethics Standard 10(d) in place. In the first half of the year, the average was 159 days, while in the second half it was 167 days.

5. Average Time to Selection of Neutral Arbitrator for All Cases Administered by the OIA

The average time to the selection of a neutral arbitrator is 52 days in all OIA cases ever handled, if we average together all types of cases discussed in the previous four sections. For purposes of comparison, the *Engalla* decision reported that the old Kaiser system averaged 674 days to the selection of a neutral arbitrator in all cases over a study period of two years. Thus far, as the following chart of shows, in the 45 months of its existence, the OIA system is about 13 times faster.

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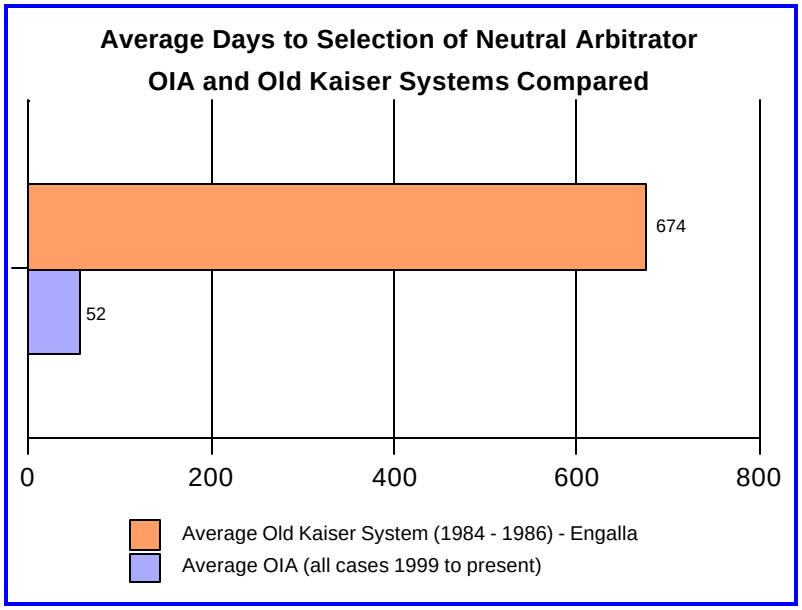
[73]This is composed of two 33 day periods to get two neutrals into place, and the 25 statutory day period of disclosure and disqualification for each of them. This calculation does not include the additional time permitted under former Ethics Standard 10(d).

[74]The 206 days is the sum of the 90 day postponement and the 116 days set forth in note 73.



In the year 2002 alone, the OIA average was 67 days, fifteen days higher than the overall average. However, as analysis throughout this section and the table on page 3 have shown, Ethics Standard 10(d) had a significant slowing effect in the last six months of 2002. That will not be present in 2003, and so we believe that time to selection will be more rapid in 2003.

In summary, the OIA system is alleviating one of the Supreme Court's primary concern in *Engalla* and achieving one of the major goals of the Blue Ribbon Panel by ensuring that neutral arbitrators are selected quickly in Kaiser arbitrations. The rationale of both the Court and the Blue Ribbon Panel was that a case only really begins to move once the neutral arbitrator is in place. The parties, however, are able to significantly influence the speed with which a neutral is selected.

B. Types of Cases

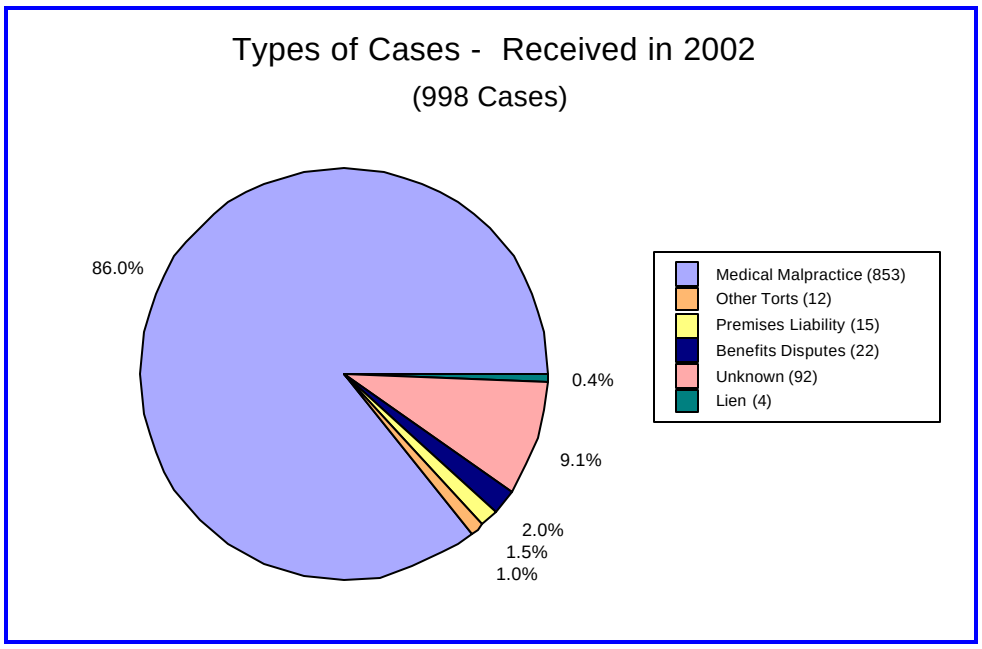
Since 1999, the OIA has administered or is now administering a total of 3,204 Kaiser cases. We categorize the cases as medical malpractice, premises liability ("trip and falls"), other tort, or benefits and coverage cases. In addition, a group of cases are categorized as unknown because the demand for arbitration does not describe the nature of the claim. Medical malpractice cases are the most common, making up 90% of the cases in the OIA system (2,873 of 3,204). Benefits and coverage cases represent only 2% of the system (55 of 3,204).

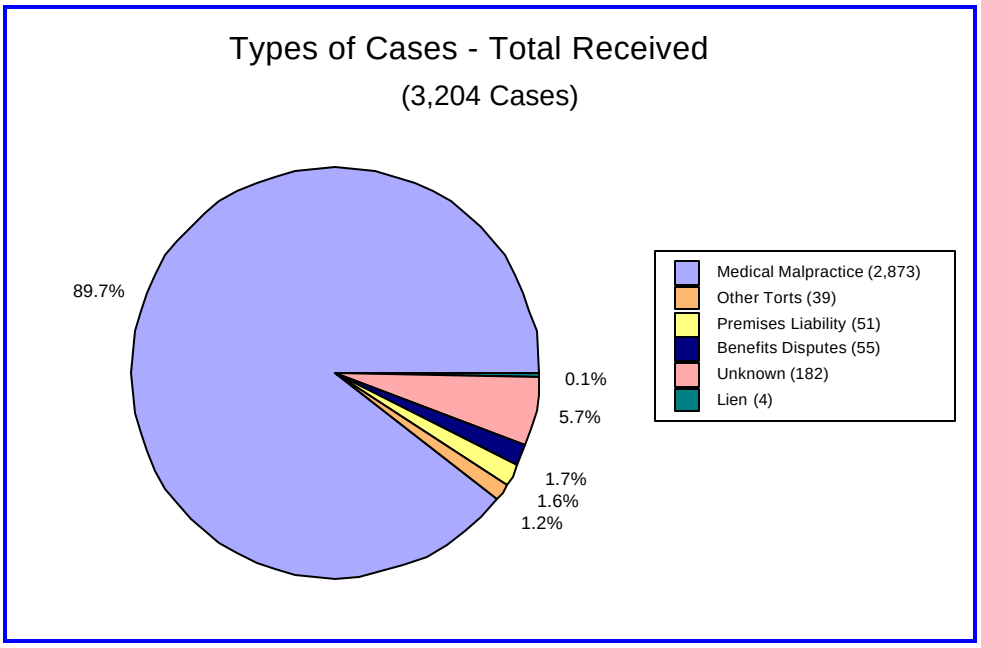
During this reporting period, the percentage of medical malpractice cases was 86%, once again somewhat down from last year when it was 89%.[75] However, it is also possible that in each year the actual number of medical malpractice claims was somewhat masked by the expanding percentage of "unknown claims" – 6% in 2001, and 9% in 2002. This issue should be clarified in the coming year. One of the statutes enacted in 2002 requires posting on the internet of the number and type of claims received[76], and as a consequence, the OIA has set in place new procedures which will help to identify the nature of claims sent to it even when the demand does not make that clear. We will report on this trend in the next annual report.

The following charts show the types of claims received at the OIA for both the total period of time and for 2002 alone:

[75]In the year 2001, 89% (816 of 916 cases.) In the year 2002, 86% (853 or 998 cases.)

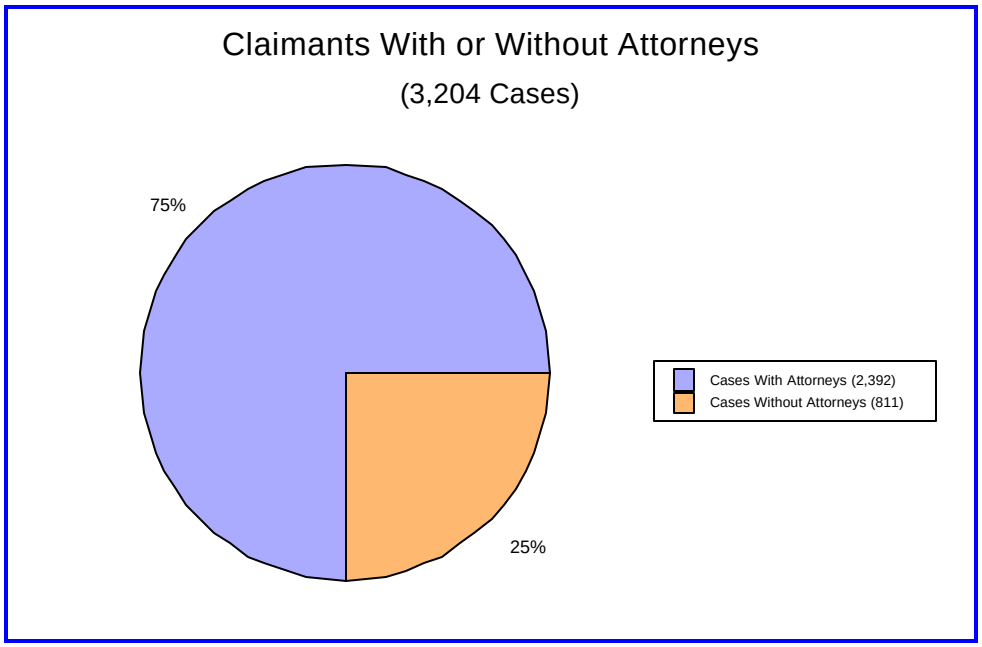
[76]Cal. Code of Civ. Proc. § 1281.96.


Types of Cases - Received in 2002
(998 Cases)
86.0%
0.4%
9.1%
2.0%
1.5%
1.0%
Medical Malpractice (853)
Other Torts (12)
Premises Liability (15)
Benefits Disputes (22)
Unknown (92)
Lien (4)


Types of Cases - Total Received
(3,204 Cases)
89.7%
0.1%
5.7%
1.7%
1.6%
1.2%
Medical Malpractice (2,873)
Other Torts (39)
Premises Liability (51)
Benefits Disputes (55)
Unknown (182)
Lien (4)

C. Claimants With and Without Attorneys (*"Pro Pers"*)

In 75% of the total cases administered by the OIA, the claimants are represented by counsel (2,392 of 3,204). In the 25% of cases remaining, the claimants are representing themselves or acting in *pro per*. In 2002, there were 23% of the cases in our system where claimants were representing themselves (225 of 998).



D. Number of Cases Involving Fee Waiver Applicants

As of December 31, 2002, 335 claimants have requested applications for fee waivers from the OIA. Two hundred and forty five (245) applications have been completed and returned. [77] The OIA has granted waivers in 226 cases, and denied them in 15 cases.[78] Three of the fifteen denied applicants subsequently failed to pay their filing fees and had their cases closed as

[77]Of the total number of claimants who asked for fee waiver applications and did not return them, only fifteen have subsequently left the system as cases abandoned for non-payment of the fee. Four of these cases occurred in 2002. Exactly what these numbers are is somewhat confused. We know how many applications we have been asked for, and we know how many are returned completed. However, people obtain copies from other places.

[78]See Exhibit C, Rule 13, for information about fee waiver applications and Exhibit I for the fee waiver forms and instructions.

once in 2002. Of these four, the OIA granted two and denied two. A copy of the fee waiver information sheet and application are attached as Exhibit I. The application is identical to the one used in the California courts.

During 2002, 65 claimants requested fee waiver applications, all of which were completed and returned. In 2002, 65 applications were granted and three were denied. There were three pending at the beginning of the year. Kaiser objected to the grant of one application. This is only the second year that Kaiser has objected to fee waivers.

This year California has enacted a new statute which requires the waiver of organizational filing and administrative fees (but not the cost of the arbitrator) if the claimant completes a sworn statement that his/her family income is less than three times the federal poverty guideline.[79] The statute mandates placement of this provision in the rules and in the initial communication with the claimant. The OIA has complied with this requirement.[80] The revised form appears as part of Exhibit I. We began to distribute it on January 1, 2003.

E. Number of Cases Where Parties Use the OIA List of Arbitrators or Choose to Jointly Select a Neutral Arbitrator

Under the *Rules*, parties can either jointly select a neutral arbitrator or use the list of possible arbitrators provided by the OIA to strike and rank names. In 69% of the total cases where parties have selected a neutral, they used the list (1,834 of 2,642 cases). In 31% of the cases, they made a joint selection (805 of 2,642 cases). Of the 805 joint selections, 531 of the cases (about 66%) chose a neutral who was also on the OIA panel although not necessarily on the list received by the selecting parties.[81]

During 2002, parties used the list 73% of the time to make the selection of arbitrator (584 of 804 cases). The use of the list is up slightly from 2001, when it stood at 70%. This year, in the 27% of the cases where the parties used joint selection (220 of 804), nearly two thirds of the arbitrators they chose were members of the OIA panel (141 of 220). We believe that the high use of OIA lists indicates confidence in the quality of the pool, as does the steady joint selection of neutrals who are already members of our pool.

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[79] Cal. Code of Civ. Proc. §1284.3.

[80] See Exhibit C, amended Rule 13, and revised form in Exhibit I.

[81] To date, three neutrals have been chosen by the courts, none of them in 2002.

F. Maintaining the Case Timetable

Through its software, the OIA tracks whether the key events set out in the *Rules* – service of the arbitrator's disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – occur on time. The OIA's approach for monitoring compliance is summarized here.

If arbitrators fail to notify us that a key event has taken place by its deadline, the OIA contacts them by phone, fax or e-mail and asks for confirmation that it has occurred. In most cases, it has and arbitrators confirm in writing. When it has not it is rapidly scheduled. In some cases, the OIA has sent a second letter and/or made a phone call asking for confirmation. The second letter and/or phone call warns arbitrators that, if they do not provide confirmation that the event took place, the OIA will remove their names from its panel until confirmation is received.

In a few cases, neutral arbitrators have not responded to a second communication. In those cases, the OIA removes the neutral arbitrators' names from its panel until they provide the required confirmation. This has occurred a total of 25 times in four years. In the complications that surrounded the implementation of the Ethics Standards this past year, this reviewing and confirming task became a very time consuming and serious one. At one point in 2002, the OIA suspended an entire organization which supplies arbitrators and all of its individual neutrals for a period of weeks because the organization was failing to meet the time lines and other requirements of the Ethics Standards and of the OIA *Rules*. However, the organization's neutrals were restored to the OIA panel early in 2003 when the organization was able to get its procedures into conformity.

1. Neutral Arbitrator's Disclosure Statement

Once neutral arbitrators have been selected, they must make written disclosures to the parties within ten days.[82] The OIA *Rules* require that this office be served with a copy of these disclosures and has always monitored them for timeliness. Since its inception, six neutrals have been suspended from our panel for failure to serve timely disclosures, two of them in 2002.[83]

However, in 2002, for the first time, a portion of the content of the disclosures became an OIA concern. The Ethics Standards greatly expand the number of matters which have to be disclosed. Furthermore, Standard 10(b) of the 2002 Standards required that if an arbitrator intended to entertain offers of additional work from parties or attorneys before him/her in an earlier case, the neutral had to give notice of that intention in the initial disclosures made in a later case. If the neutral did not make the disclosure, s/he was barred from accepting additional work from a party or an attorney for the

[82] See Cal. Code of Civ. Proc. §1281.9 and Exhibit C, Rule 20.

[83] Five have since been re-instated.

pendency of that case. The Standard appeared to require that this disclosure be made in the initial ten days. If omitted, it appeared to bar the neutral from accepting any further work. All of our cases have one repeating party, Kaiser. Our panel has nearly 300 arbitrators in it, but we handle nearly a thousand cases a year. If any significant number of arbitrators simply forgot to make the Standard 10(b) statement within the ten day period, our pool could have been decimated. We therefore spent a great deal of time in May and June warning our panelists of the requirement. In June, we began reviewing all disclosure statements for its presence. Where we received service within the ten day period and the 10(b) statement was missing, we contacted neutrals or their staff, asked if it was a deliberate omission, and where it was not, asked them to re-serve immediately. Notwithstanding this review on our part, we lost the services of 24 neutrals for some part of 2002 through the operation of Standard 10(b).

That was round one of former Standard 10.

In the cases where a neutral had given the Standard 10(b) statement initially, and was then offered another Kaiser case, Standard 10(d) then came into effect.[84] The neutral then had five days to give notice to the parties in any previous case(s) that s/he had been offered such work and give the parties in the earlier case seven days in which to object. This notice had to be given in writing to every party in every previous case where Kaiser or an attorney was repeating. The two time periods were also extended by the statutory additional time for mailing so that time elapsed for this one step could be 22 days. Many of our neutrals had more than one Kaiser case open at a given time. The OIA supplied the neutrals with names of the OIA cases where the Standard 10(d) notices were required and tracked both the time periods and the objections on a case by case basis. When a neutral failed to serve a 10(b) notice timely or an objection was received, the OIA immediately contacted the next neutral selected so as to minimize the loss of time. It was always possible that the next selectee would also have to serve Standard 10(d) notices.

This procedure is what accounts for the greatly slowed times in getting arbitrators into place reflected in the numbers reported above at Section IV.A, pages 20 to 27 and the table on page __. As already noted, the Judicial Council amended the Ethics Standards to remove Standard 10(d) in December 2002. This should be the first and last time that we report on it.

2. Arbitration Management Conference

The *Rules* formerly required the parties to have an arbitration management conference ("AMC") within 45 days of the neutral arbitrator's selection. In December 2002, the OIA amended the *Rules* to enlarge the time period to 60 days since neutrals were reluctant to contact parties in order to schedule this event during the period when disqualification was possible. They preferred to wait to calendar it until it was clear that they would be the arbitrator.

[84]These provisions applied only from July 1, 2002 through December 31, 2002.

The neutral returns the AMC form to the OIA within five days after the conference. The schedule set forth there controls dates for the rest of the case and allows the OIA to see that the case has been scheduled for completion within the time allowed by the *Rules*, usually eighteen months. Receipt of the form is therefore important. Eight neutrals have been suspended for failure to return an AMC form. Six have been re-instated. Four of them were suspended in 2002; two have been re-instated.

3. Mandatory Settlement Meeting

The parties hold a mandatory settlement meeting ("MSM") within six months of the AMC.[85] Consistent with the Blue Ribbon Panel recommendation, the *Rules* state that the neutral arbitrator is not present at this meeting. The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. We have received notice from the parties in 1,004 cases that they have held an MSM. We received notice in 357 of these cases in 2002. On the other hand, in 440 cases neither party returned the MSM form to the OIA despite repeated requests. The MSM form was due in 184 of these cases during 2002.[86]

4. Hearing

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*. For almost all cases, this means that the OIA must receive the award no later than eighteen months after it received the demand and the filing fee.[87] We suspended two neutrals for failure to submit a timely award, both of them in 2002.

G. Status of Open Cases Currently Administered by the OIA

As of December 31, 2002, the OIA was administering 912 open cases. In 40 of these cases, the OIA was waiting for the payment of the filing fee or submission of paperwork which would waive it.[88] In 146 cases, the parties were in the process of selecting a neutral arbitrator. In 726 cases, the

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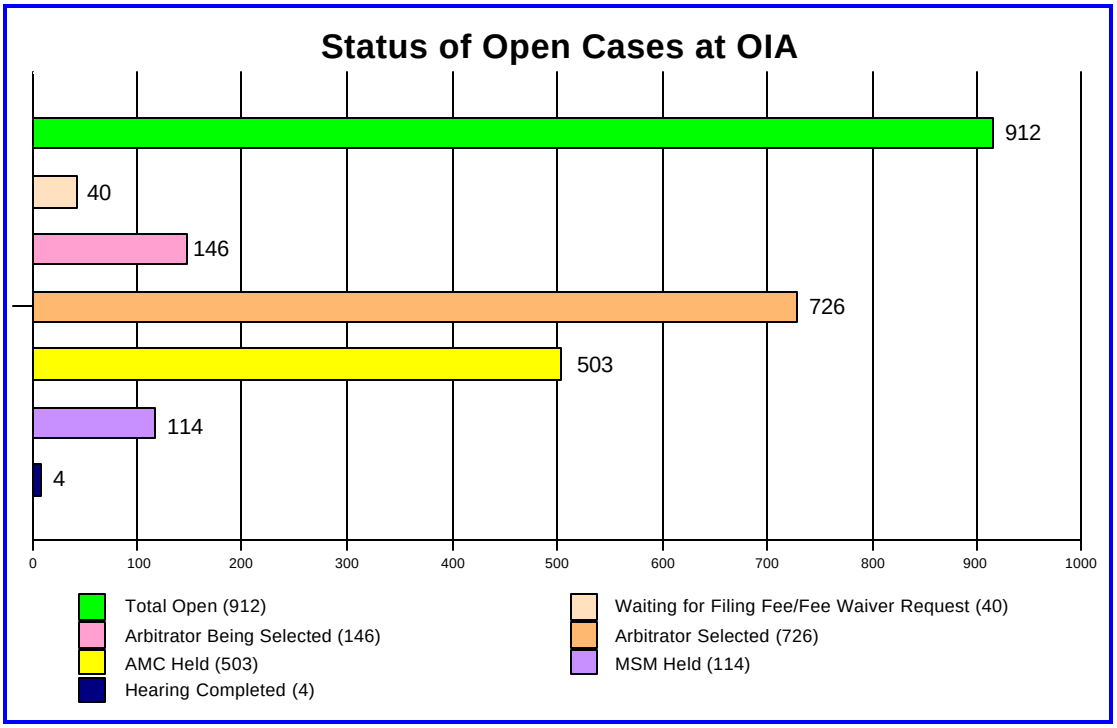
[85]Exhibit C, Rule 26.

[86]The settlement conference is supposed to be conducted without the appointed neutral and in a form agreed to by the parties. There are problems surrounding this, most notably that the OIA has no real way to track whether the event has occurred except for receiving the forms from the parties, which as the report notes, we often do not. We have no power to compel them to report.

[87]Exceptions to the 18 month rule are discussed below in section IV.J pp 41-43.

[88]Effective January 1, 2003, claimants may either fill out a fee waiver application or a statement that their income is less than 300% of the federal poverty guidelines. However, on December 31, 2002, only the fee waiver option was available. See Exhibit I; Report at IV.D pp. 30-31and Exhibit C, Rule 12.

the parties had held the mandatory settlement meeting. In four cases, the hearing had been held but the OIA had not yet been served with the decision. There were 2,292 closed cases. The following graph illustrates the status of open cases:



The number of open cases at year end continues to grow. At the end of 2002, there were 912 open cases, 89% of which were mandatory (812). At the end of 2001, there were 766, with 72% mandatory (551). At the end of 2000, there were 617, only 16% of which were mandatory (100).

H. Number of Cases Resolved and Types of Resolutions

Under the Rules, most cases must be completed within eighteen months of the OIA receiving them.[89] The OIA has been accepting claims for 45 months. During our existence thus far, 72% of all our cases have closed (2,292 of 3,204).[90] This is an increase from December 2001, when 65% of our cases had closed. In all OIA closed cases, only six have not closed

[89]Expedited, complex and extraordinary cases may be resolved in more or less than eighteen months. *See Rules* 24 and 33. Those cases are discussed in this report at section IV.J, pp. 41-42.

[90]847 cases closed in 2002.

cases had closed. In all OIA closed cases, only six have not closed within the time allowed by the *Rule*s. Three occurred in 2002. They were between one and three days late.[91]

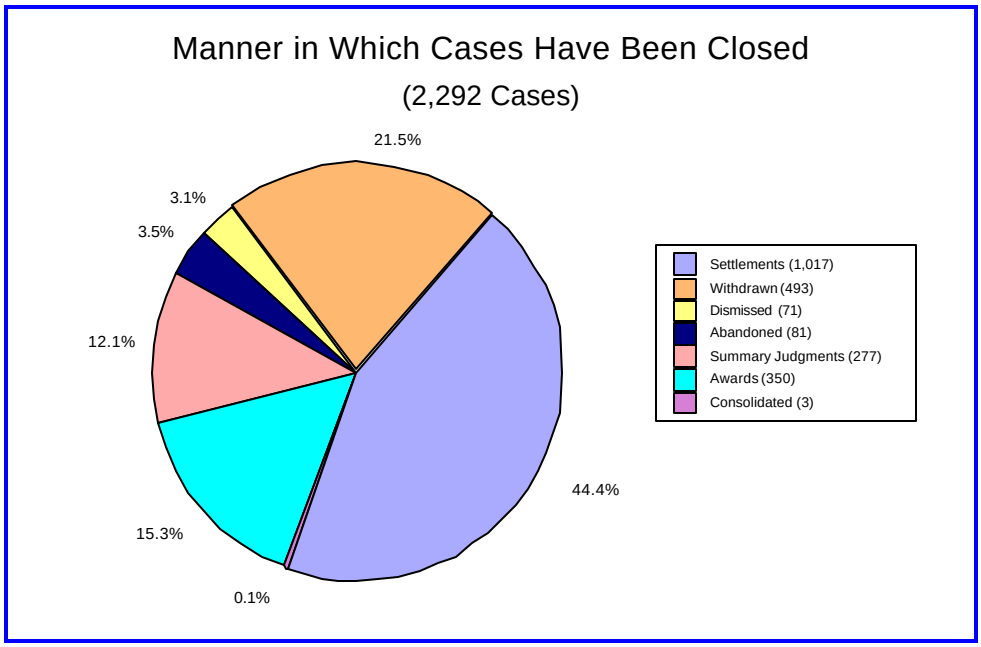
The following sub-sections discuss the various ways in which cases have been resolved, the length of time it took to close them based upon category, and the reasons for closure when the case was closed by summary judgment. The chart on page 41 shows the length of time, again by manner of closure.[92]

The average amount of time for a case to close increased somewhat in 2002 to 273 days, or about 9 months. In the third annual report, closed cases averaged 259 days, or about 8.6 months. When the year 2002 is considered alone, the average was 296 days; in the year 2001 it was 281 days. Such an increase is to be expected in a system as young as this one. Easier cases or those with less contentious parties settled early. As the system becomes fully mandatory, as it nearly is now (89% of cases now open), the period to close a case should first lengthen and then stabilize.

We also noted last year that the Ethics Standards implemented during 2002 for the first time allowed for disqualification late in a case in a way not possible under previously applicable law. That is because arbitrators must now make continuing disclosures and each time they do, the opportunity to disqualify reopens. When an arbitrator is disqualified late in a case, there is a distinct possibility that the case may last longer than it would have done had the first neutral remained. The Standards are only applicable to cases where the neutral was appointed after
July 1, 2002. So we have not yet had time to see whether this will occur. However, so far so good. As noted above, the number of disqualifications actually fell in 2002.

[91] In 2001, the OIA had a case which was seven months late (220 days). This remains our most tardy case. The delay was caused by the withdrawal of the arbitrator only days before the scheduled hearing and the eighteen month deadline. See Third Annual Report at page 27, note 61.

[92] There are twenty cases that have been closed either because the claimant died or the case was consolidated with another one. As they represent less than one percent of the total of all closed cases, they are not further discussed in this section.



1. Settlements – 44% of Closures

At the end of 2002, 44% of the OIA's cases had settled (1,017 of 2,292). The average time to settlement was 271 days, or nine months. The median was 262 days; the mode was 231 days. The range was 4 to 986 days. In 91 settled cases, the claimant was in *pro per*.

During 2002, 381 of 847 cases settled, which represents 45% of the cases closed during the year. The average time to settlement was 300 days, or about ten months. The median was 288; the mode was 363 and the range was 17 to 986 days.[93] In 24 settled cases, the claimant was in *pro per*.

2. Withdrawn Cases – 22% of Closures

The OIA has received notice that 493 out of 2,292 claimants have withdrawn their claims. In 205 of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons, but the OIA has only anecdotal information on this point. We use this classification when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice. When we receive a dismissal with prejudice, we call the parties to ask whether the case was "withdrawn" meaning voluntarily dismissed or "settled" and enter the closure accordingly. About 22% of closed cases have been withdrawn.

[93]The case that took 986 days had been designated complex by the arbitrator and also received a Rule 28 extension for complicated discovery.

The average time to withdrawal of a claim after the case entered the OIA system is 203 days for all cases. The median is 176 days. The mode is 112 days, and the range is 3 to 1,036 days.

During 2002, about 23% of closed cases were withdrawn (197 of 847). The average time to withdrawal of a claim was 222 days. The median was 193 days. The mode was 120 days, and the range was from 3 to 1,036 days.

3. Dismissed and Abandoned Cases – 7% of Closures

Neutrals have dismissed 71 of 2,292 cases, or about 3%, often for claimant's repeated failure to respond to hearing notices or otherwise to conform to the *Rules* or the applicable statutes. In 39 of the 71 cases, claimants were in *pro per*. Eighty-one (81) of the 2,292 closed cases, or 4% of closed cases, were deemed abandoned for claimant's failure to pay the filing fee of $150 or obtain a fee waiver.[94] Claimants in 50 of the abandoned cases were in *pro per*.

In 2002, neutral arbitrators dismissed 27 of the 847 cases closed in that year, about 3%. Eleven of these were *pro per* cases. Twenty-nine of 847 closed cases, about three percent, were deemed abandoned for claimant's failure to pay the filing fee or obtain fee waiver. Claimants in 14 of the 29 cases were in *pro per*.

4. Summary Judgment – 12% of Closures

Twelve percent of all the OIA's closed cases (277 of 2,292) have been decided by summary judgment granted to the respondent. In 197 of these cases, the claimant was in *pro per*.

OIA attorneys have tracked the reasons given by the neutrals in their written decisions for the grant of summary judgment. Of the total, 108 or 39% have been granted because claimant lacked an expert witness, a requirement in a California medical malpractice case in nearly all instances. Another 86 or 31% were granted because claimant filed no opposition. In 23 cases (8%), summary judgment was granted because the case was beyond the statute of limitations. In 18 cases (6%), the claimant failed to show causation. In 40 cases (14%), the neutral held that there was no triable issue of fact without stating a specific reason.

In the year 2002, the summary judgment results are similar to the total figures. Eleven percent of cases were closed by summary judgment (93 of 847). In 63 cases, claimants were in *pro per*.

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[94]Before claimants are excluded from this system for not paying the filing fee, they receive four notices from our office and are offered the opportunity to apply for fee waivers. Those excluded have either refused to apply or have failed to qualify. The fee is a uniform $150 irrespective of how many claimants there may be in a single case. This is lower than court filing fees except for small claims court. If a Kaiser member's claim is below the small claims ceiling amount of $5,000, the member is free to go there. Both the OIA and Kaiser inform these claimants of their right to go to Small Claims Court.

Twenty-four summary judgments (26%) were granted because the claimant did not have an expert witness. Thirty five (38%) were granted because no opposition was filed. Six (6%) were granted because the case was beyond the statute of limitations. Six (6%) were granted because causation was not shown. One was granted on the basis of waiver or release. And 21 or 23% were granted because claimant failed to show a triable issue of fact without stating a specific reason.

All of these are common reasons for the grant of summary judgment in the courts. It is also important to note that this arbitration system, like most, has no equivalent to the court system's demurrer or motion to dismiss where a case is closed very shortly after it is first filed because, construed in all ways favorable to plaintiff, it fails to state claim for recovery. Since there is no complaint filed in Kaiser arbitration, there is no opportunity to move to dismiss. A case filed beyond the statute of limitations, for example, can be closed through a motion to dismiss in the court system. In arbitration, claims with such defects must be dealt with through summary judgment.

As for timing, for total cases the average number of days to closure of a case by summary judgment was 286 days. The median was 271 days. The mode was 153. The range was 77 to 769 days. For the year 2002, the average number of days to grant of summary judgment was 280 days. The median was 271 days. The mode was 286 days. The range was 108 to 533 days.

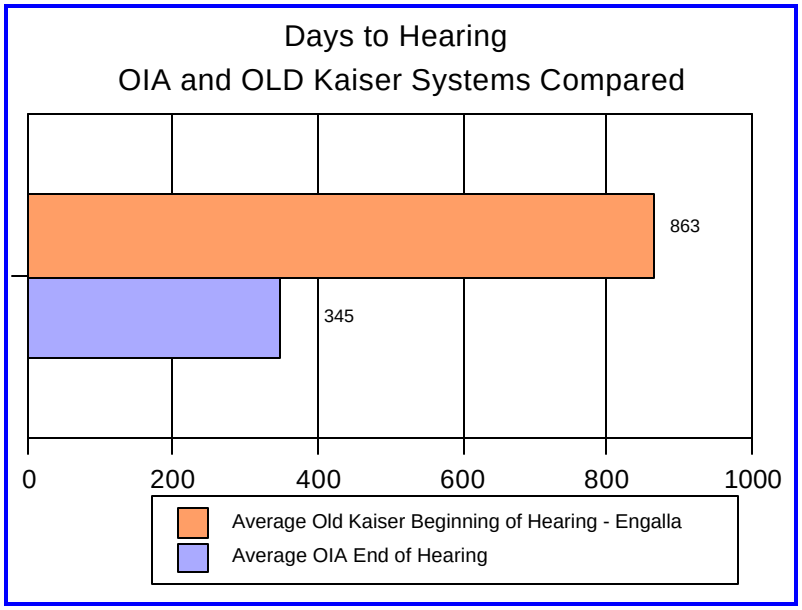
5. Cases Decided After Hearing – 15% of Closures

About 15% of all cases (350 of 2,292) have proceeded through a full hearing to an award. Judgment was for Kaiser in 212 of these cases, or 61%. In 58 of these cases, the claimant was in *pro per*. The claimant prevailed in 39% percent of the cases decided by hearing (138 of 350). In nine of these cases, the claimant was in *pro per*.

The 350 awards were decided by 176 different neutral arbitrators. Ninety-one of the arbitrators made a single award, while 42 decided only two. Forty-three different arbitrators decided the remaining 175 cases with a range of three to ten cases each over the period of 45 months that the OIA has been in operation.

In the cases that have gone to hearing thus far in at the OIA, it has taken an average of 345 days from the time the case entered the system until the end of the hearing. The California Supreme Court in *Engalla* noted that under the old Kaiser system, the hearing did not begin until 863 days, on average, after a case entered the system. The Court noted as well that thereafter the hearing was often conducted over a lengthy period with the taking of evidence being interrupted by lengthy periods. OIA hearings are usually held contiguously.[95] The following chart illustrates the difference between old Kaiser and OIA hearings.

[95] See Exhibit B, Recommendation 6 and status report.



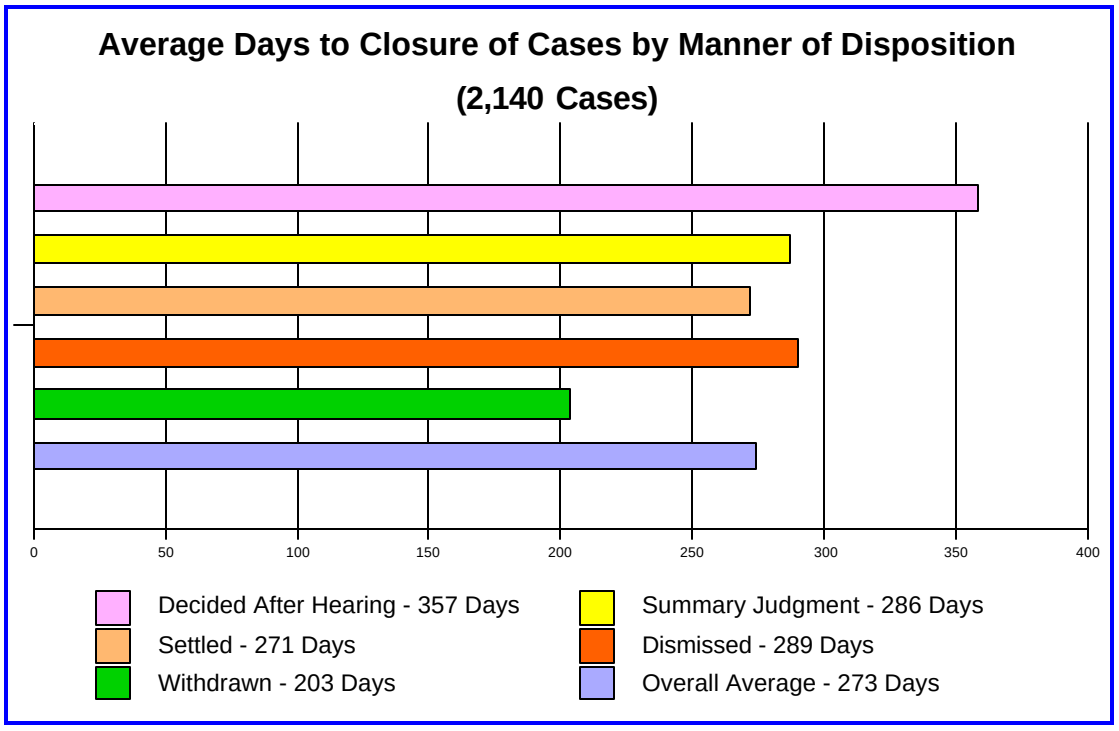
The 350 total cases that have proceeded to a hearing thus far averaged 357 days from the time they entered the OIA to closure. That's about a year. The median is 334 days. The mode is 288 days. The range is 39 to 1,181 days.

In 2002, there were 119 cases decided by hearing. That's about 14% of the closed cases (119 of 847). About 57% of these cases were decided in favor of Kaiser (68 of 119). In 14 of these cases, the claimant was in *pro per*. In 43% of these cases, claimant prevailed (51 of 119); in four of these cases, the claimant was in *pro per*. The 119 cases decided by hearing in 2002 averaged 410 days to closure. The median was 370 days. The mode was 264 days. The range was 128 to 1,181 days.

6. The Average Time to Closure of All OIA Cases

All closed cases at the OIA average 273 days to closure, or about nine months. The median is 264 days. The mode is 274 days. The range is 3 to 1,181 days.[96]

[96]The case which took 1,181 days to close was denominated "extraordinary" and is described at section IV. J.3 below. The longest regular case which went to hearing took 1,126 days to close. It first obtained a Rule 28 extension to reopen discovery close to the hearing date. The neutral withdrew shortly afterward because of illness. A new neutral granted a second Rule 28 extension because claimant was ill and under treatment.



During 2002, all closed cases averaged 296 days to completion or about ten months. The median was 281 days. The mode was 274 days. The range was from 3 to 1,181 days.

I. Amounts of Awards – See Exhibit J

Of the 350 cases that have gone to hearing, there have been 138 awards to claimants, which is 39% of such cases. One was in the amount of $5.6 million. The average amount of an award was $277,000. The median was $96,000. The mode was $175,000. The range was $500 to $5.6 million.

During 2002, of the 119 cases that have gone to hearing, there have been 51 awards to claimants, or 43% of awards. The average amount of an award to a claimant was $399,000. The median was $168,000. The mode was $30,000. The range was from $500 to $3.8 million.

A list of all awards in chronological order is attached as Exhibit J.

J. Number of Cases Using Special Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than eighteen months. Grounds for expedition include a claimant's illness or condition

medical doubt of survival, a claimant's need for a drug or medical procedure, or other good cause.[97] The *Rules* also include provisions for cases which need more than eighteen months to resolution. They are called complex and extraordinary cases. Complex cases need 24 to 30 months for resolution, while extraordinary cases are those that need more than 30 months for resolution.[98] This section discusses those cases.

1. Expedited Procedures

A total of 42 claimants have requested that their cases be resolved in less than the standard eighteen months, and 31 have received such status.[99] The OIA received 34 of those requests from claimants before a neutral was selected in the case. In such cases, under Rule 34, the OIA makes the decision. The OIA granted 26 and denied eight without prejudice to the claimant's ability to raise the matter again before the neutral arbitrator. Kaiser objected to seven of the requests for expedited status. The OIA granted five and denied two of the requests to which Kaiser objected. Neutral arbitrators have received eight such requests and have granted seven and denied one. One of the requests granted by a neutral had previously been denied by the OIA.

During 2002, nine claimants requested expedited procedures, eight from the OIA and one from a neutral arbitrator. The OIA granted seven and denied one without prejudice. Of the nine requests, Kaiser objected to one. The OIA granted that one. One neutral arbitrator received and granted one such request. The request had not previously been made to the OIA.

The 31 expedited cases in the OIA system thus far are one percent of the total case load (31 of 3,011). Two remained open at the end of 2002. One expedited case closed in 20 days, through settlement. Another closed after a hearing, in 39 days with judgment for respondent. All closed expedited cases have been decided within the time period set for the case. Those which remain open appear to be on schedule for a timely finish. The average length of time in which they have been decided is 149 days, or five months. The median has been 117 days. The mode has been 104 days. The range has been 20 to 476 days.

In 2002, the average number of days that an expedited case remained open was 101 days, or a bit over three months. The median was 86 days. The range was 41 to 217 days.

As noted previously, 55 cases at the OIA involve benefits and coverage issues, about 2% of the caseload. When this category of the rules was created, the thinking was that many expedited cases

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[97] Exhibit C, Rules 33-36 (expedited cases).

[98] Exhibit C, Rule 24(b) (complex cases), and Rule 24(c) (extraordinary cases.)

[99] Two more were granted expedited status but returned to regular status when the claimant died.

would involve benefits and coverage issues, particularly those where claimants were seeking a particular treatment or procedure. However, only two such cases have ever been expedited. Both closed in 2001 in three to four months. There were none so designated in 2002.

2. Complex Procedures

Neutral arbitrators have notified the OIA in 54 cases that they have designated the cases as complex and therefore that they would be resolved in 24 to 30 months. Thirty were so designated in 2001. Only fourteen were designated complex in 2002. The designation does not have to occur at the beginning of a case but may be made as the case proceeds and the parties get a better sense of the information that may be required. The parties and the neutral arbitrator must inform the OIA if a case has been designated as complex. Forty-one complex cases have closed, eighteen of them in 2002. The average length of time for complex matters to close thus far is 632 days, about 21 months. The median is 617 days. The mode is 679 days. The range is from 228 to 1,036 days.

Twenty four cases have been designated as complex because of complex medical issues; eighteen have been so designated because of complex discovery. Nine have been designated as complex by stipulation of the parties, and three have been designated by order of the neutral. Complex medical issues include cases where multiple liability issues exist, or the nature or amount of damages is difficult to ascertain. Complex discovery includes cases involving large document productions, many depositions, or extensive travel to complete discovery.

3. Extraordinary Procedures

The OIA has notice that three cases have been designated as extraordinary and therefore will take more than 30 months for resolution. Two were so designated in 2001, and one was so designated in 2002. One such case has closed. It took 1,181 days, or 39 months. It involved a claimant who was undergoing diagnostic testing for both nature of injury and extent of damage. Expert witnesses were not able to formulate opinions until shortly before the case closed.

4. Rule 28 Postponements Extending Case Length

Through December 31, 2002, the neutral arbitrators had made Rule 28 determinations of "extraordinary circumstances" in a total of 110 cases and extended these cases beyond their month limit.[100] Forty-three such rulings were made in 2001. Fifty-five were made in 2002.[101] Of the total 110 cases, 72 remain open, and 38 are closed. The average time to closure for cases so extended

[100]In 2002, Rule 28 was amended to state explicitly, "Failure of the parties to prepare for a scheduled hearing or to keep the hearing dates free from other commitments does not constitute extraordinary circumstances."

[101]Of these 55 cases, 35 were open at the end of 2002, and 20 were closed.

under Rule 28 is 639 days, about 21 months. The median is 604 days. The mode is 476 days, and the range is 292 to 1,126 days.

In the past, when neutral arbitrators granted a Rule 28 postponement they did not have to explain the circumstances that gave rise to it. However, in July 2002, the rule was amended to require a written order which states the reason and is served on the OIA. Through this mechanism we hope to have more information about this process in the future. Anecdotally, we know that in the past Rule 28 extensions have been granted because of the death of a neutral arbitrator, the death of a party, and health problems of a party or an attorney. They have also been granted pending the outcome of parallel actions which were in the courts.

K. Number of Cases in Which Claimants Have Elected to Proceed with a Single Arbitrator

The Blue Ribbon Panel Report recommended that Kaiser pay the neutral arbitrator's fees and expenses when a claim proceeds with a single neutral arbitrator.[102] The panel made this recommendation both to lower the cost of arbitration to the claimant and because it questioned whether the value added by party arbitrators justified their expense and the additional delay of obtaining and scheduling two more participants in the arbitration process.[103] Such delay and rescheduling lengthens cases and raises costs for all parties. In the interest of increased speed and lowered expense, the Panel suggested that the system create incentives for cases to proceed with one neutral arbitrator.[104]

This recommendation must be balanced with a California statute which gives parties in cases where the claimed damages exceed $200,000 a statutory right to proceed with three arbitrators, one neutral arbitrator and two party arbitrators.[105] In our system, Rules 14 and 15 try to strike this balance and give the incentive urged by the Panel. Kaiser will pay the full cost of the neutral arbitrator if the claimant will waive the statutory right to a party arbitrator as well as waiving any court challenge to the arbitrator on the basis that Kaiser's paid him/her. If both Kaiser and the claimant waive, the case proceeds with a single neutral arbitrator. Thus far, in all our cases where claimant has waived, Kaiser has also waived. However, even if Kaiser elected not to waive, the claimant would only have to pay his/her own party arbitrator. The full cost of the neutral arbitrator would be paid by Kaiser, if the claimant elected to have Kaiser do so.

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[102]Blue Ribbon Panel Report at 41-42, Exhibit B at Recommendation 27.

[103]Blue Ribbon Panel Report at 42.

[104]Blue Ribbon Panel Report at 42.

[105]California Health & Safety Code §1373.19.

There are also cases where claimants elect to pay their half of the neutral's cost but proceed with a single arbitrator.

At this point, it appears that few party arbitrators are being used in our system. In only 27 cases of the 350 (about 8%) in which we have received an award after hearing, have party arbitrators also signed the award. That means that the remaining 323 cases were decided by a single arbitrator.

We presently have only 25 cases of the 912 now open in which at least one party has designated party arbitrators. In only seven have both sides designated party arbitrators.

L. Cases in Which Claimants Have Elected to Have Kaiser Pay the Fees and Expenses of the Neutral Arbitrator

As noted in the previous section, the Blue Ribbon Panel recommended that all cases be heard by a single neutral arbitrator. While members with claims under $200,000 do not have a statutory right to a panel of three, they have always had the opportunity to request one. Therefore the OIA *Rules* in implementing the Blue Ribbon Panel's recommendation, also contain provisions to shift the cost of the full payment to Kaiser for those lesser claims. The procedures are simple and voluntary and rely entirely on the claimant's election.[106] For claims under $200,000, the claimant must waive his/her right to subsequently attack the award in court on the sole basis that Kaiser paid the neutral arbitrator. For claims over $200,000, the claimant must waive that right and the statutory right to a party arbitrator. The execution of these two waivers transfers the fees and expenses of the neutral arbitrator to Kaiser.

Of total cases at the OIA, 1,300 cases of 3,011 or 43% have executed the waivers that transfer the payment of the neutral to Kaiser. In 314 of these cases (about 24%) the claimant was a *pro per*. In 2002, 407 cases elected to have Kaiser pay the neutral's fees. In 78 of the 2002 cases (about 19%), the claimant was in *pro per*.

However, 43% is a floor rather than a ceiling. Kaiser may be paying in more cases. Many cases settle or are withdrawn early before there is much activity by the neutral. Therefore, claimants may never have found it necessary to file the waivers either because little or no expense was incurred or because the cost was transferred by the settlement agreement. In the future, the OIA will have more information on this point. A statute first effective in 2003 requires that provider organizations report both how much arbitrators are paid in a given arbitration and how the payment is allocated between the parties.[107] The OIA will post this information on the web as well as including it in future annual reports.

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[106] See Exhibit C, Rules 14 and 15.

[107] Cal. Code Civ Pro. §1281.96

M. Neutral Arbitrators' Evaluations of 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.[108] The information is solicited to evaluate and improve the system. The OIA designed this form with input and comment from Kaiser and the AAC, and began using it during 2000. At the end of the year 2002, the form had been returned by 1,277[109] arbitrators in 1,517 closed cases[110] for a response rate of 84%. We received 286 substantive responses[111] during 2002 (out of 341 sent), for a response rate of 84%. Considering either all of the responses, or just the responses from 2002, the results continue to show a high degree of approval of, and satisfaction with, the *Rules* and the OIA.

The questionnaires sent to the neutral arbitrators include three statements and ask them to state whether, on a scale from 1 to 5, they agree or disagree. As it does on the form sent to parties and their attorneys, 5 represents the highest level of agreement.

The neutrals averaged 4.7 in saying that the procedures set out in the Rules had worked well in the specific case. The responses averaged 4.9 in saying that based on this experience they would participate in another arbitration in the OIA system. They averaged 4.9 in saying that the OIA had accommodated their own questions and concerns in the specific case. The median and the mode for each of these three responses was five. In the year 2002 alone, the averages are the same or higher, and the median and mode for each item remain five.

The questionnaires also include two questions that ask arbitrators to check off features of the system which worked well or poorly in the specific case. The vast majority of those who responded were positive about all areas except one, the timing of the award, which received mixed results. While some who returned these forms left some or all of these questions blank, these are the responses of those who did not:

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[108]The form and an analysis of responses is attached as Exhibit M.

[109]The actual number returned was 1,385; however 108 were blank. They are not included in the following discussion.

[110]The total number of closed cases, 2,292, is higher. The number in the text is of those cases to which we mailed questionnaire forms. The OIA does not send arbitrator questionnaires to closed cases where a neutral was never appointed, or where the case was closed before an arbitration scheduling conference was held. This eliminates cases that settle early or are withdrawn shortly after the arbitrator is selected. This policy took effect after our first year of mailing them when large numbers of questionnaires were returned blank with a note from the neutral saying s/he had never met with the parties and had nothing to say about the case.

[111]Twenty-two were returned blank.

The manner of a neutral's appointment was checked as working well by 936 neutrals, while only 22 thought it needed improvement.

[In year 2002, 224 said working well; five said needed improvement.]

The early management conference was checked as working well by 989 neutrals and as needing improvement by only 28.

[In year 2002, 235 said working well; seven said needed improvement.]

The availability of expedited procedures was checked as working well by 351 neutrals and as needing improvement by seven.

[In year 2002, 91 said working well; two said needed improvement.]

The claimant's ability to have the respondent pay the cost of the neutral was checked as working well by 475 neutrals and as needing improvement by 31.

[In year 2002, 119 said working well; nine said needed improvement.]

The system's rules overall were seen as working well by 789 and as needing improvement by 28.

[In year 2002, 200 said working well; seven said needed improvement.]

The requirement that a hearing be held in eighteen months was marked as working well by 442 neutrals and as needing improvement by 28.

[In year 2002, 110 said working well; five said needed improvement.]

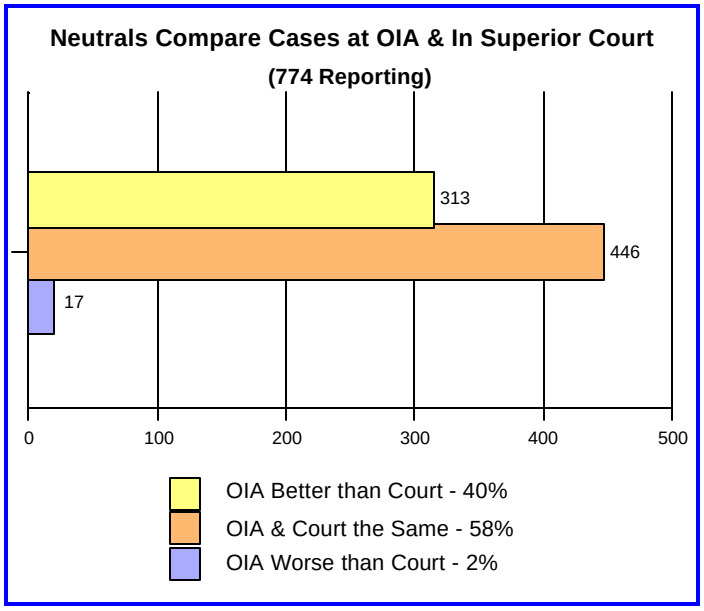
The availability of complex/extraordinary procedures was marked as working well by 86 neutrals and as needing improvement by eleven.

[In year 2002, 34 said working well; three said needed improvement.]

Only one area was controversial. The *Rules* formerly required that a written decision be served on the parties and OIA within ten calendar days after a hearing. Neutral arbitrators have telephoned the OIA about this rule and have been late in serving decisions. On this questionnaire, 93 marked "award within ten days of hearing" as needing improvement. However, 285 marked the award within ten days of hearing as working well. In the year 2002, 30 marked this as needing improvement and 84 marked it as working well. That 40% request for change in this area is the same percentage seeking

37 was amended to expand the time of service of the decision on parties and the OIA to 15 business days rather than 10 calendar days. The time for complex and extraordinary cases was expanded to 30 business days.

Finally, the questionnaires asked the neutrals whether they had experienced a similar case in the Superior Court, and if so, whether they would rank the OIA experience as better, worse, or about the same. Seven hundred seventy-four (774) neutrals responded that they had such parallel experience and made the comparison. Three hundred and thirteen or 40% said the OIA experience was better. Four hundred and forty-six or 58% said it was about the same. Only seventeen — 2% of those responding – said the OIA experience was worse. In 2002, the percentages are almost identical.[112]



The neutrals offered a number of suggestions for improvement in the system. Technological change was high on the list. They asked that the OIA communicate by e-mail. We are happy to do so when the neutral has an e-mail address, and could not possibly have accomplished as much as we did in this year of the Ethics Standards without it. However, a number of our neutrals have told us that they do not use e-mail. We encourage any neutral with an e-mail address to make sure that the OIA has it. We also communicate with a number of attorneys and *pro pers* by e-mail. Another neutral suggested that the OIA provide the possibility

[112]In 2002, 168 neutrals made the comparison. Sixty-four or 38% said the OIA process was better than court; 102 or 60% said it was about the same. Four or about 2% said it was worse.

mail. Another neutral suggested that the OIA provide the possibility of filling out required forms on its website. We are researching this capability for possible use in the future.

The neutrals have also commented often that *pro pers* in the system need more help. These comments should be considered against the background information that a quarter of the claimants are *pro pers*, and 13% of our neutral arbitrations (39 of 297) have declined to hear their cases; some have reported that *pro pers* need help which the neutral cannot provide. The neutrals have suggested the following: that an independent attorney confer with *pro pers*; that an ombudsperson exist for *pro pers*; that *pro pers* should be provided with an advocate, perhaps a law student; that perhaps *pro pers* could be given a way to survive summary judgment; that *pro pers* should automatically be provided with a copy of the relevant medical records, and that *pro pers* generally need a better way of understanding what is happening in arbitration.

V. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD (AOB)

A. Membership

As we reported last year, in April 2001, Kaiser announced the formation of a new oversight board for the arbitration system with its members. The Arbitration Oversight Board (AOB) replaced the earlier Arbitration Advisory Committee which had served for over two years. The AOB is chaired by David Werdegar, M.D. Dr. Wedergar is the former director of California's Office of Statewide Health Planning and Development and is Professor of Family and Community Medicine, *Emeritus*, at the University of California, San Francisco, School of Medicine. The Vice-Chair of the AOB is Cornelius Hopper, M.D., Vice President for Health Affairs, *Emeritus*, of the University of California System.

The membership of the AOB is a distinguished one. There are eleven board members, besides the two officers. All were originally chosen by Dr. Werdegar, after consultation with others. They represent various stakeholders in the system, such as members, doctors, nurses, employers and lawyers. There are also outstanding public members. No more than four of the complete board of thirteen may be Kaiser affiliated. All will serve staggered terms. They are, in alphabetical order:

> **Terry Bream**, R.N., M.N. Administrator, Department of Clinical Services, Southern California Permanente Group. Pasadena. (Formerly served on the AAC).
>
> **Lark Galloway-Gilliam**, MPA, Executive Director, Community Health Councils, Inc., Los Angeles.
>
> **Tessie Guillermo**, President and CEO, Community Technology Foundation of California, San Francisco.

Dan Heslin, former Director of Employee Benefits at Boeing, Murrieta. (Formerly served on the AAC).

Mary Patricia Hough, medical malpractice attorney representing plaintiffs, San Francisco.

Bruce R. Merl, M.D., Director of The Permanente Medical-Legal/Risk Management/Patient Safety Group, Oakland.

Rosemary Manchester, MBA, a member of Kaiser for many years. She is a volunteer counselor with HICAP, the Health Insurance and Counseling Program, which does Medicare counseling. Sebastopol.

Kenneth Pivo, medical malpractice attorney representing respondents, practicing in Irvine. (Formerly served on the AAC).

Honorable Cruz Reynoso, Professor of Law, King Hall School of Law, University of California, Davis, and former California Supreme Court Justice. Davis.

Charles Sabatino, Vice-President, Claims, Kaiser Foundation Health Plan, Oakland.

Honorable Linda Sanchez-Valentine, Member of the United States House of Representatives, formerly Executive Secretary-Treasurer, Orange County Labor Council. Santa Ana.

B. Assignment of the OIA Contract

In June 2002, the contract between Kaiser and Sharon Lybeck Hartmann, under which the OIA was created and has since operated, was assigned to the AOB, with the consent of both parties. A separate trust was also established and fully funded by Kaiser providing the source of the money with which the AOB can meet the contractual obligations to the OIA for payment. Simultaneously, the *OIA Rules* were modified to transfer to the AOB the final authority to make changes in them.[113] That final rule-making power was formerly held by the Independent Administrator, although it was always to be exercised in consultation with Kaiser and the AOB. However, since the AOB now exists as an oversight group independent of Kaiser, it seemed proper for the final power to rest with it. The

[113]Exhibit C, Rule 50.

consultation provisions for rule making remain. The basis on which the *Rules* may be changed by the AOB is carefully defined in the final version of the group's by-laws which are attached to this report.[114]

The AOB takes an active role. It meets at least quarterly to review operation of the OIA and receive reports from OIA staff. It also discusses with the OIA staff problems and challenges for the system, overall policy and goals. Officers of the AOB are in regular contact with the OIA by e-mail and by telephone. For example, AOB officers read and commented upon advance drafts of the OIA's comments to the Judicial Council on the Ethics Standards before those comments were submitted this past year. Both Hartmann and Dr. Werdergar appeared before the legislature in March 2002 as invited committee witnesses to present neutral testimony about the operation of the OIA system to a joint hearing of the Assembly Health and Judiciary Committees held to consider mandatory arbitration of health care disputes. After this hearing, the Assembly Judiciary Committee produced the package of legislation that made its way into law this past year. AOB officers Doctors Werdegar and Hopper have both visited the OIA for day long periods, met with all of its staff and observed its operations. All members of the AOB are welcome to visit at any time and all have been invited to do so.

The AOB also reviews the draft annual report and comments upon it with particular reference to how well the OIA is achieving the goals formulated by the Blue Ribbon Panel, which is, in effect, its mission statement. Exhibit P is the AOB Review of this Report. Last year, it noted that the Ethics Standards would soon be arriving, and stated that it would be working closely with the OIA to assure that the *Rules* and OIA operations were in conformity with the code.[115] The AOB was busy this year working with the OIA on those needed changes and the others prompted by legislative action. Significant portions of this report reduce to writing the oral reports that the OIA staff have been making to the AOB in the course of the year about the interaction between the Ethics Standards, proposed legislation and the *OIA Rules*.

Last year in its letter of comment on the Third Annual Report, the AOB said:

> The body of information provided by the OIA reports provides stimulus for future Board deliberations: What are the best bench marks for following trends in the arbitration system? What further evaluations of the system are necessary? Would surveys of health plan users be useful? Can the system be improved in terms of language accessibility? Can "pre-arbitration" procedures be enhanced? Would modifications of procedures or approaches to arbitration be useful for pro per cases? These and other pertinent questions arising in the course of discussion of the OIA report will be matters for future Board consideration.

As this report makes clear, all those issues remain relevant.

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[114] See Exhibit K, sections 2.1(f) and 2.3(f).

[115] Third Annual Report, Exhibit N at 168-170.

C. Selection of New Independent Administrator

In March 2002, Sharon Lybeck Hartmann also gave notice to the AOB and to Kaiser that she planned to retire and, as a consequence, did not wish to renew her contract to act as Independent Administrator when it expired on March 28, 2003. Hartmann gave a year's notice so that there would be ample time to select another Independent Administrator.

After consideration, the AOB decided upon Sharon Oxborough, a California attorney, who has been Of Counsel with the Hartmann firm since 1994. She drafted and was one of the negotiators of the original *Rules* and forms used by the OIA. She has consulted on issues throughout the existence of the OIA, and in 2001 she acted as Director of the OIA when Marcella Bell was on maternity leave. She has twenty years of experience in general civil litigation, appeals and alternative dispute resolution. She is a graduate of Hamline University, *summa cum laude*, and of Harvard Law School, *cum laude*, where she was an editor of the law review. Immediately thereafter, she served as a federal law clerk to the Honorable Edward Rafeedie, United States District Court Judge, in the Central District of California. Oxborough plans to keep the OIA at the same address, with the same phone numbers and has licensed from Hartmann the software for tracking cases at the OIA that the Hartmann firm created and has used. The same staff remains. For users of the system, the change should be close to transparent. Oxborough will have a new website, www.oia-kaiserarb.com. People will be directed there from the earlier OIA website.

VI. CONCLUSION

In keeping with the recommendations of the California Supreme Court and the Blue Ribbon Panel on Kaiser Permanente Arbitration, the Office of the Independent Administrator has created, and in co-operation with the Arbitration Oversight Board, is operating an independently administered system of arbitration for Kaiser and its members that is fair, fast, low cost and confidential.

This report describes the degree to which these goals are being met. The OIA, the AAC and Kaiser originally set qualifications for neutral arbitrators hearing Kaiser arbitrations. Applying them, the OIA has recruited a panel of 297 neutral arbitrators willing to hear Kaiser cases throughout the state of California. The OIA, Kaiser and the AOB negotiated and amended a set of rules that provide deadlines and procedures for Kaiser arbitrations and meet the requirements of applicable statutes and regulations. The AOB provides on-going oversight of the OIA. So far a total of 3,204 claimants have entered the system governed by the *Rules* and administered by the OIA. In the OIA system, neutral arbitrators are selected as quickly as applicable statutes will permit. This year we were somewhat slowed by a single provision of the Ethics Standards, but that has now been removed. Parties and arbitrators are holding early management conferences and setting hearing dates at the outset of cases which are largely adhered to. The OIA is monitoring cases to ensure that hearings and other events are being completed by their deadlines. Thus far, in the cases we have administered, all but six of 2,292 closed cases have met their final deadlines. Of those six, four have been less than a week late.

Of particular note, the OIA system has greatly reduced the amount of time that elapses from the time the health plan receives a demand for arbitration until a neutral arbitrator is selected. In the OIA system, the average for all cases combined is 52 days. This is 13 times faster than the average of 674 days to appointment of a neutral arbitrator in the old Kaiser system as reported by the California Supreme Court in *Engalla v. Permanente Group*. Similarly, *Engalla* reported that the old system was taking 863 days to begin a hearing. The OIA average to the end of a hearing is now 345 days.

We have also made great efforts to make our system fair. We collect large amounts of information about our arbitrators, including decisions rendered in our system and evaluations of parties who have previously used a given neutral. We make that information available to all parties before they select their neutral arbitrator. We supply our arbitrators with all of the information listed by the Ethics Standards for provider organizations so that they can make full disclosure about the OIA. We also monitor some aspects of the disclosure statements which neutrals serve after their appointment to be certain that they are revealing information as required by California's Ethics Standards. We have also posted on the internet much of the provider organization information listed by the Ethic Standards in a computer searchable format. This makes it available to the general public as well as to parties in our cases.

The OIA system has existed for 45 months. The data provided in this report show that thus far the OIA, in cooperation with the AOB, is ensuring that the deadlines and procedures found in the *Rules* are being followed in all of the Kaiser arbitrations it is administering and that the goals set in the Blue Ribbon Panel Report are being realized.

EXHIBIT A

Firm Profile and Description of OIA Staff

Firm Profile and OIA Staff Descriptions

I. Firm Profile

The Law Offices of Sharon Lybeck Hartmann is a boutique law firm specializing in monitoring consent decrees and in alternative dispute resolution, primarily in the field of civil rights. The firm's expertise results from assisting large, complex organizations at junctures where they seek substantial and lasting change. For example, in 1998, the firm was selected by the City of Los Angeles to review, evaluate and report as an expert witness upon the city's compliance with a settlement agreement entered in an employment discrimination case. Between 1994 and 1999, Hartmann was the national Civil Rights Monitor for the consent decrees that settled the class action litigation against Denny's restaurants alleging race discrimination against customers. The firm's outstanding work monitoring the Denny's cases was recognized in a commendation from U.S. Attorney General Janet Reno.

The firm's work has also included the following activities. It decided over 5,000 claims appealed by individuals denied membership in a national class action based on race and color discrimination for which it was commended by the presiding federal district court. It has conducted neutral, confidential investigation for racial discrimination in public accommodations across the United States. It has created, designed and conducted national and statewide anti-discrimination training. It has designed and conducted state-wide training geared toward eliminating fraudulent practices in consumer contracts. It has organized and conducted national testing in the sale of homeowners insurance as part of a consent decree between a national insurance company and the United States Department of Justice. It has written confidential reports describing its activities and the progress made toward the goals of each project in which it has participated. The firm is highly computer literate, and has a great deal of expertise formulating rules and processes where none previously existed, monitoring timely compliance with those rules, and ensuring compliance where problems have occurred in the past.

For the past three years, the firm has brought this expertise to bear on operating the Kaiser Mandatory Arbitration System for disputes with its members.

II. Staff of the Office of the Independent Administrator

Sharon Lybeck Hartmann, Esq., Independent Administrator. Hartmann is the principal and sole owner of the Law Offices of Sharon Lybeck Hartmann. She is a second-career lawyer who first spent twelve years as a high school English teacher, two of them in Tanzania, East Africa, with a Peace Corps predecessor program. In 1979, she graduated from Boalt Hall Law School, at the University of California, Berkeley, where she served as Editor-in-Chief of the *Industrial Relations Law Journal*. She served as a federal law clerk both at the district court level and on the United States Court of Appeals for the Ninth Circuit. Hartmann has over twenty years' experience in the areas of monitoring of civil rights consent decrees, civil rights litigation and civil litigation. She is a past recipient of the Maynard Toll Pro Bono Award of the Legal Aid Foundation of Los Angeles for her work co-directing the litigation in *Paris v. Board of Supervisors*, a *pro bono* case brought to improve conditions in emergency shelter for the homeless in Los Angeles County. She has also taught at Boalt

Hall, UCLA and Loyola Law Schools. Hartmann supervised and negotiated the creation of the OIA system and supervises the overall operation of the OIA.

Sharon Oxborough, Esq., Of Counsel. Oxborough is a graduate of Hamline University, *summa cum laude*, and Harvard Law School, *cum laude*. She was a federal law clerk in the Central District of California. She has nearly twenty years of experience in general civil litigation, appeals, and alternative dispute resolution. She has been associated with the Hartmann firm since 1994. Oxborough drafted and negotiated the original *Rules* and forms used by the OIA and consults about issues as they arise. She has also drafted all amendments and the OIA contracts and had primary responsibility for negotiating them with Kaiser and the AOB. During 2001, she did the day-by-day direction of the OIA when Marcella Bell was on maternity leave. In 2002, the AOB selected Oxborough to succeed Hartmann as Independent Administrator of the Kaiser system for arbitration of disputes with its members when Hartmann retires in March 2003.

Marcella A. Bell, Esq., Director. Bell is a graduate of Loyola Marymount University and the University of West Los Angeles School of Law, where she served on the Moot Court Board of Governors. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Bell has been an attorney with the Hartmann firm since 1995. As Director of the OIA, Bell supervises day-to-day operations of the OIA and its staff. She also decides fee waiver applications and petitions for expedited proceedings, selects neutral arbitrators based on parties' responses, speaks with neutral arbitrators about their selection and the progress of their cases, compiles and analyzes statistical data, and answers substantive questions from claimants and attorneys. She served as a volunteer attorney at the West Los Angeles Domestic Violence Prevention Clinic from 1998 to 2000. Bell is fluent in Spanish and Italian.

Stephanie L. O'Neal, Esq., Assistant Director. O'Neal is a graduate of Dartmouth College and UCLA School of Law. She also holds a Masters in Urban Planning from the UCLA School of Architecture and Urban Planning. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. O'Neal has been an attorney with the Hartmann firm since 1996. At the OIA, O'Neal reviews arbitrator applications and fee waiver applications, decides fee waiver applications and petitions for expedited proceedings, selects neutral arbitrators for specific cases based on parties' responses, speaks with neutral arbitrators about their selection and the progess of their cases, and answers substantive questions from claimants and attorneys. She also assists Bell in supervision of the OIA and its staff.

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

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

Joyce Daniels, Administrative Legal Assistant. Daniels attended Metropolitan Junior College (now Los Angeles Trade Technical College) where she majored in Secretarial Science for two years. She has worked with Sharon Lybeck Hartmann since 1984 as her legal secretary/assistant and has been a legal secretary for over thirty years in a number of large law firms including Irell & Manella and the U.S. Air Force, Judge Advocate General's Office. Daniels has worked in many areas of law including litigation, civil rights, alternative dispute resolution, bankruptcy, entertainment, labor, tax, probate/estate planning, patent/trademark and corporate. At the OIA, Daniels is responsible for sending out the lists of possible arbitrator packets ("LPA packets") to claimant's attorneys and respondent's attorneys in the process of selecting a Neutral Arbitrator to handle the case. Daniels has been studying Spanish for the last two years in order to become fluent in it as a second language.

Maria Garcia, Office Services Clerk. Garcia has worked at the Hartmann firm since 1995. She has recently assumed the responsibility within the Kaiser team for the logistics of getting the neutral arbitrator files copied, the LPA packets dispatched to the parties and tracing those that may be mislaid. She also assists Joyce Daniels in generating the LPA packets. Garcia is fluent in Spanish.

Griselda Luna, Administrative Staff. Luna has worked at the Hartmann firm since 1996. She is a graduate of Watterson College, where she studied Business Administration. At the OIA, Luna is responsible for answering incoming telephone calls and responding to questions from lawyers, members and the public. She also does data input, and miscellaneous projects. Luna is fluent in Spanish.

Lynda Tutt, Legal Assistant. A native of Philadelphia, Pennsylvania, Tutt completed course work at Temple University. She has many years' experience as a Legal Assistant, and has worked for the Hartmann firm since 1995. Tutt is a licensed notary and is a member of the Legal Secretaries Association, Beverly Hills/Century City Chapter. She is responsible for creating case files, maintaining information in the OIA's computer database, sending letters to neutral arbitrators confirming their selection, and sending letters regarding payment of filing fees.

EXHIBIT B

Blue Ribbon Panel Report
Recommendations and Report on Achievement

Status Report on Blue Ribbon Panel Recommendations

This appendix sets out in bold type each of the recommendations made by the Blue Ribbon Panel on Kaiser Permanente Arbitration in the report that it issued in January 1998. Each recommendation is followed by the status of the recommendation as known to the Office of the Independent Administrator ("OIA") on December 31, 2002.

A. Independent Administration

1. An Independent Administrator should manage the Kaiser Permanente Arbitration System and the individual cases within it. The Kaiser Foundation Health Plan, Inc. should fund the Independent Administrator.

Status: Ongoing, largely accomplished. The OIA began accepting claims from Kaiser on March 29, 1999. At that date, almost all arbitration claims were brought under contracts that predated the creation of the OIA. As Kaiser Member Service Agreements renewed throughout the year 2000, they were amended to contain language making the OIA Rules and administration mandatory. However, since malpractice claims arise at the date of discovery rather than the date of the incident, some claims still arise under contracts where use of the OIA is not required. We expect this to be so for several years. Kaiser has forwarded all claims it received on or after March 29, 1999, to the OIA as they were submitted by its members. At the end of 2002, we had 922 claims which were mandatory out of a total of 1053 new demands for arbitration which had been forwarded to us by Kaiser during 2002. The OIA has contacted all claimants in the remaining 131 cases with claims made on or after March 29, 1999 and asked whether they wish to join the new system. Of the 131 who had a choice, a total of 76 or 58% have joined our system. The remainder were returned to the old Kaiser system since the OIA had no contractual basis to administer them. As for funding, since June 2002, the OIA has been paid by the Arbitration Oversight Board, a group which has control of a trust established by Kaiser in order to meet contractual obligations to the OIA for operation of the system. The OIA is further funded by the $150 filing fee members pay when they make a demand for arbitration.

2. **The mission of the Independent Administrator should be to ensure that the Kaiser Permanente process is fair, speedy, cost-effective, and protects the privacy interests of the parties. These goals should be reflected in the contract with the Independent Administrator and made available to all members and employer-purchasers.**

Status: Completed. The *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator* (*"Rules")*set out a fair, speedy, cost-effective process. The system's goals are set out in Rule 1, and mirror this recommendation. Rule 3 provides that the arbitrator and the Independent Administrator shall not divulge information disclosed to them in the course of an arbitration. However, it was amended in 2002 to reflect the fact that the 2003 Ethics Standards at 8 and California Code of Civil Procedure §1281.96 enacted in 2002, both require that information about individual cases be revealed to parties in subsequent cases. The statute requires posting on the web in computer searchable format. The Ethics Standards permit web-posting. The names of individuals need not be disclosed, however. Effective January 1, 2003, the OIA has posted data on its website fully responsive to both sets of requirements.

The goals which the BRP recommended above are also set out in the contract between Kaiser and the Law Offices of Sharon Lybeck Hartmann which was assigned by Kaiser in 2002 to the Arbitration Oversight Board. The contract contains specific provisions related to confidentiality. The entire contract between the Independent Administrator and the AOB is available to anyone who requests it from the OIA. Many copies of the contract have been distributed.

The same provisions appear in the contract between the AOB and Sharon Oxborough who will be the next Independent Administrator, succeeding on March 29, 2003. That contract was negotiated when Oxborough was selected in 2002.

3. **The Independent Administrator selected should not be a provider of neutral arbitrators or mediators.**

Status: Completed. The Law Offices of Sharon Lybeck Hartmann is not a provider of neutral arbitrators or mediators except those recruited for Kaiser arbitrations. The OIA does not accept payment of any kind from the arbitrators in its panel, including application fees, and does not supply them to any other body.

B. Advisory Committee

4. Kaiser Permanente should establish, an on-going, volunteer Advisory Committee, comprised of representatives from Kaiser membership, Permanente Group physicians, Kaiser health care personnel, employer-purchasers of Kaiser Permanente services, an appropriate consumer advocacy organization and the plaintiffs' and defense bar involved in medical malpractice in the Kaiser Permanente arbitration system. Kaiser Permanente should consult with the Advisory Committee prior to the selection of the Independent Administrator and at other critical points described later in this report.

Status: Completed. In April 1998, Kaiser announced appointment of the Arbitration Advisory Committee ("AAC") and its membership. The AAC participated in the selection of the Independent Administrator, worked closely with Kaiser and the OIA in creating the new system, and its members provided ongoing comment on, and oversight of, the independently administered system. It also reviewed the first two annual reports.

In April 2001, Kaiser announced the formation of a new oversight board for the arbitration system with its members. The Arbitration Oversight Board (AOB) replaced the earlier Arbitration Advisory Committee. The AOB is chaired by David Werdegar, M.D. Dr. Werdegar is the former director of California's Office of Statewide Health Planning and Development and is Professor of Medicine, *Emeritus*, at the University of California, San Francisco, School of Medicine. He is married to California Supreme Court Justice Katherine Werdegar. The Vice-Chair of the AOB is Cornelius Hopper, M.D., Vice President for Health Affairs, *Emeritus*, of the University of California.

The remaining eleven members of the AOB are also distinguished. All were originally chosen by Dr. Werdegar. They represent various stakeholders in the system, such as members, doctors, nurses, employers and lawyers. There are also distinguished public members including those who advocate for consumers. No more than four of the complete board of thirteen may be Kaiser affiliated. All will serve staggered terms. They are listed in the report at section V.A-C. Their activities are also described there. They take an active role at the OIA and serve as its board of directors. Kaiser assigned its contract with Hartmann to the AOB this year and established a trust for the AOB through which the OIA is compensated.

C. Goals of a Revised Kaiser Permanente Arbitration System

Time frame for resolution

5. The Independent Administrator, after consultation with Kaiser Permanente and the Advisory Committee, should establish arbitration process deadlines, which will serve as publicly stated benchmarks for the program.

Status: Completed. Under the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator*, ordinary cases must be resolved within eighteen months of the OIA receiving the claim and the filing fee or a completed fee waiver application. The *Rules* set out events and deadlines that parties must meet en route to a matter's completion. This helps ensure that target completion dates will be met. The *Rules* also contain provisions for cases that must be completed in more or less time than eighteen months. The measurement against the benchmarks appears in this annual report. Effective January 1, 2003, there are two further sources of information for checking against our benchmarks. They are the posting on the OIA website of the disclosures required by 2003 Ethics Standard 8 and California Code of Civil Procedure §1281.96.

6. The Independent Administrator should supervise the progress of each case and should communicate regularly with the neutral arbitrator (and the parties, when appropriate) to assure that each case moves as expeditiously as possible. To this end, the Independent Administrator should encourage continuous hearings.

Status: Ongoing, largely accomplished. As described in Section I.F.-J of the annual report, the OIA tracks the progress of each case and communicates with the neutral arbitrator and the parties as necessary to ensure that each case moves forward as expeditiously as possible. Rule 25(c)(ii) requires that arbitration hearings be scheduled for consecutive days if more than one day is necessary. Of the 350 cases that have had hearings since the OIA began its work, 309 had continuous hearings. That's 88%. Twenty-eight of the remaining 41 cases were completed within two weeks. The remaining thirteen were completed from 34 to 139 days later. In the case that took 139 days, the neutral arbitrator was hospitalized.

This year, 100 of 119 cases had hearings on consecutive days. That's 84%. Twelve others were completed within two weeks. The remaining seven took from 35 to 126 days to complete the hearing.

7. **Although all cases should move as swiftly as possible, special expedited procedures, including those for appointing the neutral arbitrator and setting arbitration hearing dates, should be established for cases in which the member is terminally ill or in other catastrophic circumstances.**

Status: Completed. Rules 33 through 36 set out procedures for expedited cases. There have been a total of 31expedited cases in the OIA system since it began, one percent of the total case load (31 of 3,011). All but two are now closed, and all have closed within their allotted time periods. We handled one from beginning to end in 20 days, when it closed through settlement. Another closed after a hearing, in 39 days, with judgment for respondent.

Documentation and availability of procedures

8. **The Independent Administrator should formalize and make available Kaiser Permanente's new arbitration goals and procedures in writing and take actions, where necessary, to assure all participants are properly informed.**

Status: Completed. The OIA sends a written System Description, the *Rules*, applicable forms and a detailed letter to all claimants and/or their counsel each time Kaiser forwards a demand for arbitration to the OIA. These items are also available to anyone who requests them from the OIA, and to the public generally through the OIA's website at www.slhartmann.com/oia. The OIA has done outreach to the plaintiff's bar and the media regarding its goals and procedures. Published accounts have appeared as a consequence of these efforts. The Chair of the AOB and the Independent Administrator appeared before a Joint Hearing of the Assembly Judiciary and Health Committees in March 2002, and there was press coverage of the system in a number of newspapers state-wide as a result. Harman also spoke to the Consumer Medical Advocates, a plaintiffs' bar organization in San Francisco in December, at the invitation of Mary Patricia Hough, a member of the Arbitration Oversight Board. At the request of one of the OIA's neutral arbitrators, Hartmann also spoke before a class at USC Law School on the operation of the system in April 2002. More appearances are planned for 2003 including testimony before the National Association of Insurance

Commissioners at a hearing on a proposed model arbitration bill. The system was fully described to the Judicial Council by the OIA in written public comment on the Ethics Standards during the public comment periods in January and September 2002. Hard copies of the OIA's three previous annual reports remain available to participants and anyone else who asks and are posted and downloadable from the OIA website as this one will be. In addition, more information about the system appears on the OIA website in computer searchable format, in compliance with the requirements of Standard 8 of the 2003 Ethics Standards and with California Code of Civil Procedure §1281.96 both of which first took effect in 2002.

With specific reference to the Ethics Standards adopted by California in 2002, the OIA kept participants informed of resulting changes in its system and procedures as follows. The OIA, in consultation with the AOB and Kaiser, revised its rules twice to conform to the requirements of the Standards, remained in almost constant communication with its panel of arbitrators by e-mail, mail and telephone throughout the introductory period for both versions of the Standards, and immediately mailed amended copies of its Rules to all parties and their counsel after adoption.

Establishing a list of qualified arbitrators

9. The Independent Administrator should develop the largest possible list of qualified neutral arbitrators.

Status: Completed. The OIA's panel of neutral arbitrators currently has 297 members, made up of 110 in Northern California, 168 in Southern California and 42 in San Diego. (Twenty three neutrals belong to more than one regional panel.) The OIA continues to recruit arbitrators, to accept applications from interested parties, and to admit those qualified to the panel. Fifteen new arbitrators were admitted to the pool in 2002. Thirty-one percent, or 93 members of the total panel, are retired judges. There are 41 retired judges in the Northern California division, or 37%; there are 46 retired judges in the Southern California division, or 27%. There are eleven retired judges in the San Diego division, or 26%. In comparison with 2001, the percentage of judges overall and in each division has fallen slightly. Five retired judges resigned this year because the Judicial Council adopted a new policy which forbids a retired judge from both accepting work as a compensated private arbitrator and sitting by assignment in the courts.

10. **The Independent Administrator should solicit applications from firms and individuals in California who provide neutral arbitration services and who are interested in serving in Kaiser Permanente cases. The qualifications for applicants should be established by the Independent Administrator after discussions with the Advisory Committee and Kaiser Permanente.**

Status: Completed. In a series of meetings held in November and December 1998, and January 1999, the OIA, the AAC, and Kaiser jointly agreed upon the qualifications for neutral arbitrators. The OIA advertised them widely. The OIA has communicated extensively with JAMS/Endispute, Alternative Resolution Centers, Action Dispute Resolution Services, Judicate West, and Resolution Remedies. We have neutral arbitrators from all of these organizations in our panel as well as individuals.

11. **The Independent Administrator should select those applicants who meet standards of qualification and experience and who demonstrate that they will implement the program's goals of fairness, timeliness, low cost and protection of the parties' privacy interests.**

Status: Completed. The OIA reviews each arbitrator's application and makes sure that the applicant meets the published qualifications. When an applicant is rejected, she or he receives a letter citing the specific, numbered requirement which has not been met and is given the opportunity to respond and supplement the application in order to make it acceptable if that is possible.

Prompt selection of the neutral arbitrator

12. **Kaiser Permanente should be required to send the demand for arbitration, or other notice of arbitration, to the Independent Administrator within five (5) business days of receipt.**

Status: Completed as modified. Rule 11 requires that Kaiser Permanente forward Demands for Arbitration to the OIA within ten business days of receipt. Kaiser and the AAC enlarged BRP's recommended number in the original discussions and consultations which created the *Rules*. As stated in Section III.B of the Fourth Annual Report, Kaiser has most frequently forwarded new demands to the OIA on the same day that it has received them. The average length of time that Kaiser has taken for submitting new Demands for Arbitration to the OIA is eight days. The mode is zero. The median is four days, and the range is from zero to 330 days.

13. The neutral arbitrator should be selected within thirty (30) days of the Independent Administrator's receipt of the arbitration demand.

Status: Completed. As reported in Section V.A of the Fourth Annual Report, in the majority of cases administered by the OIA (68% or 1,705 cases out of 2,521) the average time to the naming of a neutral arbitrator is 25 days from receipt of demand and filing fee. This figure excludes cases where parties have obtained postponements and cases where more than one neutral arbitrator has been put into place. It excludes the first because the Blue Ribbon Panel also recommended including the ability to obtain 90 day postponements in the system's rules. See Recommendation 17. The disclosure and disqualification procedure must be allowed for because it is required by statute. By itself, it could take as much as 35 days and therefore could not have been considered as included within the 30 days allowed for in the recommendation. California Code of Civil Procedure §1281.9.

14. The parties should have a short period within which they may agree upon any neutral arbitrator of their choosing.

Status: Completed. Under Rule 17, the parties may select any neutral arbitrator of their choosing, as long as that person agrees to follow the OIA's rules. The parties may make their joint selection during the same 20 days they have for selecting a neutral arbitrator using a randomly generated list of possible arbitrators provided by the OIA. The parties notify the OIA of their first and second joint selections as well as returning their lists with strikes and ranks. As reported in Section IV.E of the Fourth Annual Report, in 1,834 out of 2,642 cases, or about 69% of the cases where parties have selected neutral arbitrators, the parties used the list provided by the OIA. In 31% of the cases (805 of 2,642), the parties jointly selected a neutral arbitrator instead of returning the list provided by the OIA. In the 805 cases where parties have jointly selected a neutral arbitrator, 531 of them (about 66%) have selected an arbitrator who is on the OIA's panel.

15. If no arbitrator is selected within that period, the Independent Administrator should select the neutral arbitrator by providing a list of names to the parties and giving them ten (10) days to strike some number of those names. The procedure for this striking process should be established by the Independent Administrator.

Status: Completed as modified. Rules 17 and 18 give the parties twenty days to either jointly select a neutral arbitrator or return a strike and rank list provided by the OIA.

16. In creating lists of potential neutral arbitrators, the Independent Administrator should rotate among the qualified neutral arbitrators.

Status: Completed. The OIA creates lists of possible arbitrators by randomly selecting names from its computer data base. The OIA uses an internet-based lottery program to make random selections among the listed neutral arbitrators, each of whom is assigned a number. As reported in Section II .A.6 of the Fourth Annual Report, 87% of all neutral arbitrators on the OIA's panel, (258 out of 297), have been selected to serve as neutral arbitrators on Kaiser arbitrations. The average number of selections to serve per neutral is eight. The median is four and the mode is zero.

17. A one-time delay in appointment of up to ninety (90) days may be allowed by the Independent Administrator upon written request of the plaintiff. Counsel requesting a delay should be required to provide a copy of the written request to his or her client.

Status: Completed as modified. Rule 21 provides for this postponement upon the request of a claimant. Rule 21 does not require counsel requesting a delay to provide a copy of the request to his or her client. In the discussions which created the *Rules*, the Arbitration Advisory Committee felt that this was not necessary.

18. The Independent Administrator should be able to grant further continuances in unusual circumstances.

Status: Completed. See Rule 28. As described in section IV.J.4 the OIA and the neutral arbitrators have granted Rule 28 extensions in 110 cases which extended them beyond their 18 month limit. Forty-three such rulings were made in 2001. Fifty-five were made in 2002. Such extensions have been granted, for example, in cases where a neutral or a party died or had health problems.

The OIA *Rules* set a number of deadlines. On 154 occasions, neutrals or OIA staff have granted continuances of those as well, without extending the overall time period in which the case must be completed. Those continuances were as follows:

Postponement of AMC	61
Court ordered postponement	3
Postponement to submit filing fee	42
Postponement of hearing within time period	9
Postponement of NA selection	24
Postponement of proceedings	15

Arbitration management

19. The neutral arbitrator should promptly convene an arbitration management conference, in person or by phone, to set deadlines for key events, establish the date of the arbitration hearing and assist in resolving any issues that might impede the progress of the case. The neutral arbitrator should hold additional conferences as necessary to assure that the case continues to move expeditiously. The Independent Administrator should monitor the cases and supervise the neutral arbitrators to assure efficient progress.

Status: Completed. Amended Rule 25 requires that the neutral arbitrator call an arbitration management conference within 60 days of appointment. Items to be discussed at the conference cited in Rule 25(b) and (c) track this Blue Ribbon Panel recommendation. Rule 25(f) provides for additional conferences as the parties and the arbitrator need them. As described in Section I.F. of the annual report, the OIA monitors each case and ensures that the neutral arbitrator is complying with the deadlines set out in the *Rules*. There are currently 912 open cases. In 503 of them or 55% the parties and neutral arbitrators have held the arbitration management conference. Others are, for the most part, in the very early stages of their case and have not yet reached the arbitration management conference deadline.

The OIA has monitored cases to assure efficient progress. Under the *Rules*, most cases must be completed within 18 months of the OIA receiving them. During our 45 month existence, 72% of our cases have closed (2,292 of 3,204). In all OIA closed cases, only six have not closed within the time allowed by the *Rule*s. Three late cases occurred in 2002. They were between one and three days late.

Disclosures by potential arbitrators

20. The Independent Administrator should maintain a list of all qualified neutral arbitrators and arbitration organizations and maintain a file on

each. An individual neutral arbitrator's file should contain the history of the arbitrator's rulings in Kaiser arbitrations, written decisions (if any) in those cases, a biography and any additional information necessary to enable parties to screen for bias and possible conflicts of interest.

Status: Completed. A list showing arbitrators on the OIA's panel is available from the OIA and is posted on the OIA's website at www. slhartmann.com/oia. The OIA maintains a file for each arbitrator. The files contain copies of the arbitrators' lengthy applications, redacted decisions that the OIA has received under Rule 39(c), and other documents such as biographies and resumes. The application includes a question in which arbitrators must set forth any previous involvement in a Kaiser matter within the last five years. The files also contain evaluation forms completed by parties to prior OIA arbitrations. When the OIA issues a list of possible arbitrators to parties, each side receives a copy of the file for each of the twelve randomly selected arbitrators on the list. Any neutral arbitrator selected by the parties must also make disclosures as required by law. See Rule 20.

Effective January 1, 2003, there is even more information available to enable parties to screen neutral arbitrators for bias and conflict issues. Fulfilling its duties under Ethics Standard 8 and California Code of Civil Procedure §1281.96, the OIA has posted on its website information about each case in computer searchable format, including who the neutral was, who prevailed, what amount of damages was awarded if any, who the attorneys were and much more. The OIA has also posted information about its own organization.

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21. These files should be made available to parties and counsel in pending Kaiser Permanente arbitrations. When a list of potential neutral arbitrators is sent to parties and counsel, a summary of the file information on the proposed neutral arbitrators should be included in that mailing.

Status: Completed. A copy of each arbitrator's file is sent to the parties when an arbitrator's name appears on a list issued by the OIA. To avoid the appearance of altering or shaping information about an arbitrator, the OIA sends copies of actual documents in the file rather than a summary of documents.

Written decisions

22. Neutral arbitrators should be required to issue brief written decisions to the parties in Kaiser Permanente arbitrations and the Independent Administrator. These decisions should include the name of the prevailing party; the amount and other relevant terms of the award, if any; and reasons for the judgment rendered.

Status: Completed. See Rule 38. Neutral arbitrators have issued written decisions to the parties in all cases since the OIA began operation.

23. The Independent Administrator should maintain a complete set of the written decisions in Kaiser Permanente arbitration cases. In addition, a copy of a neutral arbitrator's decision should be kept in that arbitrator's file. These documents should be made available, as described above, to parties and counsel in pending Kaiser Permanente arbitrations.

Status: Completed. The OIA keeps copies of written arbitration decisions in each case file. Under Rule 39(c), Kaiser is required to provide the OIA with a redacted version of each decision. The OIA places a copy of redacted decisions in neutral arbitrators' files. Copies of decisions are part of the information that is provided to parties and their counsel whenever the name of a neutral arbitrator who has rendered a decision appears on a list of possible arbitrators.

Protection of privacy

24. In developing principles to govern the Independent Administrator and the neutral arbitrators who will serve in Kaiser Permanente cases, Kaiser Permanente and the Advisory Committee should give substantial care to ensure the privacy of members, physicians and Kaiser personnel. Prior to making past awards and written decisions available, as recommended above, the Independent Administrator should remove the names of parties, members, physicians and Kaiser Permanente personnel, as well as the name and location of the Kaiser facility.

Status: Completed. Rule 39(c) requires Kaiser to provide the OIA with copies of redacted decisions. Redacted decisions become part of the OIA file for the neutral arbitrator who issued the decision. The redacted decisions are the same ones which Kaiser is required by statute to prepare for California's Department of Managed Health Care.

As noted previously, the OIA is now required by Ethics Standard 8 and Code of Civil Procedure §1281.96 to make case information available to parties in subsequent cases and to post some of it on the internet. However, the statutes and the Standards provide that the names of individuals need not appear. They do not in the materials which we have prepared.

Enhancement of settlement opportunities

25. The Independent Administrator should ensure that the neutral arbitrator schedules, but does not attend, an early meeting between the parties to consider settlement, either through direct negotiations or with the assistance of a mediator.

Status: Completed. Under Rule 26, the parties must hold a mandatory settlement meeting within 6 months of the neutral arbitrator being appointed. The OIA tracks the scheduling and the holding of this settlement meeting. However, there is resistance to it. Attorneys seem split in their opinions about whether the timing of this meeting is too early in the process or too late. Be that as it may, 44% of our cases settle – many of them early. However, their dates of settlement are not correlated to the holding of the settlement meeting.

26. Within twelve (12) months of this report, Kaiser Permanente should consult with the Independent Administrator and the Advisory Committee and begin implementation of a mediation program.

Status: Not completed. No such program is planned. However, Kaiser and the OIA have had several discussions about this recommendation. Kaiser believes that its present internal dispute resolution mechanisms, external review, and the statutory changes requiring DMHC intervention in benefits and coverage disputes have met the spirit of this recommendation. Kaiser has significantly reduced its number of open claims by utilizing its present devices. It does not believe that a mediation program as such is needed now and does not plan to start one.

Encouraging use of the sole arbitrator

27. If the member requests a single, neutral arbitrator, Kaiser Permanente should consent and pay the full fee of the neutral arbitrator. If Kaiser Permanente insists upon a tripartite panel in these circumstances, it should pay for all fees of the neutral arbitrator as well as its own party arbitrator.

Status: Completed. Rules 14 and 15 provide these features. In about 43% of the cases the OIA is administering (1,300 of 3,011 cases), claimants have elected to shift the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser. See sections IV.L of the Annual Report. This may not be the full number of cases in which Kaiser pays since it reflects only our reception of the waivers signed pursuant to our *Rules*. It would not ,for example, reflect agreements contained in settlements to pay fees. A new statute, California Code of Civil Procedure §1281.96, requires that neutrals report to us what they are paid and how the fee is allocated between the parties. It applies to cases initiated after January 1, 2003. Therefore, in several years it is possible that we will have more concrete information on this point.

Oversight and monitoring

28. The Independent Administrator should report annually to Kaiser Permanente and the Advisory Committee. The report should discuss the actions taken to achieve the program's goals and whether those goals are being met. The annual report shall be made available to the Advisory Committee and, upon request, to Kaiser Permanente members, employer/purchasers and the general public.

Status: Completed. This is the fourth annual report. Each has reported in detail on the system's goals and its level of success in meeting them. The AAC and now the AOB has reviewed each report before its release and commented on it in an attached exhibit. Hard copies of the annual report are available to the public without cost from Kaiser and from the OIA. The report can also be read or downloaded from the OIA's website at www.slhartmann.com/oia. We have left the first, second and third annual reports posted on the website. This one will join them. Sharon Oxborough will initiate a new website in March, www.oia-kaiserarb.com, when she becomes Independent Administrator, but she will link to the original website and also post the first four reports on her website as well.

29. No less than every five years, an independent audit of the Independent Administrator should be undertaken. This audit shall also be made available to the Advisory Committee and, upon request, to Kaiser Permanente members, employer/purchasers and the general public.

Status: Not completed because the OIA has only been in existence for a bit less than four years. However, the contract between the AOB and the Law Offices of Sharon Lybeck Hartmann provides that the Law Offices will make the OIA available for independent audits not to exceed one per calendar year.

The OIA has not yet received a request for an audit but will cooperate whenever one is requested.

30. Kaiser Permanente should conduct on-going, internal research to assess the extent to which the arbitration system is meeting its stated goals.

Status: Unknown. This recommendation does not call for the OIA's participation.

D. Improvement of the Pre-arbitration System

31. Kaiser Permanente should establish and fund a formal Ombudsperson program to assist members in the complaint and grievance processes.

Status: Unknown. This recommendation does not call for the OIA's participation.

32. The Kaiser Permanente dispute resolution system should be standard across all facilities in California and should be communicated more clearly and directly, in writing, to its members.

Status: To the extent that this recommendation involves systems other than arbitration, the OIA has no information because it is not involved.

With regard to the OIA, the system is completely standard across the state. The OIA treats each demand for arbitration received from Kaiser in the same fashion, sending a written description of its system and a copy of the *Rules* to all claimants who file demands. All OIA cases are administered in the same manner.

E. Cases Not Involving Medical Malpractice

33. Kaiser Permanente should consult with the Advisory Committee and the Independent Administrator to determine whether different arbitration procedures are needed for benefits and coverage cases and matters other than medical malpractice.

Status: Ongoing, essentially completed. At this point 90% of the cases in the OIA system (2,873 of 3,204) are medical malpractice. In the OIA's 45 months of operation, benefits and coverage cases have constituted 2% of the system (55 of 3,204). Only two of them have requested expedited status. Both closed in 2001 in three to four months. There were none so designated in

2002. As the system continues to develop, the AOB, Kaiser and the OIA will continue to watch to see whether benefits and coverage cases and types of cases other than medical malpractice need different arbitration procedures. Kaiser has forwarded claims of the following types to the OIA: medical malpractice, premises liability, other tort, benefits, and unknown (because the demand does not contain this information). So far, all types of cases are proceeding under a single set of rules.

F. Speed of Implementation

34. The Advisory Committee should be appointed no later than February 1, 1998.

Status: Completed late. The Arbitration Advisory Committee was appointed in April of 1998.

35. The Independent Administrator should be selected no later than April 1, 1998.

Status: Completed late. Kaiser and the Law Offices of Sharon Lybeck Hartmann executed their contract on November 4, 1998.

36. Kaiser Permanente should develop and publish an implementation schedule for these recommendations as rapidly as possible.

Status: Essentially completed. The OIA is not aware of a published implementation schedule for the Blue Ribbon Panel's recommendations. However, as noted throughout this exhibit, 32 out of 36 recommendations have been completed or essentially completed. Two recommendations, mediation and the audit of the OIA, have not been done, and we have no information about recommendations 30, and 31 (internal research and the ombudsperson) which do not involve us. However, the AOB may have such information or be able to obtain it.

EXHIBIT C

Amended Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator

RULES FOR KAISER PERMANENTE MEMBER ARBITRATIONS

<u>ADMINISTERED</u> [OVERSEEN] BY

THE OFFICE OF THE INDEPENDENT ADMINISTRATOR

<u>AMENDED AS OF JANUARY 1, 2003</u> [March, 1999]

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A. GENERAL RULES

1. Goal

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

2. Administration of Arbitration

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

3. Confidentiality

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

4. Code of Ethics

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

5. Meaning of Arbitrator

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

6. Authority of Arbitrators

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

7. Contents of the Demand for Arbitration

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

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

8. Serving Demand for Arbitration

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

Kaiser Foundation Health Plan, Inc. or
Legal Department
P.O. Box 12916
Oakland, CA 94604

Kaiser Foundation Health Plan, Inc.
Legal Department
1950 Franklin Street, 17th Floor
Oakland, CA 94612

Service on that Respondent shall be deemed completed when received.

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

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

Service on that Respondent shall be deemed completed when received.

c. All other Respondent(s), including individuals, must be served as required by the California Code of Civil Procedure for a civil action.

d. All Respondent(s) served with a Demand for Arbitration in the manner described above shall be Parties to the Arbitration. The Arbitrator shall have jurisdiction only over Respondent(s) actually served. If Claimant(s) serves any Respondent(s) other than an organization affiliated with Kaiser Permanente, the Claimant(s) shall serve a proof of service of that Respondent(s) on the Independent Administrator.

9. Serving Other Documents

a. Service of other documents required by these Rules will be made on the Parties or Arbitrator at their last known address. If the Party is represented in this arbitration, that counsel shall be served instead of the Party. Service may be made by personal service, Federal Express or other similar services, facsimile transmission, or by U.S. mail.

b. Parties should only serve the Independent Administrator with those documents specified in these Rules. Unless otherwise directed by the Neutral Arbitrator, the parties should not serve the Independent Administrator with copies of motions or briefs. Service for the Independent Administrator shall be directed to:

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

or

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

or

Fax: 213-637-8658.

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

d. Service on the Independent Administrator is effective on the date the Independent Administrator receives the document.

10. Representation

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

B. RULES ON COMMENCEMENT OF ARBITRATION AND SELECTION OF ARBITRATORS

11. Initiation of Arbitration

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

12. Filing Fee

a. Claimant(s) seeking arbitration shall pay a single, non-refundable, filing fee of $150 per arbitration payable to "Arbitration Account" regardless of the number of claims asserted in the Demand for Arbitration or the number of Claimants or Respondents named in the Demand for Arbitration.

b. **The Independent Administrator will waive the filing fee for Claimant(s) who submit forms that show that the Claimants' gross monthly income is less than 300 percent of the federal poverty guidelines. A copy of this form may be obtained from the Independent Administrator. Claimants should not serve a copy of this form on Respondent(s).**

c. If Claimant(s) wishes to have both the filing fee and the Neutral Arbitrators' fees waived, the Claimant(s) should follow the procedure set out in Rule 13. If Claimant(s) wishes only to avoid paying the fees for the Neutral Arbitrator,

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

d. If a Claimant(s) fails to pay the filing fee or obtain a waiver of that fee within seventy-five (75) days of the date of the Transmission Form, the Independent Administrator will not process the Demand and it shall be deemed abandoned.

e. While the filing fee is normally non-refundable, if Claimant(s) has paid the filing fee with the Demand for Arbitration before receiving notice of the opportunity to have it waived, the Independent Administrator will refund the fee if it receives a completed waiver form within seventy-five (75) days of the date of the Transmission Form and grants the waiver.

13. Waiver of Filing and Neutral Arbitrator Fees

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

14. Number of Arbitrators

a. If the Demand for Arbitration seeks total damages of $200,000 or less, the dispute shall be heard and determined by one Neutral Arbitrator, unless the Parties otherwise agree in writing that the arbitration shall be heard by two Party Arbitrators and a Neutral Arbitrator. The Arbitrators shall not have authority to award monetary damages that are greater than $200,000.

b. If the Demand for Arbitration seeks total damages of more than $200,000, the dispute may be heard and determined by one Neutral Arbitrator and two Party Arbitrators, one appointed by the Claimant(s) and one appointed by the Respondent(s). Parties who are entitled to select a Party Arbitrator under these Rules may agree to waive this right. If both Parties agree, these arbitrations will be heard by a single Neutral Arbitrator.

c. A Party who is entitled to a Party Arbitrator and decides to waive this right shall sign a Waiver of Party Arbitrator Form and serve a copy of it upon the Independent Administrator, Neutral Arbitrator, and other Party. The Claimant(s) shall serve this form on the Neutral Arbitrator and Respondent(s) no later than the date of the Arbitration Management Conference set out in Rule 25 and shall serve the Independent Administrator no later than five (5) days after serving the other Parties. If a Claimant(s) serves Respondent(s) with a signed Waiver of Party Arbitrator Form, Respondent(s) shall inform Claimant(s) within five (5) days of the date of that Form if Respondent(s) will also waive the Party Arbitrator.

d. The Blue Ribbon Advisory Panel on Kaiser Permanente Arbitration concluded that Party Arbitrators increase the cost and cause more delay than would occur with a single Neutral Arbitrator. The Independent Administrator therefore encourages Parties to use a single Neutral Arbitrator to decide cases.

e. The number of Arbitrators may affect the Claimant(s)' responsibility for paying the Neutral Arbitrator's fees and expenses, as set out in Rule 15.

15. Payment of Neutral Arbitrator Fees and Expenses

a. Respondent [Health Plan] shall pay for the fees and expenses incurred by the Neutral Arbitrator if

   i. Claimant(s) agrees to waive any potential objection arising out of such payment, signs the Waiver of Objection Form, and serves a copy of it on the Independent Administrator and Respondent(s); and

   ii. either the arbitration has only a single Neutral Arbitrator or the Claimant(s) has served a Waiver of Party Arbitrator Form as set out in Rule 14.c.

b. In arbitrations where the Independent Administrator has granted Claimant's Fee Waiver request, Respondent [Health Plan] shall pay the fees and expenses incurred by the Neutral Arbitrator.

c. In all other arbitrations, the fees and expenses of the Neutral Arbitrator shall be paid one-half by the Claimant(s) and one-half by the Respondent(s).

d. Nothing in this Rule shall prohibit an order requiring the payment of the Neutral Arbitrator's fees and expenses which were incurred as a result of conduct which causes the Neutral Arbitrator to incur needless fees and expenses. Such conduct includes, but is not limited to, failure to respond to discovery requests, abusive discovery practices, the filing of frivolous motions of all sorts, and untimely requests for continuances. In the event that such a finding is made by the Neutral Arbitrator, those fees and expenses shall be paid by the responsible Party or counsel. The Neutral Arbitrator shall make such a finding in writing, shall specify what fees and expenses are covered by the order, and shall serve a copy of the finding on the Independent Administrator with the Parties' names redacted.

16. List of Possible Arbitrators

a. Within three (3) business days after the Independent Administrator [it] has received both the Demand for Arbitration and the filing fee, or has granted a request for waiver of fees, it shall simultaneously send to each Party an identical List of Possible Arbitrators, along with the Application forms of and redacted Awards, if any, by each of the possible Neutral Arbitrators.

b. The List of Possible Arbitrators shall contain the names of twelve (12) persons. The Independent Administrator will choose the twelve (12) names at random from the Independent Administrator's arbitration panel for San Diego, Southern or Northern California, based on the location where the cause of action arose.

c. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve the Independent Administrator with their response to the List of Possible Arbitrators on or before the deadline [within twenty (20) days of the] date appearing on the List of Possible Arbitrators. This deadline will be twenty (20) days from the day the Independent Administrator sent the List of Possible Arbitrators. Rules 17 and 18 specify how the Parties may respond.

17. Joint Selection of the Neutral Arbitrator

a. The Parties may all agree upon a person listed on the List of Possible Arbitrators. If they do, [the Parties shall contact the person they have chosen. If the person agrees to act as Neutral Arbitrator] the Parties and counsel shall sign the Joint Selection of Neutral Arbitrator Form [and have the Neutral Arbitrator sign the Agreement to Serve Form]. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve the [both] form[s] on the Independent Administrator by the deadline set out in Rule 16.c [within twenty (20) days of the date appearing on the List of Possible Arbitrators].

b. Rather than selecting a Neutral Arbitrator from the List of Possible Arbitrators, the Parties may agree to select another person to serve as Neutral Arbitrator, provided that the person agrees in writing to comply with these Rules. If the Parties collectively select a person not on the List of Possible Arbitrators, all the Parties and counsel shall complete and sign the Joint Selection of Neutral Arbitrator Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve the form on the Independent Administrator by the deadline set out in Rule 16.c [within twenty (20) days of the date appearing on the List of Possible Arbitrators].

c. The Independent Administrator encourages Parties, if possible, to make more than one joint selection and requires the Claimant and Respondent to individually submit the List of Possible Arbitrators under Rule 18. If the person the Parties have jointly selected is unable to serve, the Independent Administrator will then first use other joint selection(s). If only one joint Selection was submitted, the Independent Administrator will then use the strike and ranked List(s) of Possible Arbitrators. If no such List was submitted, Rule 18.c shall apply, and the Independent Administrator will randomly select a possible Neutral Arbitrator from the List of Possible Arbitrators.

d. After the Independent Administrator has received these forms, it will send a Letter Confirming Service to the person who has agreed to act as Neutral Arbitrator, with a copy to the Parties.

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

a. If the Parties do not collectively agree upon a Neutral Arbitrator, the Neutral Arbitrator shall be selected from the List of Possible Arbitrators in the following manner. Claimant(s) and Respondent(s) may each strike up to four (4) names to which the Party objects and shall rank the remaining names in order of preference with “1" being the strongest preference. No name should be left blank. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve their preferences on the Independent Administrator by the deadline set out in Rule 16.c [within twenty (20) days of the date appearing on the List of Possible Arbitrators].

b. Regardless of the number of Claimants or Respondents, the Claimant(s) shall return only one list of preferences and the Respondent(s) shall return only one list of preferences. If they do not, Rule 18.c will apply.

c. Unless there is a ninety (90) day continuance pursuant to Rule 21, if a Party does not serve the Independent Administrator with a response by the deadline set out in Rule 16.c [within twenty (20) days of the date appearing on the List of Possible Arbitrators], all persons named on the List of Possible Arbitrators shall be deemed equally acceptable Neutral Arbitrators to that Party.

d. At any time before the Party's response is due, a Party or representative may request to review further information, if any, which the Independent Administrator has in its files about the persons named on the List of Possible Arbitrators. Parties and their representatives may call the Independent Administrator at 213-637-9847 to request such information. The Parties and their representatives may review the information by going to the Independent Administrator's office. If requested, the Independent Administrator will also send the information to the Party or attorney by mail or fax. Parties who request that further information be sent to them shall be responsible for the Independent Administrator's cost of providing it, with no charge made for duplication of the first twenty-five (25) pages. Time spent requesting or waiting for the additional information shall not extend the time [twenty (20) day limit] to respond to the List of Possible Arbitrators.

e. Working from the returned Lists of Possible Arbitrators it has timely received, the Independent Administrator shall invite a person to serve as the Neutral Arbitrator, asking first the person with the lowest combined rank whose name has not been stricken by either Party. If the person with the lowest combined rank is not available, the Independent Administrator will ask the second lowest ranked person who was not stricken by either party, and will continue until a person whose name was not stricken agrees to serve. When the Independent Administrator contacts the persons, it shall inform them of the names of the Parties and their counsel and ask them not to accept if they know of any conflict of interest. If there is a tie in ranking, the Independent Administrator shall select a person at random from those choices who are tied.

f. If, for any reason, a Neutral Arbitrator cannot be obtained from the first List of Possible Arbitrators, the Independent Administrator shall send a second List of Possible Arbitrators to the Parties. The procedure and timing in that case shall be the same as that for the first List of Possible Arbitrators. If, for any reason, a Neutral Arbitrator cannot be obtained from the second List of Possible Arbitrators, the Independent Administrator shall randomly select a Neutral Arbitrator from the other members on the panel who have not been named on either prior List of Possible Arbitrators.

g. If a Neutral Arbitrator should die, become incapacitated, be disqualified, or otherwise become unable or unwilling to proceed with the arbitration after appointment, the Independent Administrator shall serve the Parties with a new List of Possible Arbitrators and the selection process as set out in Rules 16 through 18 shall begin again.

19. Acceptance by the Neutral Arbitrator

a. If a person in the Independent Administrator's pool is appointed as the Neutral Arbitrator in a case and either served a notice saying no further work by the Parties or the attorneys would be accepted during the

pendency of the case, or failed to serve any Standard 12(b) disclosure, the person shall be removed from the pool until the case is closed.

b. When a person agrees to act as a Neutral Arbitrator under Rule 18, the Independent Administrator shall send the person a copy of these Rules [,an Agreement to Serve Form] and a Letter Confirming Service. The Independent Administrator shall also serve the Parties with a copy of the Letter Confirming Service. [The prospective Neutral Arbitrator shall sign and serve the Agreement to Serve Form as soon as possible.]

20. Disclosure and Challenge

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

b. The Neutral Arbitrator shall make all further disclosures as required by law, including California Code of Civil Procedure Section 1281.9 or its successor statute and the Ethics Standards simultaneously upon the Parties and the Independent Administrator. Party responses, if any, shall be in accordance with the code, with a copy served to the Independent Administrator.

21. Postponement of Selection of Neutral Arbitrator

a. The Claimant(s) may obtain a single [ninety (90) day] postponement of up to ninety (90) days for [of] the appointment of the Neutral Arbitrator by serving a written request for postponement on the Independent Administrator on or before the date that the response to the List of the Possible Arbitrators is due under Rule 16. Claimant(s) shall serve a copy of this request for postponement on the Respondent(s). Regardless of the number of Claimants, Claimant(s) is entitled to only a single ninety (90) day postponement of the appointment of the Neutral Arbitrator.

b. If the Claimant(s) agrees in writing, Respondent(s) may obtain a single ninety (90) day postponement for [of] the appointment of the Neutral Arbitrator. Respondent(s) shall serve a written request for postponement on the Independent Administrator before the date that the response to the List of the Possible Arbitrators is due under Rule 16.c.

c. There shall be only one postponement whether made by either Claimant(s) or Respondent(s) pursuant to this Rule in any arbitration.

22. Selection of the Party Arbitrator

a. If the Parties are entitled to a Party Arbitrator and have not waived that right, the Claimant(s) and the Respondent(s) shall each select a Party Arbitrator and notify the Independent Administrator and the Neutral Arbitrator of the Party Arbitrator's name, address, and telephone and fax numbers. Each Party Arbitrator shall sign the Agreement to Serve, and submit it to the Independent Administrator before serving in the arbitration.

b. If possible, the Parties should select the Party Arbitrators before the Arbitration Management Conference that is set forth in Rule 25. Any Party

Arbitrator who is selected after the Arbitration Management Conference shall conform to any arbitration schedule established prior to his or her selection. Notwithstanding any other Rule, if a Party Arbitrator has not been selected, or has not signed the Agreement to serve, or does not attend a hearing, conference or meeting set by the Neutral Arbitrator of which the Party Arbitrator or Party had notice, the remaining Arbitrators may act in the absence of such Party Arbitrator**.**

c. Regardless of the number of Claimants or Respondents, all of the Claimant(s) are entitled to only one Party Arbitrator and all of the Respondent(s) are entitled to only one Party Arbitrator.

d. No Claimant, Respondent, or attorney may act as Party Arbitrator in an arbitration in which he or she is participating in any other manner.

23. Appointment of Chairperson

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

C. RULES FOR REGULAR PROCEDURES

24. Deadline for Disposing of Arbitrations

a. Unless Rule 24.b, 24.c, or 33 applies, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within eighteen (18) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. <u>The Parties and Arbitrator are encouraged to complete the arbitration in less time than the maximums set forth in the Rules, if that is consistent with a just and fair result</u>.

b. If all of the Parties and their counsel agree that the claim is a complex case and the Neutral Arbitrator agrees, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within twenty-four (24) to thirty (30) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Designation of Complex Arbitration Form upon the Independent Administrator.

c. There may be some small number of extraordinary cases which cannot be disposed of within thirty (30) months, such as those where the damages or injuries cannot be ascertained within that time. If all the Parties, counsel, and Neutral Arbitrator agree, the Neutral Arbitrator may select a later date for disposition of the case. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Designation of Extraordinary Arbitration Form upon the Independent Administrator. This form will set forth the reason for this designation and the target disposition date.

d. [The Parties and Arbitrator are encouraged to complete the arbitration in less time than the maximums set forth in the Rules, if that is consistent with a just and fair result.] It is the Neutral Arbitrator's responsibility to set a hearing date and to ensure that the arbitration proceeds within the time limits set out in these Rules. [While,] Failure by the Parties, counsel, or Neutral Arbitrator to comply with this Rule may subject them to sanction, removal as Neutral Arbitrator, or removal from the pool of Neutral Arbitrators. However, this Rule is not a basis to dismiss an arbitration or a claim. Nothing in this paragraph affects the remedies otherwise available under law for violation of any other Rule.

25. Arbitration Management Conference

a. The Neutral Arbitrator shall hold an Arbitration Management Conference with the attorneys representing the Parties, or the Claimant in pro per and the attorney(s) representing Respondent(s) [Parties and their attorneys] within sixty (60) [forty-five (45)] days of the date of the Letter Confirming Service of the Neutral Arbitrator. The Neutral Arbitrator shall give notice to the Parties of the time and location at least ten (10) days in advance. The Arbitration Management Conference may be conducted by telephone or by video conference if such facilities are available.

b. The Neutral Arbitrator shall discuss, but is not limited to, the following topics:

i. the status of the Parties, claims, and defenses;

ii. a realistic assessment of the case;

iii. any pending or intended motions;

iv. completed and intended discovery;

v. the procedures to be followed, including any written submissions the Neutral Arbitrator requires or permits; and

vi. if appropriate, whether the Parties have or will waive any Party Arbitrator.

c. At the Arbitration Management Conference, the Arbitrator shall establish:

i. the schedule for motions and the mandatory settlement meeting and

ii. the dates of the Arbitration Hearing. The Arbitrator and the Parties shall schedule the Arbitration Hearing for consecutive days if more than one day is necessary. If the Arbitrator permits post-Arbitration briefs, the dates for the Arbitration Hearing must be set early enough to ensure that it will be closed within the deadlines established in Rule 24.

d. If any of the Parties is not represented by counsel, the Neutral Arbitrator should explain the process to be followed at the Arbitration Hearing, use of motions, need for expert witnesses, costs, etc.

e. The Neutral Arbitrator shall record all deadlines established by the Neutral Arbitrator during the Arbitration Management Conference on the Arbitration Management Conference Form. The Neutral Arbitrator shall serve the Arbitration Management Conference Form on the Parties and the

Independent Administrator within five (5) days of the Arbitration Management Conference. The Neutral Arbitrator shall also serve a copy of the Arbitration Management Conference Form on the Party Arbitrators if and when they are named.

f. At any time after the Arbitration Management Conference, the Neutral Arbitrator may require, or the Parties may request, additional conferences to discuss administrative, procedural, or substantive matters and to assure that the case continues to move expeditiously. Neutral Arbitrators are encouraged to conduct such conferences [may be conducted] by telephone or video conference if facilities are available.

26. Mandatory Settlement Meeting

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

b. This Rule sets a deadline for the Parties to conduct a mandatory settlement meeting. The Parties are encouraged to engage in settlement discussions at an earlier date.

27. Discovery

a. Discovery may commence as soon as the Health Plan serves Claimant(s) with a copy of the Transmission Form, unless some Party objects in writing. If a Party objects, discovery may commence as soon as the Neutral Arbitrator is appointed. Discovery shall be conducted as if the matter were in California state court. Any extension of time for completion of discovery shall not affect the date of the Arbitration Hearing.

b. The Parties should address problems stemming from the discovery process to the Neutral Arbitrator for rulings. The time for serving any discovery motions shall commence as required by the California Code of Civil Procedure or upon the appointment of the Neutral Arbitrator, whichever is later.

c. If the Claimant(s) requests and at the Claimant's expense, Health Plan or the affiliated entities that are named as Respondent(s) shall serve a copy of that portion of Claimant's medical records requested on the Claimant(s) within thirty (30) days of Claimant's request.

d. At the request of the Parties and as would be permitted in state court, the Neutral Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive or private information.

28. Postponements

a. Any postponement of dates other than that set out in Rule 21 shall be requested in writing from the Neutral Arbitrator if one has been appointed or from the Independent Administrator if the Neutral Arbitrator has not been appointed or has become incapacitated. The request shall set out good cause for the postponement and whether the other Party agrees. Postponements, absent extraordinary circumstances, shall not prevent the Arbitration Award [Hearing] from being served [completed] within the time periods specified in Rule 24. Failure of the parties to prepare for a scheduled hearing or to keep the hearing dates free from other commitments does not constitute extraordinary circumstances.

b. Whenever a Party requests a postponement of an Arbitration Hearing, the request must be in the form of a written motion to the Neutral Arbitrator, with a copy served on the Parties.

i. The motion must state the reasons for the request.

ii. The Neutral Arbitrator must issue a written order that either denies or grants the motion for postponement, states who made the motion, and gives the reason for the decision. The order must be served on the parties and the Independent Administrator. If the Neutral Arbitrator grants the motion, the order must state the date to which the hearing has been postponed.

iii. If the motion for a postponement is granted, the Neutral Arbitrator has the discretion to enter an order requiring that the Neutral Arbitrator's costs and fees associated with the postponement of an Arbitration Hearing be paid by the party requesting the postponement

29. Failure to Appear

a. The arbitration may proceed in the absence of a Party, a Party's attorney, or a Party Arbitrator who, after due notice of the date, time, and location of the Arbitration Hearing, or any other conference or hearing, fails to be present and failed to obtain a postponement. If the date of the Arbitration Hearing has not been changed, service of the Arbitration Management Conference Form on a Party shall constitute due notice.

b. An Award shall not be made solely on the default of a Party. The Arbitrator may require each Party who attends to submit such evidence as the Arbitrator requires for the making of an Award.

30. Securing Witnesses for the Arbitration Hearing

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

31. Close of Hearing or Proceeding

a. When the Parties have rested, the Neutral Arbitrator shall declare the Arbitration Hearing closed.

b. The Neutral Arbitrator may defer the closing of the Arbitration Hearing until a date agreed upon by the Neutral Arbitrator and the Parties, to permit the Parties to submit post-Hearing papers. The date for the post-Hearing submissions shall not be more than fifteen (15) days after the Parties have rested. If post-Hearing papers are to be submitted, the Arbitration Hearing will be deemed closed on the date set for the submission. If a Party fails to submit the papers by the closing date, the Neutral Arbitrator need not accept or consider them.

c. The time limit under Rule 37 for the Neutral Arbitrator to make the Award shall begin to run upon the closing of the Arbitration Hearing or proceeding. The late filing of a post-hearing paper shall not affect the deadline for making the Award.

32. Documents

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

D. RULES FOR EXPEDITED PROCEDURES

33. Expedited Procedures

a. Expedited Procedures are available in an arbitration where the Claimant(s) requires an Award in less time than that set out in Rule 24.a. The need for the Expedited Procedures shall be based upon any of the following:

i. a Claimant or member suffers from an illness or condition raising substantial medical doubt of survival until the time set for an Award according to Rule 24.a; or

ii. a Claimant or member seeks a determination that he or she is entitled to a drug or medical procedure that the Claimant or member has not yet received; or

iii. other good cause.

b. The Claimant(s) and Respondent(s) may submit evidence, including declarations by physicians or others, to establish any of these criteria.

c. If either the Independent Administrator or the Neutral Arbitrator decide that Expedited Procedures are required, the arbitration shall be disposed of within the time set out in that order. No extension of that time is allowed.

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

34. Seeking Expedited Procedures from the Independent Administrator

a. If Claimant(s) believes that Expedited Procedures are required and a Neutral Arbitrator has not yet been appointed, the Claimant(s) may serve a

written request, with a brief statement of the reason for request for Expedited Procedures and the length of time in which an Award is required, on the Independent Administrator, with a copy to Respondent(s). Respondent(s) shall provide written opposition to the request for Expedited Procedures, if any, within seven (7) days of the date of the request. The Independent Administrator shall decide the request and inform the Parties of the decision no later than five (5) days after any opposition by Respondent(s) is due.

b. Should the Independent Administrator determine that Expedited Procedures are necessary, the selection procedures set out in Section B of these Rules shall be followed except that no ninety (90) day continuance shall be allowed and the Independent Administrator shall require that the Neutral Arbitrator agree to render an Award within the period required.

c. After the Neutral Arbitrator is appointed, he or she shall promptly confer with the Parties to decide what schedule, actions, or modifications of these Rules will be needed to meet the deadline. The Neutral Arbitrator shall issue any additional orders that are necessary to assure compliance with that deadline and serve the Independent Administrator with a copy of such orders. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions.

35. Seeking Expedited Procedures from the Neutral Arbitrator

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

36. Telephonic Notice

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

E. RULES ON AWARD AND ENFORCEMENT

37. Time of Award

The Neutral Arbitrator shall serve the Award on the Parties and the Independent Administrator promptly. Unless otherwise specified by law, the Neutral Arbitrator shall serve the Award <u>in Extraordinary and Complex cases, no later than thirty (30) business days after the closing of the Arbitration hearing, and in all other cases</u>, no later than <u>fifteen (15) business</u> [ten (10)] days after the date of the closing of the Arbitration Hearing. <u>If post arbitration briefs are submitted, the Arbitration Hearing is closed on the date the briefs are due</u>.

38. Form of Award

a. A majority of the Arbitrators shall sign the Award. The Award shall specify the prevailing Party, the amount and terms of the relief, if any, and the reasons for the decision. The reasons for the decision will not become part of the Award nor be admissible in any judicial proceeding to enforce or vacate the Award. The Arbitrator may use the Arbitration Award Form. The Neutral Arbitrator shall be responsible for preparing the written Award.

b. As required by California regulation, all written decisions must contain the following language in bold, twelve (12) point type,

"Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care."

39. Delivery of the Award

a. The Neutral Arbitrator shall serve a copy of the Award on the Parties and Independent Administrator by mail.

b. Respondent(s) shall redact the Award by eliminating the names of the enrollees, the plan, witnesses, providers, health plan employees, and health facilities.

c. Respondent(s) shall serve the redacted Award on the Independent Administrator and Claimant(s). The redacted version of the Award will become part of the Neutral Arbitrator's file.

40. Notice after Settlement or Withdrawal

a. At any point in the proceedings, if the Parties reach a settlement, they shall promptly inform the Neutral Arbitrator and the Independent Administrator in writing. Upon receiving such notice, the Independent Administrator shall deem the arbitration terminated.

b. If a Claimant decides to withdraw a demand, the Claimant or the Claimant's attorney shall serve a notice of withdrawal upon Respondent, the Neutral Arbitrator, and the Independent Administrator.

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

41. Sanctions

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

42. Release of Documents for Judicial Proceedings

The Independent Administrator shall, upon the written request of and payment by a Party, furnish to the Party, at the Party's expense, copies of any papers, notices, process or other documents in the possession of the

Independent Administrator that may be required in judicial proceedings relating to that Party's arbitration.

F. RULES OF ADMINISTRATION

43. Counting of Days

a. Unless a Rule specifies otherwise, "days" mean calendar days. Thus, all days, including holidays, Saturdays and Sundays are to be counted when counting the number of days. In determining the date an action is required, the date of the event or document that triggers the action is not included, but the date by which the action must occur is included.

b. If a Rule refers to "business days," federal holidays, Saturdays, and Sundays are excluded when counting the number of days.

c. If the date on which some action is to be taken, or a notice, process, or other communication would otherwise be required to be sent or a period would otherwise expire, falls on a holiday, a Saturday, or a Sunday, the date is extended to the next succeeding business day.

44. No Limit on Immunity

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

45. Neutral Arbitrator Fees

a. If the Neutral Arbitrator was selected from the List of Possible Arbitrators, the Neutral Arbitrator's compensation for an arbitration shall accord with the fees and terms sent out to the Parties by the Independent Administrator with the List of Possible Arbitrators.

b. The Independent Administrator is not responsible for, or involved in the collection of, the Neutral Arbitrator's fees.

46. Expenses

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

47. Forms

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

48. Questionnaire

a. At the conclusion of the arbitration, the Neutral Arbitrator shall complete and timely return the arbitration questionnaire supplied by the Independent Administrator. This information may be used by the Independent Administrator and the Arbitration Oversight Board ("AOB") in evaluating the arbitration system.

b. If the Independent Administrator received the Demand for Arbitration on or after January 1, 2003, at the conclusion of the arbitration, the Neutral Arbitrator shall inform the Independent Administrator of the

total fee and the percentage of fee allocated to each party. This information will be used by the Independent Administrator to comply with the disclosure requirements of California law.

49. Evaluation

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

50. Amendment of Rules

a. The AOB [Independent Administrator] may amend these Rules in consultation with the Independent Administrator and Health Plan [Arbitration Advisory Committee]. The Rules in effect on the date the Independent Administrator receives the Demand for Arbitration will apply to that arbitration throughout unless the Parties agree in writing that another version of the Rules applies. The Parties shall serve a copy of that agreement on the Independent Administrator.

b. If the relevant law changes or an event occurs which is not contemplated by these Rules, the Arbitration Oversight Board [Independent Administrator] may adopt a new Rule(s) to deal adequately with that event. New Rule(s) shall apply to all pending arbitrations if the AOB deems such a change necessary notwithstanding Rule 50.a. Any such new Rule(s) shall be created in consultation with the Independent Administrator and Health Plan and shall not be inconsistent with existing Rules [and shall be created in consultation with the Arbitration Advisory Committee] unless the Independent Administrator agrees to the change. The Independent Administrator shall serve all Parties and Arbitrators in pending arbitrations with a copy of any such new Rule(s) and it shall be binding upon the Parties and Arbitrators.

c. In the event of an urgent condition that in the judgment of the Independent Administrator threatens the orderly administration of the arbitration system, with the concurrence of the Chair or Vice-Chair of the AOB, the Independent Administrator shall adopt such temporary rules as it deems necessary to preserve the orderly administration of the arbitration system.

51. Conflict with Law

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

52. Acknowledgment of No Warranty

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

53. Public Reporting

Annually, the Independent Administrator will report in a collective fashion the lengths of times it took to complete various tasks in the process of adjudicating the claims, how the arbitrations were disposed of, and the choices made by the Parties and Arbitrators. This report may be available

to the public. The Independent Administrator will also post on its website disclosures required by statute or the Ethics Standards.

54. Legal Advice

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

Information for Claimants Who Do Not Have Attorneys

Lawyers say that a claimant who represents him or herself in a legal action without an attorney's help is acting *in propria persona*, or "in pro per." The Office of the Independent Administrator provides the following information to assist claimants who are acting in pro per. We make this offer in order to help pro pers understand our system and its procedures. However, we can never provide legal advice because we do not take sides in any case.

What is the Office of the Independent Administrator?
The Office of the Independent Administrator, or OIA, is a neutral, independent body that oversees arbitrations brought by Kaiser members under the Health Plan's contracts with its members and their employers. These arbitrations are controlled by the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator*. Claimants acting in pro per should carefully and thoroughly read these *Rules*. The OIA will answer questions about these *Rules* at any time. Just call us at the number which appears below. However, we do not give legal advice. This means that we will tell you what our *Rules* mean and how to follow them, but we will not advise you on how they might affect your specific case.

What is arbitration?
Arbitration is a legal process. An arbitration hearing is like a court hearing. You and the other side present witnesses, including medical experts, and other evidence. Unlike many court trials, there is no jury. Throughout the process, a neutral arbitrator acts as a judge, or neutral fact finder. The neutral arbitrator cannot give legal advice to you or to the other party. The neutral arbitrator decides the case based on his or her interpretation of the law, as it applies to the evidence presented by the parties. The decisions of the neutral arbitrator are final, legally binding and enforceable in court. Only very rare exceptions allow the decision to be changed.

Are arbitration and mediation different?
Yes. Arbitration is not mediation. Mediation is a process where the people involved in a dispute attempt to solve their problem with the help of a neutral person, called "the mediator." Unlike an arbitrator, a mediator has no authority to impose a decision on the parties.

Is a medical expert always necessary to prove a claim of medical malpractice?
Under California law, testimony from a medical expert is nearly always required to prove medical malpractice. This is true in both arbitration and in court. Almost always, if you do not have a medical

expert, you will lose your claim. Neither the neutral arbitrator nor the OIA can assist any party in locating or hiring a medical expert.

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

If you do not have a medical expert, the respondent (Kaiser) will almost always bring a motion for summary judgment, and the arbitrator will almost always grant this motion because the law requires it. Summary judgment motions can also be brought on other bases. The case is over if summary judgment is granted. This means that, at a hearing on a motion for summary judgment, if a claimant does not offer expert medical testimony, or otherwise offer effective legal reasons in opposition to the motion, the arbitrator must grant the motion and close the case. Summary judgment is a decision on the law alone, and no facts are involved. Please note that when a case ends in this fashion, there will be no hearing on the facts, and no opportunity to present witnesses and other evidence. Cases heard in court also end in summary judgment.

Are any other expert witnesses needed during the arbitration process?

Sometimes there are. For example, claimants seeking damages for lost wages may need the testimony of an economist. Other experts may be needed depending on the nature of the claim.

May I ask a friend or relative for assistance in presenting my case?

You may not be represented by someone who is not an attorney. This means that you may not ask a friend or relative to help you present your case at a hearing or conference, unless that person is an attorney representing you in the matter.

What is *ex parte* communication?

Ex parte communication occurs when one party (claimant or respondent) talks or writes to the neutral arbitrator without giving the other party a chance to participate or respond. *Ex parte* communication is prohibited, unless it concerns the schedule or location of a hearing or conference. If you need to contact the neutral arbitrator for any other reason, you should write a letter to the neutral arbitrator and send a copy of the letter to the respondent. You may also request a conference call with the neutral arbitrator and respondent.

What are my responsibilities when I decide to proceed without a lawyer?

Both in court and in arbitration, people may represent themselves and do not have to hire attorneys. However, in doing so, the person assumes all the responsibilities of a lawyer. That means, for example, that the person must learn the California law that applies to the case, meet deadlines, locate and subpoena witnesses where that is necessary, and identify, hire and pay expert witnesses where they are needed. Some of these tasks take time, are complicated, are expensive and must be prepared for some time in advance. If the person's lawyer would normally have done a task, the claimant representing him or herself must do that task both in arbitration and in court. If this sounds like a lot of work, it is. It is difficult, and an arbitrator is not supposed to make the requirements any easier to meet because a person has chosen to represent him or herself. We

encourage people to retain attorneys for arbitration. However, a quarter of the OIA case load is individuals acting in pro per. We help them to understand our *Rules* and procedures as much as we can. However, we stress that neither the OIA nor the neutral arbitrator can help parties by giving them legal advice or by assisting them on factual matters such as how to locate an expert witness.

Are there any other resources to help claimants acting in pro per?

There are useful books written for claimants acting in pro per. Please check your local library or bookstore. If you need help finding a lawyer, call the State Bar or local County Bar Association.

If you have any questions, please call the OIA at (213) 637-9847. You may obtain extra copies of the Rules, our forms and other helpful items at our website: www.oia-kaiserarb.com.

EXHIBIT D

Application for Neutral Arbitrators

Neutral Arbitrator Application
Kaiser Permanente Arbitration System

Answer each of the following questions completely. Type or clearly print your responses. Attach additional answer sheets as necessary. You may attach your resume, but please do not reference your resume in your answers unless a question specifically permits you to do so. Copies of your application will be provided to participants in Kaiser's arbitration system.

I. PROFILE

Name: _____

Title Preference: _____

Business or Firm Name: _____

Business or Firm Address: _____

Business Telephone: _____ Business Fax: _____

Business E-mail Address: _____

II. ADMISSIONS AND AFFILIATIONS

Date admitted to the California Bar: _____ Bar No: _____

Active:____ Inactive:____ Date First Inactive (if judge, date of resignation): _____

Other state bars to which you are admitted (include states, dates of admission and bar numbers):

_____

_____

Memberships and positions held in bar, ADR professional or other panels, boards, agencies and associations relevant to arbitration, health care, or medical malpractice law:

_____

_____

Courts or organizations for which you serve as a neutral arbitrator (list court/organization and program):

_____

_____

_____

III. LANGUAGES

LANGUAGES List any languages other than English which you speak and understand and in which you would be willing to conduct arbitrations:

_____

_____

IV. KAISER MEMBERSHIP

I_____am/_____am not currently a member of Kaiser Foundation Health Plan

I_____have/_____have not been a member of Kaiser Foundation Health Plan within the last five years.

V. EDUCATION (College and Graduate) List all schools attended, degrees and years received:

VI. EMPLOYMENT Set forth all employment (without omissions) for the last ten years. Provide employer, primary occupation, and dates of employment.

VII. LEGAL EXPERIENCE Summarize your legal experience (including teaching) since admission to the bar, particularly in the past ten years.

Percentage of practice in the last ten years representing: plaintiff _____ % defense _____ %

Percentage of federal or state court practice in the last ten years: federal _____ % state _____ %

Number of years in the last ten years in which litigation occupied more than 50% of your time: _____

I have had at least three civil trials or arbitrations within the past five years in which I have served as _____ the lead attorney for one of the parties or _____ an arbitrator.

VIII. CURRENT PRACTICE State the percentages of your current practice in the following roles:

As a neutral arbitrator, judge, or hearing officer: _____ %

As a defense party arbitrator: _____ % As a plaintiff's party arbitrator: _____ %

As a defense attorney: _____ % As a plaintiff's attorney: _____ %

As an expert: _____ % As an _____ : _____ %
(list other role)

In descending order, list the subject areas of law in which you are currently most active.

Area of Law Percentage of Practice

a. _____

b. _____

c. _____

d. _____

IX. ARBITRATION EXPERIENCE Summarize your arbitration experience in the last ten years. Include your role or roles (e.g., neutral arbitrator, party arbitrator, hearing officer, plaintiff's counsel, defense counsel, expert, etc.), number of years in each role, approximate number of cases in which you have participated in each role, and whether you are currently serving in any of these roles. _____

Have your actions as an arbitrator figured in a published legal opinion? If so, please provide the citation. _____

X. ARBITRATION TRAINING Describe any arbitration training you have received. For each training, list the training provider's name, length of training, dates of training, and a brief description of the training. You may reference a specific section of your resume that sets out your training related to arbitration._____

XI. MEDICAL MALPRACTICE EXPERIENCE Have you been involved in any medical malpractice case within the past ten years? If so, set forth the years of your involvement, your role (e.g., plaintiff's counsel, defense counsel, neutral arbitrator, party arbitrator, hearing officer, expert, litigant, etc.), and the approximate number of cases in each role. _____

XII. OTHER RELEVANT EXPERIENCE Describe any other relevant experience. _____

XIII. PREVIOUS INVOLVEMENT IN KAISER CASES Set forth your involvement, if any, in any case involving Kaiser Permanente or any affiliated entity or individual within the past five years. For each case, identify your role (e.g., neutral arbitrator, plaintiff/claimant party arbitrator, defense party arbitrator, judge, hearing officer, plaintiff/claimant counsel, defense counsel, expert, litigant etc.), whether the case went to verdict and, if so, for which side the verdict was rendered (plaintiff or defense), and the amount of the award, if any. _____

To the best of your recollection, were you involved in any Kaiser case prior to five years ago? If so, to the best of your recollection, state your role or roles. State the approximate number of cases in which you were involved. Be as specific as your records or recollection will permit.

XIV. EXPEDITED HEARINGS Are you willing to act as a neutral arbitrator for expedited claims that must be completed within five months or less of the date you are appointed?

Yes _____ No _____

XV. PRO PER CASES Are you wiling to act as a neutral arbitrator for cases in which one or both parties are not represented by counsel?

Yes _____ No _____

XVI. INSURANCE Do you carry insurance that covers your activities as a neutral arbitrator?
Yes _____ No _____If no, do you intend to obtain such insurance before working on arbitrations administered by the Office of the Independent Administrator?
Yes _____ No _____

XVII. CONVICTIONS, SANCTIONS AND DISCIPLINE Answer each question:

Have you ever been convicted of a crime? Yes _____ No _____
If so, attach an explanation.

Have you ever been sanctioned by a court for $1,000 or more? Yes _____ No _____
If so, attach an explanation.

Have you ever been disciplined by any court, administrative agency, bar association, or other professional group? Yes _____ No _____
If so, attach an explanation.

XVIII. REFERENCES

I am providing references for my work (check your role(s) and provide references as set forth below):

____ as an arbitrator. List the name, addresses, and telephone numbers of counsel for the plaintiff and the defense **in the last five** arbitrations or civil trials for which you served as a neutral arbitrator, judge or hearing officer. Provide a total of ten contacts.

____ as an attorney. List the name, addresses, and telephone numbers of opposing counsel and neutral arbitrators, judges, or hearing officers **for the last five** arbitrations or civil trials in which you participated. Provide a total of ten contacts.

____ as a _____. (Other - please describe.) List the names addresses, and telephone numbers of counsel and/or arbitrators, judges, or hearing officers **in the last five** arbitrations or civil trials in which you participated. These references must reflect different sides in the arbitration or civil trials and must be able to provide a report of how you handled yourself in an arbitration or civil trial:

You may provide references for yourself in different roles (e.g., two references for your work as an arbitrator and three references for your work as an attorney).

Matter #1. My role_____
Reference's role_____Reference's name, address and telephone number:
_____
Reference's role_____Reference's name, address and telephone number:
_____

Matter #2. My role_____
Reference's role_____Reference's name, address and telephone number:
_____
Reference's role_____Reference's name, address and telephone number:
_____

Matter #3. My role_____
Reference's role_____Reference's name, address and telephone number:
_____
Reference's role_____Reference's name, address and telephone number:
_____

Matter #4. My role_____
Reference's role_____Reference's name, address and telephone number:
_____
Reference's role_____Reference's name, address and telephone number:
_____

Matter #5. My role_____
Reference's role_____Reference's name, address and telephone number:
_____
Reference's role_____Reference's name, address and telephone number:
_____

XIX. TRAVEL Complete the following.

Check one.___I am applying to conduct arbitrations in Northern California.

Northern California includes Alameda, Contra Costa, Marin,
San Francisco, San Mateo, Sonoma, Napa, Solano, Sacramento,
Yolo, San Joaquin, Santa Clara, Stanislaus, Placer and Fresno counties.

___I am applying to conduct arbitrations in Southern California.

Southern California includes, Kern, Ventura, Los Angeles,
Orange, San Bernardino, Riverside and San Diego counties.

Are you willing to travel anywhere within the half of the state you check above to hear arbitration cases? Yes _____ No _____

Check all that apply. I am willing to travel to the following counties without charging for travel time or travel expenses:

Northern California: Alameda County___ Contra Costa County___ Marin County___

San Francisco County___San Mateo County___Sonoma County___Napa County___

Solano County___ Sacramento County___ Yolo County___San Joaquin County___

Santa Clara County___ Stanislaus County___ Placer County___ Fresno County___

Southern California: Kern County___Ventura County___ Los Angeles County___

Orange County___San Bernardino County___Riverside County___San Diego County__

Indicate your terms and charges, if any, for time spent in transit._____

_____

Indicate your terms and charges, if any, for transportation costs._____

_____

XX. AFFIRMATION

My signature on this form affirms that the foregoing statements and all attached information are true and correct to the best of my knowledge. I understand that any misrepresentation, or any failure on my part to supply information requested by the Office of the Independent Administrator may constitute a basis for my disqualification or withdrawal of my name as an arbitrator for Kaiser Permanente matters. I understand that if I am selected as a member of the Office of the Independent Administrator's panel of neutral arbitrators, copies of this application and all information I attach to it will be available to claimants, their attorneys, Kaiser Permanente, its attorneys, the Office of the Independent Administrator, and Kaiser Permanente's Arbitration Advisory Committee. I also understand that the Independent Administrator may attempt to verify any of the information contained in it. I consent to that process.

_____ _____

Signature Date

Schedule of Fees and Costs

Answer each of the following questions completely. Type or clearly print your responses. Attach additional answer sheets as necessary. Copies of this form will be provided to participants in Kaiser's arbitration program.

Arbitrator's Name _____

1. State the fees and charges for your services.

   a. Hearing fees: _____per hour or _____per day

      If daily, what are your charges for partial days? _____

   b. Meeting fees: _____per hour or _____per day

      If daily, what are your charges for partial days?

   c. Fees for study or document review: _____per hour or _____per day

      If daily, what are your charges for partial days? _____

   d. Do you charge for travel time? Yes ___ No ___

      If so, what do you charge? _____

   e. Do you charge for expenses? Yes ___ No ___

      If so, for what expenses, and how much? _____

   f. Do you charge for any postponed or canceled proceedings (conference, telephone call, meeting, hearing, etc.) during the course of an arbitration? Yes ___ No ___
      If so, what are the terms and charges? _____
      _____
      _____

   g. Do you charge a cancellation fee if a case settles before the hearing date?
      Yes ___ No ___ If so, describe the terms and charges in this situation. _____
      _____

   h. Describe any requirements you have regarding the timing of payments. _____
      _____
      _____

2. Can you provide space for any or all of the arbitration proceedings? Yes ___ No ___
If so, set forth the location of the space and any applicable charges. Also, please state whether you require the use of such space. _____

_____

_____

_____

_____

3. Set forth any other fees, terms or conditions you require in the event that you are selected to sit as a neutral arbitrator for an arbitration administered by the Office of the Independent Administrator. Include a copy of any forms, stipulations or other agreements that you require be signed by the parties in order for you to serve as a neutral arbitrator in any such matter. ___

_____

_____

_____

_____

_____

_____

4. My signature on this form affirms that the foregoing statements and all attached information is true and correct to the best of my knowledge. I understand that I may not change the fees I charge for arbitrations administered by the Office of the Independent Administrator during my first year of service, but may do so annually thereafter. I understand that any misrepresentation, or any failure on my part to supply information requested by the Office of the Independent Administrator may constitute a basis for my disqualification or withdrawal of my name as an arbitrator for matters administered by the Office of the Independent Administrator.

_____ _____

Signature Date

Certificate of Veracity, Consent and Understanding

The information contained in my application, and any attachments thereto, is true and accurate to the best of my knowledge, information and belief. In addition, I consent to and understand the following:

1. I understand that if my application is accepted, I will not be an employee or agent of the Office of the Independent Administrator. I understand that, if selected, I will become a member of the Neutral Arbitrator Panel organized and maintained by the Office of the Independent Administrator. The Office of the Independent Administrator may include my name on lists of neutral arbitrators from which claimants, their counsel, Kaiser Permanente, and its counsel will select one arbitrator.

2. I understand that submission of an application for the Neutral Arbitrator Panel does not guarantee that I will be accepted on the panel and that the Office of the Independent Administrator has complete discretion to make additions, changes and deletions to the composition of the Neutral Arbitrator Panel at any time.

3. I understand that my acceptance as a member of the Neutral Arbitrator Panel does not obligate the Office of the Independent Administrator to propose me for appointment as a neutral in any case, nor guarantee that I will be selected by the parties to serve as a neutral arbitrator. Further, I recognize that I am under no obligation to accept appointments.

4. I consent to disclosure of the information contained in my application to parties and their counsel, the Office of the Independent Administrator and Kaiser Permanente's Arbitration Advisory Committee. I further consent that the information in this application is subject to verification by any or all of them.

5. I understand that the Office of the Independent Administrator will undertake to update information contained in my application at least once per year. I consent to provide such updated information. Notwithstanding the annual update, I agree to promptly notify the Office of the Independent Administrator if there is any material change in the information provided in my application. I agree to notify the Office of the Independent Administrator and parties in any proceedings administered by it of any change of address, telephone number, or fax number within five days.

6. I understand and agree that I am responsible for billing and collecting fees and expenses directly from the parties to any arbitration. I understand that compensation that may become due me for services as a neutral arbitrator is the sole and direct obligation of the parties to the dispute and that the Office of the Independent Administrator has no liability to me for billing or payment.

7. I understand that I may not change the fees I charge for arbitrations administered by the Office of the Independent Administrator during my first year of service. Further, I understand that changes in the terms of my compensation, following my first year of acceptance to the panel, may be made once per year as part of the application update process conducted by the Office of the Independent Administrator.

8. I understand that when being considered as a neutral arbitrator by prospective parties, I will be required to disclose any potential conflicts of interest either I or my firm or my employer may have. I understand that these conflicts may result in my disqualification by one or more of the parties.

Print Name _____

Signature _____ Date _____

EXHIBIT E

Qualifications for Neutral Arbitrators

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

1. Neutral arbitrators shall be members of the State Bar of California, members of the state bar of another state with extensive practice in California during the past five years, or retired state or federal judges.

2. Neutral arbitrators shall not have received public discipline or censure from the state bar of California or any other state bar in the past five years. In the case of former judges, they shall not have received public discipline or censure from any government body that has authority to discipline judges in the past five years.

3. Neutral arbitrators shall

(a) have been admitted to practice for at least ten years, with substantial litigation experience; AND

(b) have had at least three civil trials or arbitrations within the past five years in which they have served as either (i) the lead attorney for one of the parties or (ii) an arbitrator; OR

(c) have been a state or federal judge; OR

(d) have completed within the last five years a program designed specifically for the training of arbitrators.

4. Neutral arbitrators shall provide satisfactory evidence of ability to act as an Arbitrator based upon judicial, trial, or legal experience.

5. Neutral arbitrators shall not have served as party arbitrators on any matter involving Kaiser Permanente, or any affiliated organization or individual, within the last five years.

6. Neutral arbitrators shall not presently serve as attorney of record or an expert witness or a consultant for or against Kaiser Permanente, or any organization or individual affiliated with Kaiser Permanente, or have had any such matters at anytime within the past five years.

7. Neutral arbitrators shall successfully complete an application provided by the Independent Administrator.

8. Neutral arbitrators shall follow applicable arbitration statutes, substantive law of the issues addressed, and procedures of the Independent Administrator.

9. Neutral arbitrators shall comply with the provisions of code of ethics selected by the Office of the Independent Administrator.

10. Neutral arbitrators shall administer Kaiser arbitrations in a fair and efficient manner.

EXHIBIT F

2003 Ethics Standards

DIVISION VI. Ethics Standards for Neutral Arbitrators in Contractual Arbitration

Standard 1. Purpose, intent, and construction

(a) These standards are adopted under the authority of Code of Civil Procedure section 1281.85 and establish the minimum standards of conduct for neutral arbitrators who are subject to these standards. They are intended to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.

(b) For arbitration to be effective there must be broad public confidence in the integrity and fairness of the process. Arbitrators are responsible to the parties, the other participants, and the public for conducting themselves in accordance with these standards so as to merit that confidence.

(c) These standards are to be construed and applied to further the purpose and intent expressed in subdivisions (a) and (b) and in conformance with all applicable law.

(d) These standards are not intended to affect any existing civil cause of action or create any new civil cause of action.

Comment to Standard 1

Code of Civil Procedure section 1281.85 provides that, beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to that section.

While the grounds for vacating an arbitration award are established by statute, not these standards, an arbitrator's violation of these standards may, under some circumstances, fall within one of those statutory grounds. (See Code Civ. Proc., § 1286.2.) A failure to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware is a ground for vacatur of the arbitrator's award. (See Code Civ. Proc., § 1286.2(a)(6)(A).) Violations of other obligations under these standards may also constitute grounds for vacating an arbitration award under section 1286.2(a)(3) if "the rights of the party were substantially prejudiced" by the violation.

While vacatur may be an available remedy for violation of these standards, these standards are not intended to affect any civil cause of action that may currently exist nor to create any new civil cause of action. These standards are also not intended to establish a ceiling on what is considered good practice in arbitration or to discourage efforts to educate arbitrators about best practices.

Standard 2. Definitions

As used in these standards:

(a) [Arbitrator and neutral arbitrator]

(1) "Arbitrator" and "neutral arbitrator" mean any arbitrator who is subject to these standards and who is to serve impartially, whether selected or appointed:

(A) Jointly by the parties or by the arbitrators selected by the parties;

(B) By the court, when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them; or

(C) By a dispute resolution provider organization, under an agreement of the parties.

(2) Where the context includes events or acts occurring before an appointment is final, "arbitrator" and "neutral arbitrator" include a person who has been served with notice of a proposed nomination or appointment.

(b) "Applicable law" means constitutional provisions, statutes, decisional law, California Rules of Court, and other statewide rules or regulations that apply to arbitrators who are subject to these standards.

(c) "Conclusion of the arbitration" means the following:

(1) When the arbitrator is disqualified or withdraws or the case is settled or dismissed before the arbitrator makes an award, the date on which the arbitrator's appointment is terminated;

(2) When the arbitrator makes an award and no party makes a timely application to the arbitrator to correct the award, the final date for making an application to the arbitrator for correction; or

(3) When a party makes a timely application to the arbitrator to correct the award, the date on which the arbitrator serves a corrected award or a denial on each party, or the date on which denial occurs by operation of law.

(d) "Consumer arbitration" means an arbitration conducted under a predispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

(1) The contract is with a consumer party, as defined in these standards;

(2) The contract was drafted by or on behalf of the nonconsumer party; and

(3) The consumer party was required to accept the arbitration provision in the contract.

(e) "Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

(1) An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;

(2) An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;

(3) An individual with a medical malpractice claim that is subject to the arbitration agreement; or

(4) An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

(f) "Dispute resolution neutral" means a temporary judge appointed under article VI, section 21 of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, an arbitrator, a

neutral evaluator, a special master, a mediator, a settlement officer, or a settlement facilitator.

(g) "Dispute resolution provider organization" and "provider organization" mean any nongovernmental entity that, or individual who, coordinates, administers, or provides the services of two or more dispute resolution neutrals.

(h) "Domestic partner" means a domestic partner as defined in Family Code section 297.

(i) "Financial interest" means a financial interest within the meaning of Code of Civil Procedure section 170.5.

(j) "Gift" means a gift as defined in Code of Civil Procedure section 170.9(l).

(k) "Honoraria" means honoraria as defined in Code of Civil Procedure section 170.9(h) and (i).

(l) "Lawyer in the arbitration" means the lawyer hired to represent a party in the arbitration.

(m) "Lawyer for a party" means the lawyer hired to represent a party in the arbitration and any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.

(n) "Member of the arbitrator's immediate family" means the arbitrator's spouse or domestic partner and any minor child living in the arbitrator's household.

(o) "Member of the arbitrator's extended family" means the parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, siblings, uncles, aunts, nephews, and nieces of the arbitrator or the arbitrator's spouse or domestic partner or the spouse of such person.

(p) [Party]

(1) "Party" means a party to the arbitration agreement:

(A) Who seeks to arbitrate a controversy pursuant to the agreement;

(B) Against whom such arbitration is sought; or

(C) Who is made a party to such arbitration by order of a court or the arbitrator upon such party's application, upon the application of any other party to the arbitration, or upon the arbitrator's own determination.

(2) "Party" includes the representative of a party, unless the context requires a different meaning.

(q) "Party-arbitrator" means an arbitrator selected unilaterally by a party.

(r) "Private practice of law" means private practice of law as defined in Code of Civil Procedure section 170.5.

(s) "Significant personal relationship" includes a close personal friendship.

Comment to Standard 2

Subdivision (a). The definition of "arbitrator" and "neutral arbitrator" in this standard is intended to include all arbitrators who are to serve in a neutral and impartial manner and to exclude unilaterally selected arbitrators.

Subdivisions (l) and (m). Arbitrators should take special care to note that there are two different terms used in these standards to refer to lawyers who represent parties in the arbitration. In particular, arbitrators should note that the term "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.

Subdivision (p)(2). While this provision generally permits an arbitrator to provide required information or notices to a party's attorney as that party's representative, a party's attorney should not be treated as a "party" for purposes of identifying matters that an arbitrator must disclose under standards 7 or 8, as those standards contain separate, specific requirements concerning the disclosure of relationships with a party's attorney.

Other terms that may be pertinent to these standards are defined in Code of Civil Procedure section 1280.

Standard 3. Application and effective date

(a) Except as otherwise provided in this standard and standard 8, these standards apply to all persons who are appointed to serve as neutral

arbitrators on or after July 1, 2002, in any arbitration under an arbitration agreement, if:

(1) The arbitration agreement is subject to the provisions of title 9 of part III of the Code of Civil Procedure (commencing with section 1280); or

(2) The arbitration hearing is to be conducted in California.

(b) These standards do not apply to:

(1) Party arbitrators, as defined in these standards; or

(2) Any arbitrator serving in:

(A) An international arbitration proceeding subject to the provisions of title 9.3 of part III of the Code of Civil Procedure;

(B) A judicial arbitration proceeding subject to the provisions of chapter 2.5 of title 3 of part III of the Code of Civil Procedure;

(C) An attorney-client fee arbitration proceeding subject to the provisions of article 13 of chapter 4 of division 3 of the Business and Professions Code;

(D) An automobile warranty dispute resolution process certified under California Code of Regulations title 16, division 33.1;

(E) An arbitration of a workers' compensation dispute under Labor Code sections 5270 through 5277;

(F) An arbitration conducted by the Workers' Compensation Appeals Board under Labor Code section 5308;

(G) An arbitration of a complaint filed against a contractor with the Contractors State License Board under Business and Professions Code sections 7085 through 7085.7; or

(H) An arbitration conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

(c) Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before July 1, 2002, are not subject to these standards in those arbitrations. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to standard 8 in those arbitrations.

Comment to Standard 3

With the exception of standard 8, these standards apply to all neutral arbitrators appointed on or after July 1, 2002, who meet the criteria of subdivision (a). Arbitration provider organizations, although not themselves subject to these standards, should be aware of them when performing administrative functions that involve arbitrators who are subject to these standards. A provider organization's policies and actions should facilitate, not impede, compliance with the standards by arbitrators who are affiliated with the provider organization.

Standard 4. Duration of duty

(a) Except as otherwise provided in these standards, an arbitrator must comply with these ethics standards from acceptance of appointment until the conclusion of the arbitration.

(b) If, after the conclusion of the arbitration, a case is referred back to the arbitrator for reconsideration or rehearing, the arbitrator must comply with these ethics standards from the date the case is referred back to the arbitrator until the arbitration is again concluded.

Standard 5. General duty

An arbitrator must act in a manner that upholds the integrity and fairness of the arbitration process. He or she must maintain impartiality toward all participants in the arbitration at all times.

Comment to Standard 5

This standard establishes the overarching ethical duty of arbitrators. The remaining standards should be construed as establishing specific requirements that implement this overarching duty in particular situations.

Maintaining impartiality toward all participants during all stages of the arbitration is central to upholding the integrity and fairness of the arbitration. An arbitrator must perform his or her duties impartially, without bias or prejudice, and must not, in performing these duties, by words or conduct manifest partiality, bias, or prejudice, including but not limited to partiality, bias, or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation,

socioeconomic status, or the fact that a party might select the arbitrator to serve as an arbitrator in additional cases. After accepting appointment, an arbitrator should avoid entering into any relationship or acquiring any interest that might reasonably create the appearance of partiality, bias, or prejudice. An arbitrator does not become partial, biased, or prejudiced simply by having acquired knowledge of the parties, the issues or arguments, or the applicable law.

Standard 6. Duty to refuse appointment

Notwithstanding any contrary request, consent, or waiver by the parties, a proposed arbitrator must decline appointment if he or she is not able to be impartial.

Standard 7. Disclosure

(a) [Intent] This standard is intended to identify the matters that must be disclosed by a person nominated or appointed as an arbitrator. To the extent that this standard addresses matters that are also addressed by statute, it is intended to include those statutory disclosure requirements, not to eliminate, reduce, or otherwise limit them.

(b) [General provisions] For purposes of this standard:

(1) (*Collective bargaining cases excluded*) The terms "cases" and "any arbitration" do not include collective bargaining cases or arbitrations conducted under or arising out of collective bargaining agreements between employers and employees or between their respective representatives.

(2) (*Offers of employment or professional relationship*) If an arbitrator has disclosed to the parties in an arbitration that he or she will entertain offers of employment or of professional relationships from a party or lawyer for a party while the arbitration is pending as required by subdivision (b) of standard 12, the arbitrator is not required to disclose to the parties in that arbitration any such offer from a party or lawyer for a party that he or she subsequently receives or accepts while that arbitration is pending.

(3) (*Names of parties in cases*) When making disclosures about other pending or prior cases, in order to preserve confidentiality, it is sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(c) [Time and manner of disclosure] Within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing all matters listed in subdivisions (d) and (e) of this standard of which the arbitrator is then aware. If an arbitrator subsequently becomes aware of a matter that must be disclosed under either subdivision (d) or (e) of this standard, the arbitrator must disclose that matter to the parties in writing within 10 calendar days after the arbitrator becomes aware of the matter.

(d) [Required disclosures] A person who is nominated or appointed as an arbitrator must disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial, including all of the following:

(1) (*Family relationships with party*) The arbitrator or a member of the arbitrator's immediate or extended family is a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party.

(2) (*Family relationships with lawyer in the arbitration*) The arbitrator, or the spouse, former spouse, domestic partner, child, sibling, or parent of the arbitrator or the arbitrator's spouse or domestic partner is:

(A) A lawyer in the arbitration;

(B) The spouse or domestic partner of a lawyer in the arbitration; or

(C) Currently associated in the private practice of law with a lawyer in the arbitration.

(3) (*Significant personal relationship with party or lawyer for a party*) The arbitrator or a member of the arbitrator's immediate family has or has had a significant personal relationship with any party or lawyer for a party.

(4) (*Service as arbitrator for a party or lawyer for party*)

(A) The arbitrator is serving or, within the preceding five years, has served:

(i) As a neutral arbitrator in another prior or pending noncollective bargaining case involving a party to the current arbitration or a lawyer for a party.

(ii) As a party-appointed arbitrator in another prior or pending noncollective bargaining case for either a party to the current arbitration or a lawyer for a party.

(iii) As a neutral arbitrator in another prior or pending noncollective bargaining case in which he or she was selected by a person serving as a party-appointed arbitrator in the current arbitration

(B) [Case information] If the arbitrator is serving or has served in any of the capacities listed under (A), he or she must disclose:

(i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney representing the party in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case.

(ii) The results of each prior case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(C) [Summary of case information] If the total number of the cases disclosed under (A) is greater than five, the arbitrator must provide a summary of these cases that states:

(i) The number of pending cases in which the arbitrator is currently serving in each capacity;

(ii) The number of prior cases in which the arbitrator previously served in each capacity;

(iii) The number of prior cases arbitrated to conclusion; and

(iv) The number of such prior cases in which the party to the current arbitration, the party represented by the lawyer for a party in the current arbitration or the party represented by the party-arbitrator in the current arbitration was the prevailing party.

(5) (*Compensated service as other dispute resolution neutral*) The arbitrator is serving or has served as a dispute resolution neutral other than an arbitrator in another pending or prior noncollective bargaining case involving a party or lawyer for a party and the arbitrator received or expects to receive any form of compensation for serving in this capacity.

(A) [Time frame] For purposes of this paragraph (5), "prior case" means any case in which the arbitrator concluded his or her service as a dispute resolution neutral within two years before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the arbitrator concluded his or her service before January 1, 2002.

(B) [Case information] If the arbitrator is serving or has served in any of the capacities listed under this paragraph (5), he or she must disclose:

(i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case;

(ii) The dispute resolution neutral capacity (mediator, referee, etc.) in which the arbitrator is serving or served in the case; and

(iii) In each such case in which the arbitrator rendered a decision as a temporary judge or referee, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(C) [Summary of case information] If the total number of cases disclosed under this paragraph (5) is greater than five, the arbitrator must also provide a summary of the cases that states:

(i) The number of pending cases in which the arbitrator is currently serving in each capacity;

(ii) The number of prior cases in which the arbitrator previously served in each capacity;

(iii) The number of prior cases in which the arbitrator rendered a decision as a temporary judge or referee; and

(iv) The number of such prior cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party.

(6) (*Current arrangements for prospective neutral service*) Whether the arbitrator has any current arrangement with a party concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in or, within the last two years, has participated in discussions regarding such prospective employment or service with a party.

(7) (*Attorney-client relationships*) Any attorney-client relationship the arbitrator has or has had with a party or lawyer for a party. Attorney-client relationships include the following:

(A) An officer, a director, or a trustee of a party is or, within the preceding two years, was a client of the arbitrator in the arbitrator's private practice of law or a client of a lawyer with whom the arbitrator is or was associated in the private practice of law;

(B) In any other proceeding involving the same issues, the arbitrator gave advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration; and

(C) The arbitrator served as a lawyer for or as an officer of a public agency which is a party and personally advised or in

any way represented the public agency concerning the factual or legal issues in the arbitration.

(8) (*Other professional relationships*) Any other professional relationship not already disclosed under paragraphs (2)-(7) that the arbitrator or a member of the arbitrator's immediate family has or has had with a party or lawyer for a party, including the following:

(A) The arbitrator was associated in the private practice of law with a lawyer in the arbitration within the last two years.

(B) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a party; and

(C) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a lawyer in the arbitration.

(9) (*Financial interests in party*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in a party.

(10) (*Financial interests in subject of arbitration*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in the subject matter of the arbitration.

(11) (*Affected interest*) The arbitrator or a member of the arbitrator's immediate family has an interest that could be substantially affected by the outcome of the arbitration.

(12) (*Knowledge of disputed facts*) The arbitrator or a member of the arbitrator's immediate or extended family has personal knowledge of disputed evidentiary facts relevant to the arbitration. A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.

(13) (*Membership in organizations practicing discrimination*) The arbitrator's membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation. Membership in a religious organization, an official military organization of the United States,

or a nonprofit youth organization need not be disclosed unless it would interfere with the arbitrator's proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning the arbitrator's ability to act impartially.

(14) Any other matter that:

(A) Might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial;

(B) Leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration; or

(C) Otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice.

(e) [Inability to conduct or timely complete proceedings] In addition to the matters that must be disclosed under subdivision (d), an arbitrator must also disclose:

(1) If the arbitrator is not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment; and

(2) Any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner.

(f) [Continuing duty] An arbitrator's duty to disclose the matters described in subdivisions (d) and (e) of this standard is a continuing duty, applying from service of the notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration proceeding.

Comment to Standard 7

This standard requires arbitrators to disclose to all parties, in writing within 10 days of service of notice of their proposed nomination or appointment, all matters they are aware of at that time that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial and to disclose any additional such matters within 10 days of becoming aware of them.

Timely disclosure to the parties is the primary means of ensuring the impartiality of an arbitrator. It provides the parties with the necessary information to make an informed selection of an arbitrator by disqualifying or ratifying the proposed arbitrator following disclosure. See also standard 10, concerning disclosure and disqualification requirements relating to concurrent and subsequent employment or professional relationships between an arbitrator and a party or attorney in the arbitration. A party may disqualify an arbitrator for failure to comply with statutory disclosure obligations (see Code Civ. Proc., § 1281.91(a)). Failure to disclose, within the time required for disclosure, a ground for disqualification of which the arbitrator was then aware is a ground for *vacatur* of the arbitrator's award (see Code Civ. Proc., § 1286.2(a)(6)(A)).

The arbitrator's overarching duty under this standard, which mirrors the duty set forth in Code of Civil Procedure section 1281.9, is to inform parties about matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial. While the remaining subparagraphs of (d) require the disclosure of specific interests, relationships, or affiliations, these are only examples of common matters that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial. The absence of the particular interests, relationships, or affiliations listed in the subparagraphs does not necessarily mean that there is no matter that could reasonably raise a question about the arbitrator's ability to be impartial and that therefore must be disclosed. An arbitrator must make determinations concerning disclosure on a case-by-case basis, applying the general criteria for disclosure under paragraph (d).

Code of Civil Procedure section 1281.85 specifically requires that the ethical standards adopted by the Judicial Council address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity. Section 1281.85 further provides that the standards "shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but may not limit the disclosure and disqualification requirements established by this chapter [chapter 2 of title 9 of part III, Code of Civil Procedure, sections 1281–1281.95]."

Code of Civil Procedure section 1281.9 already establishes detailed requirements concerning disclosures by arbitrators, including a specific requirement that arbitrators disclose the existence of any ground specified in Code of Civil Procedure section 170.1 for disqualification of a judge. This standard does not eliminate or otherwise limit those requirements; in large part, it simply consolidates and integrates those existing statutory disclosure requirements by topic area. This standard does, however, expand upon or clarify the existing statutory disclosure requirements in the following ways:

- Requiring arbitrators to disclose to the parties any matter about which they become aware after the time for making an initial disclosure has expired, within 10 calendar days after the arbitrator becomes aware of the matter (subdivision (f)).

- Expanding required disclosures about the relationships or affiliations of an arbitrator's family members to include those of an arbitrator's domestic partner (subdivisions (d)(1) and (2); see also definitions of immediate and extended family in standard 2).

- Requiring arbitrators, in addition to making statutorily required disclosures regarding prior service as an arbitrator for a party or attorney for a party, to disclose prior services both as neutral arbitrator selected by a party arbitrator in the current arbitration and as any other type

of dispute resolution neutral for a party or attorney in the arbitration (e.g., temporary judge, mediator, or referee) (subdivisions (d)(4)(C) and (5)).

- Requiring the arbitrator to disclose if he or she or a member of his or her immediate family is or was an employee, expert witness, or consultant for a party or a lawyer in the arbitration (subdivisions (d)(8)(A) and (B)).

- Requiring the arbitrator to disclose if he or she or a member of his or her immediate family has an interest that could be substantially affected by the outcome of the arbitration (subdivision (d)(11)).

- If a disclosure includes information about five or more cases, requiring arbitrators to provide a summary of that information (subdivisions (d)(4) and (5).

- Requiring arbitrators to disclose membership in organizations that practice invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation (subdivision (d)(13)).

- Requiring the arbitrator to disclose any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner (subdivision (d)).

- Clarifying that the duty to make disclosures is a continuing obligation, requiring disclosure of matters that were not known at the time of nomination or appointment but that become known afterward (subdivision (e)).

It is good practice for an arbitrator to ask each participant to make an effort to disclose any matters that may affect the arbitrator's ability to be impartial.

Standard 8. Additional disclosures in consumer arbitrations administered by a provider organization

(a) [General provisions]

(1) *(Reliance on information provided by provider organization).* Except as to the information in (c)(1), an arbitrator may rely on information supplied by the administering provider organization in making the disclosures required by this standard. If the information that must be disclosed is available on the Internet, the arbitrator may comply with the obligation to disclose this information by providing the Internet address at which the information is located and notifying the party that the arbitrator will supply hard copies of this information upon request.

(2) *(Reliance on representation that not a consumer arbitration)* An arbitrator is not required to make the disclosures required by this

standard if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.

(b) [Additional disclosures required] In addition to the disclosures required under standard 7, in a consumer arbitration as defined in standard 2 in which a dispute resolution provider organization is coordinating, administering, or providing the arbitration services, a person who is nominated or appointed as an arbitrator on or after January 1, 2003 must disclose the following within the time and in the same manner as the disclosures required under standard 7(c):

(1) *(Relationships between the provider organization and party or lawyer in arbitration)* Any significant past, present, or currently expected financial or professional relationship or affiliation between the administering dispute resolution provider organization and a party or lawyer in the arbitration. Information that must be disclosed under this standard includes:

(A) A party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently associated is a member of the provider organization.

(B) Within the preceding two years the provider organization has received a gift, bequest, or favor from a party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently associated.

(C) The provider organization has entered into, or the arbitrator currently expects that the provider organization will enter into, an agreement or relationship with any party or lawyer in the arbitration or a law firm with which a lawyer in the arbitration is currently associated under which the provider organization will administer, coordinate, or provide dispute resolution services in other non-collective bargaining matters or will provide other consulting services for that party, lawyer, or law firm.

(D) The provider organization is coordinating, administering, or providing dispute resolution services or has coordinated, administered, or provided such services in another pending or prior noncollective bargaining case in which a party or lawyer

in the arbitration was a party or a lawyer. For purposes of this paragraph, "prior case" means a case in which the dispute resolution neutral affiliated with the provider organization concluded his or her service within the two years before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the dispute resolution neutral concluded his or her service before July 1, 2002.

(2) (*Case information*) If the provider organization is acting or has acted in any of the capacities described in paragraph (1)(D), the arbitrator must disclose:

(A) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case or who was involved in the prior case;

(B) The type of dispute resolution services (arbitration, mediation, reference, etc.) coordinated, administered, or provided by the provider organization in the case; and

(C) In each prior case in which a dispute resolution neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge appointed under article VI, § 4 of the California Constitution, or a referee appointed under Code of Civil Procedure sections 638 or 639, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(3) (*Summary of case information*) If the total number of cases disclosed under paragraph (1)(D) is greater than five, the arbitrator must also provide a summary of these cases that states:

(1) The number of pending cases in which the provider organization is currently providing each type of dispute resolution services;

(1) The number of prior cases in which the provider organization previously provided each type of dispute resolution services;

(1) The number of such prior cases in which a neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge, or a referee; and

(1) The number of prior cases in which the party to the current arbitration or the party represented by the lawyer in the current arbitration was the prevailing party.

(c) [Relationship between provider organization and arbitrator]. If a relationship or affiliation is disclosed under paragraph (b), the arbitrator must also provide information about the following:

(1) Any financial relationship or affiliation the arbitrator has with the provider organization other than receiving referrals of cases, including whether the arbitrator has a financial interest in the provider organization or is an employee of the provider organization;

(2) The provider organization's process and criteria for recruiting, screening, and training the panel of arbitrators from which the arbitrator in this case is to be selected;

(3) The provider organization's process for identifying, recommending, and selecting potential arbitrators for specific cases; and

(4) Any role the provider organization plays in ruling on requests for disqualification of the arbitrator.

(d) [Effective date] The provisions of this standard take effect on January 1, 2003. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to this standard in those pending arbitrations.

Comment to Standard 8

This standard only applies in consumer arbitrations in which a dispute resolution provider organization is administering the arbitration. Like standard 7, this standard expands upon the existing statutory disclosure requirements. Code of Civil Procedure section 1281.95 requires arbitrators in certain construction defect arbitrations to make disclosures concerning relationships between their employers or arbitration services and the parties in the arbitration. This standard requires arbitrators in all consumer arbitrations to disclose any financial or professional relationship between the administering provider organization and any party, attorney, or law firm in the arbitration and, if any such relationship exists, then the arbitrator must also disclose his or her relationship with the dispute resolution provider organization. This standard does not require an arbitrator to disclose if the provider organization has a financial interest in a party or lawyer in the arbitration or if a party or lawyer in the arbitration has a financial interest in the provider organization because provider organizations are prohibited under Code of Civil Procedure section 1281.92 from administering any consumer arbitration where any such relationship exists.

Subdivision (b). Currently expected relationships or affiliations that must be disclosed include all relationships or affiliations that the arbitrator, at the time the disclosure is made, expects will be formed. For example, if the arbitrator knows that the administering provider organization has agreed in concept to enter into a business relationship with a party, but they have not yet signed a written agreement formalizing that relationship, this would be a "currently expected" relationship that the arbitrator would be required to disclose.

Standard 9. Arbitrators' duty to inform themselves about matters to be disclosed

(a) [General duty to inform him or herself] A person who is nominated or appointed as an arbitrator must make a reasonable effort to inform himself or herself of matters that must be disclosed under standards 7 and 8.

(b) [Obligation regarding extended family] An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships or other matters involving his or her extended family and former spouse that are required to be disclosed under standard 7 by:

(1) Seeking information about these relationships and matters from the members of his or her immediate family and any members of his or her extended family living in his or her household; and

(2) Declaring in writing that he or she has made the inquiry in (1).

(c) [Obligation regarding relationships with associates of lawyer in the arbitration] An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships with any lawyer associated in the practice of law with the lawyer in the arbitration that are required to be disclosed under standard 7 by:

(1) Informing the lawyer in the arbitration, in writing, of all such relationships within the arbitrator's knowledge and asking the lawyer if the lawyer is aware of any other such relationships;

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the lawyer in the arbitration.

(d) [Obligation regarding service as a neutral other than an arbitrator before July 1, 2002] An arbitrator can fulfill the obligation under this standard to inform himself or herself of his or her service as a dispute

resolution neutral other than as an arbitrator in cases that commenced prior to July 1, 2002 by:

(1) Asking any dispute resolution provider organization that administered those prior services for this information; and

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.

(e) [Obligation regarding relationships with provider organization] An arbitrator can fulfill his or her obligation under this standard to inform himself or herself of the information that is required to be disclosed under standard 8 by:

(1) Asking the dispute resolution provider organization for this information; and

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.

Comment to Standard 9

This standard expands arbitrators existing duty of reasonable inquiry that applies with respect to financial interests under Code of Civil Procedure section 170.1(a)(3), to require arbitrators to make a reasonable effort to inform themselves about all matters that must be disclosed. This standard also clarifies what constitutes a reasonable effort by an arbitrator to inform himself or herself about specified matters, including relationships or other matters concerning his or her extended family and relationships with attorneys associated in the practice of law with the attorney in the arbitration (such as associates encompassed within the term "lawyer for a party").

Standard 10. Disqualification

(a) An arbitrator is disqualified if:

(1) The arbitrator fails to comply with his or her obligation to make disclosures and a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

(2) The arbitrator complies with his or her obligation to make disclosures within 10 calendar days of service of notice of the proposed nomination or appointment and, based on that disclosure,

a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

(3) The arbitrator makes a required disclosure more than 10 calendar days after service of notice of the proposed nomination or appointment and, based on that disclosure, a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91; or

(4) A party becomes aware that an arbitrator has made a material omission or material misrepresentation in his or her disclosure and, within 15 days after becoming aware of the omission or misrepresentation and within the time specified in Code of Civil Procedure section 1281.91(c), the party serves a notice of disqualification that clearly describes the material omission or material misrepresentation and how and when the party became aware of this omission or misrepresentation; or

(5) If any ground specified in Code of Civil Procedure section 170.1 exists and the party makes a demand that the arbitrator disqualify himself or herself in the manner and within the time specified in Code of Civil Procedure section 1281.91(d).

(b) For purposes of this standard, "obligation to make disclosure" means an arbitrator's obligation to make disclosures under standards 7 or 8 or Code of Civil Procedure section 1281.9.

(c) Notwithstanding any contrary request, consent, or waiver by the parties, an arbitrator must disqualify himself or herself if he or she concludes at any time during the arbitration that he or she is not able to conduct the arbitration impartially.

Comment to Standard 10

Code of Civil Procedure section 1281.91 already establishes requirements concerning disqualification of arbitrators. This standard does not eliminate or otherwise limit those requirements or change existing authority or procedures for challenging an arbitrator's failure to disqualify himself or herself. The provisions of subdivisions (a)(1), (2), and (5) restate existing disqualification procedures under section 1281.91; (b) and (d) when an arbitrator makes, or fails to make, initial disclosures or where a section 170.1 ground exists. The provisions of subdivisions (a)(3) and (4) clarify the requirements relating to disqualification based on disclosure made by the arbitrator after appointment or based on the discovery by the party of a material omission or misrepresentation in the arbitrator's disclosure.

Standard 11. Duty to refuse gift, bequest, or favor

(a) An arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests are reasonably likely to come before the arbitrator in the arbitration.

(b) From service of notice of appointment or appointment until two years after the conclusion of the arbitration, an arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests have come before the arbitrator in the arbitration.

(c) An arbitrator must discourage members of his or her family residing in his or her household from accepting a gift, bequest, favor, or honoraria that the arbitrator would be prohibited from accepting under subdivisions (a) or (b).

(d) This standard does not prohibit an arbitrator from demanding or receiving a fee for services or expenses.

Comment to Standard 11

Gifts and favors do not include any rebate or discount made available in the regular course of business to members of the public.

Standard 12. Duties and limitations regarding future professional relationships or employment

(a) [Offers as lawyer, expert witness, or consultant] From the time of appointment until the conclusion of the arbitration, an arbitrator must not entertain or accept any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer for a party in the pending arbitration.

(b) [Offers for other employment or professional relationships] In addition to the disclosures required by standards 7 and 8, within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing if, while that arbitration is pending, he or she will entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party, including offers to serve as a dispute resolution neutral in

another case. A party may disqualify the arbitrator based on this disclosure by serving a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91(b).

(c) [Acceptance of offers prohibited unless intent disclosed] If an arbitrator fails to make the disclosure required by subdivision (b) of this standard, from the time of appointment until the conclusion of the arbitration the arbitrator must not entertain or accept any such offers of employment or new professional relationships, including offers to serve as a dispute resolution neutral.

(d) [Relationships and use of confidential information related to the arbitrated case] An arbitrator must not at any time:

(1) Without the informed written consent of all parties, enter into any professional relationship or accept any professional employment as a lawyer, an expert witness, or a consultant relating to the case arbitrated; or

(2) Without the informed written consent of the party, enter into any professional relationship or accept employment in another matter in which information that he or she has received in confidence from a party by reason of serving as an arbitrator in a case is material.

Standard 13. Conduct of proceeding

(a) An arbitrator must conduct the arbitration fairly, promptly, and diligently and in accordance with the applicable law relating to the conduct of arbitration proceedings.

(b) In making the decision, an arbitrator must not be swayed by partisan interests, public clamor, or fear of criticism.

Comment to Standard 13

Subdivision (a). The arbitrator's duty to dispose of matters promptly and diligently must not take precedence over the arbitrator's duty to dispose of matters fairly.

Conducting the arbitration in a procedurally fair manner includes conducting a balanced process in which each party is given an opportunity to participate. When one but not all parties are unrepresented, an arbitrator must ensure that the party appearing without counsel has an adequate opportunity to be heard and involved. Conducting the arbitration promptly and diligently requires expeditious management of all stages of the proceeding and concluding the case as promptly as the circumstances reasonably permit. During an arbitration, an arbitrator may discuss the issues,

arguments, and evidence with the parties or their counsel, make interim rulings, and otherwise to control or direct the arbitration. This standard is not intended to restrict these activities.

The arbitrator's duty to uphold the integrity and fairness of the arbitration process includes an obligation to make reasonable efforts to prevent delaying tactics, harassment of any participant, or other abuse of the arbitration process. It is recognized, however, that the arbitrator's reasonable efforts may not successfully control all conduct of the participants.

For the general law relating to the conduct of arbitration proceedings, see chapter 3 of title 9 of part III of the Code of Civil Procedure, sections 1282–1284.2, relating to the conduct of arbitration proceedings. See also Code of Civil Procedure section 1286.2 concerning an arbitrator's unreasonable refusal to grant a continuance as grounds for *vacatur* of the award.

Standard 14. Ex parte communications

(a) An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as permitted by this standard, by agreement of the parties, or by applicable law.

(b) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

(c) An arbitrator may obtain the advice of a disinterested expert on the subject matter of the arbitration if the arbitrator notifies the parties of the person consulted and the substance of the advice and affords the parties a reasonable opportunity to respond.

Comment to Standard 14

See also Code of Civil Procedure sections 1282.2(e) regarding the arbitrator's authority to hear a matter when a party fails to appear and 1282.2(g) regarding the procedures that must be followed if an arbitrator intends to base an award on information not obtained at the hearing.

Standard 15. Confidentiality

(a) An arbitrator must not use or disclose information that he or she received in confidence by reason of serving as an arbitrator in a case to gain personal advantage. This duty applies from acceptance of appointment and continues after the conclusion of the arbitration.

(b) An arbitrator must not inform anyone of the award in advance of the time that the award is given to all parties. This standard does not prohibit an arbitrator from providing all parties with a tentative or draft decision for review or from providing an award to an assistant or to the provider organization that is coordinating, administering, or providing the arbitration services in the case for purposes of copying and distributing the award to all parties.

Standard 16. Compensation

(a) An arbitrator must not charge any fee for services or expenses that is in any way contingent on the result or outcome of the arbitration.

(b) Before accepting appointment, an arbitrator, a dispute resolution provider organization, or another person or entity acting on the arbitrator's behalf must inform all parties in writing of the terms and conditions of the arbitrator's compensation. This information must include any basis to be used in determining fees and any special fees for cancellation, research and preparation time, or other purposes.

Standard 17. Marketing

(a) An arbitrator must be truthful and accurate in marketing his or her services and must not make any representation that directly or indirectly implies favoritism or a specific outcome. An arbitrator must ensure that his or her personal marketing activities and any activities carried out on his or her behalf, including any activities of a provider organization with which the arbitrator is affiliated, comply with this requirement.

(b) An arbitrator must not solicit business from a participant in the arbitration while the arbitration is pending.

Comment to Standard 17

Subdivision (b). This provision is not intended to prohibit an arbitrator from accepting another arbitration from a party or attorney in the arbitration while the first matter is pending, as long as the arbitrator complies with the provisions of standard 12 and there was no express solicitation of this business by the arbitrator.

Drafter's Notes

Standards 1–17 implement Code of Civil Procedure section 1281.85, which requires the Judicial Council to adopt ethics standards for all neutral arbitrators serving in arbitrations pursuant to an arbitration agreement. Among other things, they address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, the acceptance of gifts, the establishment of future professional relationships, ex-parte communication, fees, and marketing.

EXHIBIT G

Lists of Neutral Arbitrators on the OIA Panel as of 12/31/02

OIA Panel of Neutral Arbitrators

Northern California

Justice Nat Anthony Agliano
Judge Demetrios P. Agretelis, (Ret.)
Judge Paul J. Aiello, (Ret.)
Mr. Roger F. Allen, Esq.
Justice Carl West Anderson, (Ret.)
Ms. Karen G. Andres, Esq.
Judge Michael E. Ballachey, (Ret.)
Ms. Eileen Barker, Esq.
Judge Michael J. Berger
Mr. Daniel V. Blackstock, Esq.
Mr. Brenton A. Bleier, Esq.
Judge Allan J. Bollhoffer
Ms. Barri Kaplan Bonapart, Esq.
Judge Cecily Bond, (Ret.)
Mr. Marc P. Bouret, Esq.
Mr. Thomas J. Brewer
Mr. Robert J. Brockman, Esq.
Mr. Fred D. Butler, Esq.
Judge Robert K. Byers
Mr. Harve Eliot Citrin, Esq.
Mr. Casey Clow, Esq.
Judge John S. Cooper, (Ret.)
Mr. James S. Crawford, Esq.
Judge Thomas Dandurand
Judge Benjamin A. Diaz, (Ret.)
Mr. Paul J. Dubow, Esq.
Judge James Duvaras
Judge Mark L. Eaton
Mr. Jeffrey Eckber, Esq.
Mr. Joseph Elie, Esq.
Mr. Eric S. Emanuels, Esq.
Mr. Douglas L. Field, Esq.
Judge John A. Flaherty, (Ret.)
Mr. Lester Friedman, Esq.
Mr. Kenneth D. Gack, Esq.
Judge John J. Gallagher
Mr. James L. Gault, Esq.
Judge Wm. R. Giffen, (Ret.)
Ms. Shelley A. Gordon, Esq.
Mr. Stephen B. Gorman, Esq.

Judge Arnold Greenberg, (Ret.)
Judge Sheldon H. Grossfeld
Judge Ina Levin Gyemant, (Ret.)
Mr. Arnold B. Haims, Esq.
Judge Zerne P. Haning
Mr. Michael G. Harper, Esq.
Ms. Catherine C. Harris, Esq.
Judge Richard A. Hodge, (Ret.)
Mr. Douglas W. Holt, Esq.
Mr. Garry J.D. Hubert, Esq.
Ms. Nancy Hutt, Esq.
Mr. Ralph L. Jacobson, Esq.
Judge Ellen Sickles James
Judge William E. Jenson
Mr. Thomas A. Johnson, Esq.
Justice Robert F. Kane, (Ret.)
Mr. John P. Kelly, Esq.
Mr. Donald H. Kincaid, Esq.
Mr. Alfred P. Knoll, Esq.
Mr. Martin David Koczanowicz, Esq.
Ms. Barbara Kong-Brown, Esq.
Mr. Ernest B. Lageson, Esq.
Judge Henry B. Lasky
Mr. Stewart I. Lenox, Esq.
Mr. B. Scott Levine, Esq.
Judge Darrel Lewis, (Ret.)
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Ms. Carol J. Marshall, Esq.
Mr. James S. Martin, Esq.
Mr. Allan J. Mayer, Esq.
Mr. Brick E. McIntosh, Esq.
Judge Winton McKibben
Mr. David J. Meadows, Esq.
Mr. Carl Meyer, Esq.
Mr. Robert A. Murray, Esq.
Mr. Jeffrey Scott Nelson, Esq.
Mr. William J. O'Connor, Esq.
Mr. Allan J. Owen, Esq.
Mr. Samuel C. Palmer III
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Ms. Julia J. Parranto, Esq.
Judge Richard L. Patsey, (Ret.)
Judge Irving H. Perluss
Mr. John E. Peterson, Esq.
Ms. Andrea M. Ponticello, Esq.

Justice Robert K. Puglia
Judge Raul A. Ramirez
Mr. Joe Ramsey, Esq.
Mr. Thomas D. Reese, Esq.
Mr. Alan R. Rothstein, Esq.
Mr. Geoffrey E. Russell, Esq.
Mr. Lucien Salem, Esq.
Judge Rex Sater
Ms. Patricia Shuler Schimbor, Esq.
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Judge Leonard B. Sprinkles
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Mr. Ronald I. Toff, Esq.
Mr. Gregory D. Walker, Esq.
Judge Noel Watkins
Mr. Gary A. Weiner, Esq.
Judge Rebecca Westerfield
Mr. Barry S. Willdorf, Esq.
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Mr. Philip Young, Esq.

OIA Panel of Neutral Arbitrators

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Mr. Philip C. Blanton, Esq.
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Mr. Frank R. Brown, Esq.
Mr. Michael D. Brown, Esq.
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Ms. Adriana M. Burger, Esq.
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Mr. Walter K. Childers, Esq.
Mr. Michael A. Cholodenko, Esq.
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Mr. John B. Cobb, Esq.
Mr. Peter D. Collisson, Esq.
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Mr. Thomas I. Friedman, Esq.
Ms. Dolly M. Gee, Esq.
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Judge Norman W. Gordon
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Ms. Roseann Herman, Esq.
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Mr. Theo Lacy, Esq.
Mr. Dennis O. LaRochelle, Esq.
Ms. June Lehrman, Esq.

Mr. Boyd Lemon, Esq.
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Mr. Joseph D. McNeil, Esq.
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Mr. John P. Miller, Esq.
Mr. John E. Millers, Esq.
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Mr. Jeffrey Cabot Myers, Esq.
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Mr. Roger A. Parkinson, Esq.
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Judge Philip M. Saeta
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Mr. Steven A. Schneider, Esq.
Judge Thomas Schneider, (Ret.)
Judge R. William Schoettler

Judge Robert L. Schouweiler
Judge Philip E. Schwab
Mr. Herbert E. Selwyn, Esq.
Mr. C. David Serena, Esq.
Mr. John P. Shaby, Esq.
Mr. Robert M. Shafton, Esq.
Mr. Donald S. Sherwyn, Esq.
Judge James L. Smith
Judge Sherman W. Smith, Jr.
Justice Steven J. Stone
Mr. Jeffrey D. Stulberg, Esq.
Mr. John A. Sullivan, Esq.
Mr. Mitchell R. Sussman, Esq.
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Judge Robert W. Thomas, (Ret.)
Mr. Jeffrey A. Tidus, Esq.
Justice William L. Todd
Mr. Peter C. Tornay, Esq.
Judge Don A. Turner
Mr. Jack A. Weichman, Esq.
Judge Robert Weil
Mr. Bernard L. Weiner, Esq.
Mr. Richard Weissman, Esq.
Judge Andrew J. Weisz, (Ret.)
Mr. Garry W. Williams, Esq.
Mr. Joseph Winter, Esq.
Mr. Alan E. Wisotsky, Esq.
Ms. Deborah Z. Wissley, Esq.
Mr. Gary Wittenberg, Esq.
Mr. William R. Wolanow, Esq.
Judge Leonard S. Wolf
Judge Delbert E. Wong
Mr. Robert K. Wrede, Esq.
Mr. Julius G. Wulfsohn, Esq.
Judge Eric E. Younger
Mr. John Zanghi, Esq.
Mr. Scott L. Zimmerman, Esq.

OIA Panel of Neutral Arbitrators

San Diego, California

Mr. Marc D. Adelman, Esq.
Mr. Richard N. Appleton, Esq.
Ms. Nancy T. Beardsley, Esq.
Ms. Marianne P. Borselle, Esq.
Ms. Randi R. Bradstreet, Esq.
Mr. Richard R. Castillo, Esq.
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Mr. Peter D. Collisson, Esq.
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Mr. William J. Tucker, Esq.
Ms. Sherry Van Sickle, Esq.

EXHIBIT H

Neutral Arbitrator's Letter
Asking to Use OIA's January 1st Memo
And OIA's January 1, 2003 Memo

From: Shafton, Robert [mailto:RSHAFTON@stroock.com]
Sent: Tuesday, January 14, 2003 8:42 AM
To: mbell@slhartmann.com
Subject: Your memo of January y 2--from Sharon

Dear Marcella:

A few attorneys and retired judges (Richard Chernick, Skip Byrne, etc) get together every other month to discuss ADR.

There is a meeting tonight and I thought I would share your memo of Jan 2 on how effectively you are handling the new Disclosure Rules. (You are way ahead of everyone else in my judgment.)

I did not want to do that without your permission. Would you let me know this morning by phone or email?

Thanks

Regards, Bob

Robert M. Shafton
Suite 1800
2029 Century Park East
Los Angeles, CA 90067
Tel: (310) 556-5824
Fax: (310) 556-5959
rshafton@stroock.com

MEMORANDUM

To: **All OIA Arbitrators**

From: **Sharon Lybeck Hartmann, Independent Administrator**

Re: **Amended OIA Rules, Effective January 1, 2003**

Date: **January 2, 2003**

I. Introduction and Overview

I enclose a copy of the newly amended OIA Rules, effective January 1, 2003; they apply prospectively. We have had to amend the Rules for the second time in six months because of the following:

(1) changed requirements of the Ethics Standards first announced by the Judicial Council on December 12, 2002,

(2) new statutes enacted by the Legislature and the Governor in August and September, and

(3) regulatory action of the Department of Managed Health Care in August.

I also want to tell you about the information which the OIA will make available to you so that you can fully comply with the organizational disclosure requirements of the Ethics Standard which first becomes effective on January 1, 2003.[1]

II. The Newest Changes to the Ethics Standards and Rule Changes They Caused

The most important change is that Ethics Standard 10(d) is gone. As you know, in cases in which a Neutral Arbitrator was appointed after July 1, 2002, the Ethics Standards required neutral arbitrators to state to the parties, as part of their initial disclosures, whether they would entertain offers of new work from the parties or attorneys while the first case was still open. In addition, Standard 10(d) required that, if you were offered such work and wished to accept it, you had to inform the parties of the offer and give them time to object.

[1]The organizational disclosure was formerly known as Standard 7(b)(12). It is now known as Standard 8(b).

Neutral Arbitrators are still required to disclose to the parties whether they will entertain new offers of employment from the parties or the attorneys in a case. Neutral Arbitrators, who timely make this disclosure, are no longer required to serve notices on the parties of the right to object to new work or to disclose the existence of new work to them. Therefore, **after January 1, 2003**, **you will no longer need to send out Standard 10(d) notices in any case**. We made several changes in the Rules in July to deal with the initial form of Standard 10(d). Our January 1, 2003 Rules delete those references.

III. The Other Changes to Our Rules

A. Date of the Arbitration Management Conference

The deadline for holding the Arbitration Management Conference has been increased from 45 days to 60 days after the neutral arbitrator's selection date. This allows neutral arbitrators who wish to do so to wait until after the statutory disqualification period has expired before setting the date for the AMC. Rule 25(a).

B. Information Needed for Tracking and Disclosures

When arbitrations are completed henceforth, we will ask neutral arbitrators to inform the OIA of the amount of their fees and how the fees were allocated between the parties. This information is now required by Section 1281.96 of the Code of Civil Procedure. This information will be posted on our website beginning January 1, 2003, along with much other information which the new statute requires. Rule 48(b).

C. Number of Names Listed on the List of Possible Arbitrators

In July, we increased the number of arbitrator names initially sent to the parties from 12 to 14 to deal with the possibility that a significant number of listed neutral arbitrators might be blocked from serving under the initial form of Standard 10(d). Because Standard 10(d) has been deleted, all lists mailed on or after January 1, 2003 will once again contain only 12 names. Rule 16(b).

D. Waiver of the $150 Filing Fee

In accordance with a new statute, claimants whose gross monthly income is less than 300 percent of the national poverty guidelines will be entitled to a waiver of the OIA's filing fee of $150. To qualify, claimants need to submit a form to our office within 75 days of our receiving the demand for arbitration. Rule 12(b).

Copies of the new Rules have been sent to all attorneys in open OIA cases and to parties representing themselves.

IV. Organizational Disclosures

As you will recall, the Ethics Standards as originally promulgated required arbitrators to make disclosures about the organization which referred a case to them. Standard 7(b)(12), which remains in its original form but is now known as Standard 8(b), becomes effective January 1, 2003. Through the OIA website and through specifically prepared hard copies faxed to you, we will enable you to fully comply with the Standard.

A. Ethics Standard 8(b)(1) requires disclosure of relationships and affiliations between the OIA and the parties, lawyers, and neutral arbitrators. The OIA will post on its website (www.slhartmann.com) a statement that responds to each of the items for which information is sought.

B. Ethics Standard 8(b)(2) requires disclosure of

(1) the number of pending and prior cases that the parties and the lawyers in the present case have had with the OIA. This information will vary from case to case. We will fax you this information at the same time that we mail you and the parties the letter confirming your service.

(2) the names of the attorneys, the prevailing party, the date of disposition, and the amount of award in cases which were disposed of because of action by the neutral arbitrator. Such cases include those closed after an award, a summary judgment, or dismissal by the neutral arbitrator. This disclosure is limited to cases that have closed since July 1, 2002.[2] The OIA will provide this information on its website.

C. Ethics Standard 8(b)(3) requires disclosure of a summary of the number of prior OIA cases in which each of the parties and the attorneys in the present case was the prevailing party. This summary is limited to those disclosures where the number of cases is greater than five. This information will vary from case to case. It will also be faxed to you at the time that we send you the letter confirming service.

D. Please note that the Standards provide that you may cite the parties to the location of material posted on the web rather than reproducing it in your disclosures. However, in some cases when you are requested to do so, you may also have to provide it in hard copy. Standard 8(a)(1).

[2]While not relevant at this time, the disclosure also has a two year reach back, which will limit the disclosure after July 2, 2004.

A newly enacted statute [AB 2656, now CCP 1281.96], effective January 1, 2003, also requires the posting of a great deal of information about each arbitration in computer searchable format. It overlaps the Ethics Standards in some respects but covers a number of other items as well. That is also posted on our website. You may want to look at it.

The year 2002 has certainly been a busy one for all of us involved in arbitration in California. We at the OIA thank all of you for your patience, cooperation and hard work to master and implement the new requirements. The year has ended in yet another burst of activity. The OIA staff has worked through the holidays to make all the changes. Please call us if you have questions. We will do whatever we can to help.

Happy New Year! Let us all hope for a placid year in 2003!

EXHIBIT I

Fee Waiver Forms & Instructions

INFORMATION SHEET AND INSTRUCTIONS FOR WAIVER OF FILING FEE AND FEES AND EXPENSES OF THE NEUTRAL ARBITRATOR

Criteria: If you wish to arbitrate a claim in this system but cannot afford to pay the filing fee or the fees and expenses of the Neutral Arbitrator, you may not have to pay them if you establish:

EITHER

1. You are receiving financial assistance under any of the following programs:
   - SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
   - CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF (Temporary Assistance for Needy Families)
   - The Food Stamps Program
   - County Relief, General Relief (G.R.) or General Assistance (G.A.)

If you are claiming eligibility for a waiver of these fees because you receive financial assistance under one or more of these programs, you must produce ***either*** a letter confirming benefits from a public assistance agency ***or*** one of the following documents:

Program	Verification
SSI/SSP	MediCal Card ***or*** Notice of Planned Action ***or*** SS Computer Generated Printout ***or*** "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	MediCal Card **or** Notice of Action **or** Income and Eligibility Verification Form **or** Monthly Reporting Form **or** Electronic Benefit Transfer Card **or** "Passport to Services"
Food Stamp Program	Notice of Action ***or*** Food Stamp ID Card ***or*** "Passport to Services"
General Relief /General Assistance	Notice of Action ***or*** copy of check stub ***or*** County voucher

OR

2. Your total gross monthly household income is less than the following amounts:

Number in Family	Family Income		Number in Family	Family Income		Number in Family	Family Income
One	$ 922.92		Four	$1,885.42		Seven	$2,847.92
Two	$1,243.75		Five	$2,206.25		Eight	$3,168.75
Three	$1,564.58		Six	$2,527.08		Each Add'l Person	$ 328.83

OR

3. Your income is not enough to pay for the common necessities of life for yourself and the people you support and also to pay arbitration fees and costs.

Instructions: To apply, fill out the "Request Form for Waiver of Filing Fees and Fees and Expenses of the Neutral Arbitrator" ("Fee Waiver Form"). A copy of the Fee Waiver Form can be obtained by calling the Kaiser Permanente Member Service Call Center at 1-800-464-4000 or the office of the Independent Administrator at 213-637-9847.

1. All of the Claimants must fill out a Fee Waiver Form, include copies of the necessary documents, sign it, and return a copy to the Independent Administrator at:

   Law Offices of Sharon Lybeck Hartmann
   Independent Administrator
   3580 Wilshire Blvd., Suite 2020
   Los Angeles, CA 90010
   Fax: 213-637-8658

2. If you seek a fee waiver because you are receiving financial assistance, you will need to fill out items 1-3 on the Fee Waiver Form.
   If you seek a fee waiver because of the number of persons in your family and your family's gross monthly income, you will need to fill out items 1, 2, 4, 6, and 7 on the Fee Waiver Form.
   If you seek a fee waiver because your income is not enough to pay for the common necessities of life and the fees of the arbitration, you will need to fill out items 1-2, and 5-10 on the Fee Waiver Form.

3. When you return a copy of the Fee Waiver Form to the Independent Administrator, also serve a copy on the Respondent(s). Send it to the same address you used to serve your "Demand for Arbitration." The Independent Administrator, Respondent(s), and counsel shall keep the information provided on the Fee Waiver Form confidential.

4. Health Plan is entitled to file a response to your request for a fee waiver. The Independent Administrator will make a decision about your request for a fee waiver within fifteen days of the date you sent your Fee Waiver Form and notify both you and the Respondent(s).

Note: If your request for a fee waiver is denied, you will be required to pay the filing fee or your "Demand for Arbitration" will be deemed abandoned. If you waive your right to a Party Arbitrator, you will not be required to pay the Neutral Arbitrator's fees and expenses. If your request for a fee waiver is granted, you will be required to pay any attorney's fees and Party Arbitrator fees.

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal service office, or lawyer referral service in your county. (These services may be listed in the yellow pages of your telephone book under "Attorneys.")

Request Form for Waiver of Filing Fee and Fees and Expenses of Neutral Arbitrator

All information on this form is kept confidential.

My Name _____

Arbitration Name _____

Arbitration Number _____ Date _____

I request an order by the Independent Administrator indicating that I do not have to pay the $150 filing fee or the fees and expenses of the Neutral Arbitrator.

1. a. My current street or mailing address is: (Please include apartment number, if any, city, and zip code.)_____

   _____

   b. My attorney's name, address and phone number is: _____

   _____

2. a. My occupation, employer, and employer's address is: _____

   _____

   b. My spouse's occupation, employer, and employer's address is: _____

   _____

3. I am receiving financial assistance under one or more of the following programs:

   ____ **SSI** and **SSP**: Supplemental Security Income and State Supplemental Payments Programs.

   ____ **CalWORKs**: California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Need Families, (formerly AFDC.)

   ____ **Food Stamps**: The Food Stamps program.

   ____ **County Relief**: General Relief (G.R.), or General Assistance (G.A.).

For each line checked above, attach copies of documents to verify receipt of each benefit (the "Information Sheet and Instructions for Waiver of Filing Fee and Fees and Expenses of the Neutral Arbitrator" explains the acceptable documents), and sign the next page.

4. ____ My total gross monthly household income is less than the amount shown on the "Information Sheet and Instructions for Waiver of Filing Fee and Fees and Expenses of the Neutral Arbitrator" form.

Note: *If you checked line 4 above, skip item 5, complete items 6 and 7, and sign below.*

5. ____ My family income is not enough to pay for the common necessities of life for me and the people in my family, plus also paying for the filing fee and the fees and expenses of the Neutral Arbitrator.

Note: *If you checked line 5 above, complete the rest of this form and sign below.*

I declare under penalty of perjury, under the laws of the State of California that the information provided on this form and all attachments are complete, true and correct. I waive any claim I may have based on Kaiser Foundation Health Plan, Inc., paying the Neutral Arbitrator's fees.

_____ _____ _____

Type or Print Name **Signature** **Date**

6. ____ My pay changes considerably from month to month.

Note: *If you check this line, each of the amounts reported in item 10 should be your average for the past 12 months.*

7. Monthly Income

a. My gross monthly pay is: $_____.

b. My payroll deductions are: (specify purpose and amount.)

i. _____$_____

ii. _____$_____

iii. _____$_____

iv. _____$_____

v. _____$_____

vi. _____$_____

c. My total Net Income is: (a. minus the total of b.) $_____

d. Other money I receive each month is: (indicate source and amount)

i. _____ $ _____

ii._____ $ _____

iii._____$ _____

iv._____$ _____

Total of other money received each month is: $ _____

e. My total Monthly Income is: (add c. + d.) $ _____

f. Number of persons living in my home: _____

List all the persons living in your home, depending on you for support, or on whom you depend for support:

Name	Age	Relationship	Gross Monthly Income

Total amount of money earned by all the persons living in your home is: $ _____

g. The Total Gross Monthly Household Income is: $ _____
(add items a., d., and f. for this total)

8. I own or have an interest in the following:

a. Cash $ _____

b. Checking, savings, and credit union accounts (list the banks):

i. _____ $ _____

ii _____ $ _____

iii _____ $ _____

c. Cars and other vehicles; boats and RVs (make, year, fair market value, and loan balance on each):

Property	**Fair Market Value**	**Loan balance**
1.		
2.		

d. Real estate (list address, full market value, and loan balance):

Property	**Full Market Value**	**Loan Balance**
1.		
2.		
3.		

e. Other personal property, such as jewelry, furniture, furs, stocks, bonds, etc.:

Property	**Full Market Value**	**Loan Balance**
1.		
2.		
3.		
4.		

9. My monthly expenses not already listed in item 7., b. are the following:

a. Rent or house payment and maintenance $_____

b. Food and household supplies $ _____

c. Utilities and telephone $ _____

d. Clothing $ _____

e. Laundry and cleaning $ _____

f. Medical and dental payments $ _____

g. Insurance (life, health, accident, etc.) $ _____

h. School, child care $ _____

i. Child, spousal support (prior marriage) $ _____

j. Transportation and auto expenses (insurance, gas, repairs) $ _____

k. Monthly installment payments: (indicate purpose & amount)

1. _____ $_____

2. _____ $ _____

3. _____ $ _____

Total amount of all monthly installment payments is:$ _____

l. Amount deducted for wage assignments and earning withholding orders: $_____

m. Other expenses (specify):

1.	$
2.	$
3.	$

n. My Total Monthly Expenses are: $ _____

(add 9.a. through 9.m.)

10. Other facts that support this application:

Describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the Independent Administrator understand your budget. (If more space is needed, please add another page and label it "Attachment to Item 10.")

_____

_____

_____

_____

_____

_____

_____

_____

Claimant's Request for Waiver of $150 Arbitration Filing Fee

Instructions: If you seek a waiver of the $150 arbitration filing fee, please complete and sign the following form and return it to the address below. Claimants who have a gross monthly income that is less than 300 percent of the federal poverty guidelines are entitled to have this fee waived. This waiver will not affect your obligation to pay one half of the neutral arbitrator's fees and expenses. The last section of the System Description explains the different methods for obtaining waivers in our system. The form must be sent to the OIA within 75 days of the OIA receiving your demand for arbitration. Return this form to the address below. **This form is confidential – do not serve a copy on Respondents**. The OIA will notify you if you are not eligible for the waiver, in which case you must either pay the $150 filing fee or obtain a waiver based upon extreme hardship, as described in Rule 13.

Office of the Independent Administrator
3580 Wilshire Boulevard, Suite 2020
Los Angeles, California 90010
Fax: 213-637-8658

Name of Arbitration _____ Arbitration Number _____

I declare under oath that my gross monthly income is _____. The number of persons living in my household is _____.

_____ _____
Signature of Claimant Date

_____ _____
Signature of Claimant Date

_____ _____
Signature of Claimant Date

_____ _____
Signature of Claimant Date

_____ _____
Signature of Claimant Date

EXHIBIT J

Lists of All Awards to Claimants (Redacted)

List of All Awards to Claimants (Redacted)

Case Number (not actual OIA case number)	**Amount of Awards**	**Month/Year**
1	$12,500.00	10/99
2	$6,560.00	12/99
3	$30,000.00	02/00
4	$102,740.00	03/00
5	$175,000.00	03/00
6	$17,706.76	03/00
7	$10,000.00	04/00
8	$109,773.06	04/00
9	$25,000.00	05/00
10	$125,000.00	05/00
11	$5,594,605.00	06/00
12	$20,202.58	06/00
13	$125,000.00	06/00
14	$96,000.00	06/00
15	$176,500.00	06/00
16	$17,000.00	07/00
17	$75,627.00	07/00
18	$427,110.00	07/00
19	$442,400.00	07/00
20	$200,000.00	08/00
21	$201,572.00	08/00
22	$28,900.00	09/00
23	$25,000.00	09/00
24	$37,950.00	09/00
25	$311,362.39	09/00
26	$200,000.00	10/00
27	$40,000.00	10/00
28	$110,738.00	10/00
29	$165,832.00	10/00
30	$59,817.25	11/00
31	$8,120.00	11/00
32	$30,975.00	11/00
33	$251,440.00	11/00
34	$175,000.00	12/00
35	$271,000.00	12/00
36	$340,000.00	12/00
37	$53,500.00	12/00
38	$160,000.00	12/00
39	$375,000.00	01/01
40	$2,850.00	01/01
41	$11,163.00	01/01
42	$61,489.00	01/01

List of All Awards to Claimants (Redacted)

Case Number (not actual OIA case number)	**Amount of Awards**	**Month/Year**
43	$250,000.00	02/01
44	$2,500.00	02/01
45	$79,000.00	02/01
46	$303,884.00	02/01
47	$79,047.60	02/01
48	$175,000.00	03/01
49	$316,338.00	03/01
50	$96,560.00	03/01
51	$8,000.00	03/01
52	$1,100,000.00	03/01
53	$50,000.00	03/01
54	$25,000.00	04/01
55	$7,052.00	05/01
56	$45,000.00	05/01
57	$58,646.00	05/01
58	$72,000.00	05/01
59	$175,000.00	06/01
60	$85,000.00	06/01
61	$95,000.00	06/01
62	$80,842.00	07/01
63	$2,700.00	07/01
64	$70,000.00	08/01
65	$996,100.00	08/01
66	$29,165.00	08/01
67	$80,000.00	08/01
68	$3,841.00	09/01
69	$8,524.32	10/01
70	$2,750.00	10/01
71	$504,309.72	10/01
72	$100,000.00	10/01
73	$175,000.00	10/01
74	$50,000.00	10/01
75	$22,500.00	11/01
76	$261,916.00	11/01
77	$22,500.00	11/01
78	$75,000.00	11/01
79	$250,000.00	11/01
80	$375,000.00	12/01
81	$194,000.00	12/01
82	$479,794.98	12/01
83	$17,000.00	12/01
84	$186,939.92	12/01

List of All Awards to Claimants (Redacted)

Case Number (not actual OIA case number)	**Amount of Awards**	**Month/Year**
85	$10,000.00	12/01
86	$30,000.00	12/01
87	$87,170.07	12/01
88	$450,000.00	01/02
89	$30,000.00	01/02
90	$21,300.00	01/02
91	$75,000.00	01/02
92	$275,000.00	03/02
93	$500,000.00	03/02
94	$45,069.00	04/02
95	$167,972.00	04/02
96	$16,667.00	04/02
97	$6,500.00	04/02
98	$306,000.00	05/02
99	$2,261.00	05/02
100	$59,898.00	05/02
101	$250,000.00	05/02
102	$273,333.34	05/02
103	$100,000.00	05/02
104	$200,000.00	05/02
105	$5,000.00	05/02
106	$1,173,107.00	06/02
107	$7,575.00	06/02
108	$3,837,529.00	06/02
109	$215,700.00	06/02
110	$365,192.00	06/02
111	$272,154.00	06/02
112	$500.00	07/02
113	$92,978.17	07/02
114	$150,000.00	07/02
115	$7,000.00	07/02
116	$100,000.00	07/02
117	$490,604.00	08/02
118	$100,530.00	08/02
119	$35,000.00	08/02
120	$875,000.00	08/02
121	$2,700,000.00	08/02
122	$41,832.00	09/02
123	$259,224.80	09/02
124	$30,000.00	09/02
125	$65,000.00	10/02
126	$229,684.00	10/02

List of All Awards to Claimants (Redacted)

Case Number (not actual OIA case number)	**Amount of Awards**	**Month/Year**
127	$125,000.00	10/02
128	$350,642.00	10/02
129	$998,000.00	10/02
130	$623,668.00	10/02
131	$82,872.00	11/02
132	$1,182,389.20	11/02
133	$300,000.00	11/02
134	$1,561,480.00	11/02
135	$9,460.00	12/02
136	$2,500.00	12/02
137	$253,786.00	12/02
138	$1,051,731.00	12/02

EXHIBIT K

Arbitration Oversight Board Final Bylaws

BYLAWS
OF
THE KAISER FOUNDATION HEALTH PLAN
ARBITRATION OVERSIGHT BOARD

BYLAWS OF THE KAISER FOUNDATION HEALTH PLAN ARBITRATION OVERSIGHT BOARD

ARTICLE I. GENERAL TERMS

1.1 ***Name***. The name of the unincorporated association is The Kaiser Foundation Health Plan Arbitration Oversight Board (the "Association").

1.2 ***Filing of Statement of Unincorporated Association.*** Kaiser Foundation Health Plan, Inc. ("Health Plan") has caused to be filed, in the office of the Secretary of State of the State of California, the Association's Statement of Unincorporated Association on December 28, 2001 (the "Charter").

1.3 ***Mailing Address.*** The Association's mailing address shall be:

Kaiser Foundation Health Plan Arbitration Oversight Board
C/O David Werdegar, M.D., Chair
P.O. Box 779
San Francisco, California 94159.

The mailing address may be changed from time to time as determined by the Association.

1.4 ***Purpose, Scope, Structure and Objectives.***

The sole purpose of the Association is to engage in the functions described in this Section 1.4 (the "Oversight").

The Association shall set policy for and oversee the independent administration of the Kaiser Permanente Mandatory Arbitration System (the "Arbitration System"). The members of the Association shall constitute an oversight board (the "Board"), which shall be constituted and operated as provided in these bylaws.

The scope of the Oversight shall entail the following: (i) ensuring that the Arbitration System is fair, speedy, cost-effective and protects the privacy interests of the users of the Arbitration System; (ii) continuously improving the Arbitration System and the experience of the users of the Arbitration System; (iii) regularly reviewing the rules guiding the Arbitration System and revising them as needed in light of applicable law, experience and evaluations; (iv) reviewing and evaluating the performance of the Office of the Independent Administrator ("OIA") of the Arbitration System and participating in contract negotiations with the OIA; (v) reviewing where pertinent the operation of Kaiser Foundation Health Plan's pre-arbitration procedures; (vi) offering recommendations to the Plan for possible improvements in those procedures; and (vii) periodically reporting on the state of the Arbitration System to Kaiser Foundation Health Plan and Hospitals and the Permanente Medical Groups, with the understanding that the report will be made public for the benefit of Health Plan members and other interested parties.

The Association shall be a not-for-profit entity and shall administer funds for operating expenses of the Board using proceeds from the Kaiser Foundation Health Plan Arbitration Oversight Board Trust (the "Trust"). The Trust shall be funded by Health Plan in accordance with an annual memorandum of understanding, as provided in Section 2.7.

1.5 ***Term of Association.*** The term of the Association shall commence at the time of the filing of the Charter pursuant to Section 1.2, and shall continue until December 31, 2031, unless earlier dissolved in accordance with Article 5.

1.6 ***Filings of Other Certificates.*** The Association or its authorized agents shall cause to be executed, filed and published all such certificates, notices, statements or other instruments, and amendments thereto under the laws of the State of California and other applicable jurisdictions as the Association may deem necessary or advisable for the formation and operation of the Association.

ARTICLE II.
MANAGEMENT

2.1 ***Oversight Board.***

(a) *Authority.* The Board shall have the sole responsibility, authority and control over the management, conduct and operation and affairs of the Association, except as delegated by the Board or as otherwise provided herein.

(b) *Composition of the Board.* The Board shall be comprised of not more than 13 members. Members shall be selected so as to reflect a diversity of perspectives on the Arbitration System. The following are examples of perspectives that shall be reflected at all times, to the extent possible:

- Kaiser Permanente members
- Kaiser Permanente health care professionals
- Employers providing Kaiser Permanente coverage to employees
- Consumer advocacy
- Labor organizations
- Plaintiff's medical malpractice bar
- Defense medical malpractice bar
- Health Plan.

In the discretion of the Board, members may also be selected to reflect other appropriate perspectives or on account of their independent public stature. The Board shall limit the number of Kaiser-affiliated members, as defined in subsection (f) below, to not more than four members.

(c) *Nomination and Approval of Board Members*. The first members of the Board shall be appointed by the Chair in conformance with Section 2.1(b). Except in the case of the member representing the perspective of Health Plan, upon the resignation, removal or expiration of the term of a Board member, the Chair and the Vice-Chair shall nominate a replacement Board member who, to the extent possible, will maintain the diversity of perspectives described in Section 2.1(b). Health Plan shall nominate a Board member to replace the member reflecting the perspective of Health Plan upon the resignation, removal or expiration of his or her term. Individuals nominated in accordance with the foregoing procedures shall become members of the Board upon the approval by a majority of the members of the Board. Members whose terms have expired may be nominated and approved for additional terms.

(d) *Term of Board Membership*. The Chair shall have an initial term of office of 3 years. So as to achieve staggered terms of office, the remaining 12 initial members shall be divided into three groups of four, with one group having an initial term of office of three years, the second group having a term of office of four years and the third group having a term of office of five years. At the initial meeting of the Board, the initial members shall be assigned their terms of office by lot. Following the initial terms, all members, including the Chair, shall have terms of three years. In the event that any member fails to complete a term of office, the replacement board member shall serve the remaining term of the replaced member and shall thereafter have a three-year term if re-approved by the Board.

(e) *Removal of Board Members*. Board members may be removed from the Board, with or without cause, upon the vote of two thirds of the members of the Board.

(f) *Member Affiliations with Kaiser*. The Secretary shall maintain a list showing which Board members are affiliated with the Kaiser Permanente organization (the "Kaiser-affiliated Members") and which members are not so affiliated (the "Public-interest Members"). The following classes of members shall be considered to be Kaiser-affiliated Members:

1. The member nominated by Health Plan
2. The member representing the perspective of the defense medical malpractice bar;
3. Any member who is employed by any Kaiser Permanente entity.

All other members of the Board, including the Board member representing the perspective of Kaiser Permanente members, shall be considered Public-interest Members. A member shall (i) disclose in writing his or her affiliation, if any, with the Kaiser Permanente organization at the time of his or her nomination, and (ii) disclose in writing to the Chair and the Secretary any subsequent changes in affiliation status promptly after such change and in no event later than the first occasion following such change on which the member is requested to vote upon or consent to a proposed action of the Board. If a Public-interest Member becomes a Kaiser-affiliated Member at a time when at least four other members of the Board are Kaiser-affiliated Members, the Public-interest Member shall promptly submit his or her resignation from the Board.

2.2 ***Nontransferabilty of Board Membership***. Board membership shall not be transferable.

2.3 ***Meetings of the Board***.

(a) *Regular Meetings*. The Board shall hold regular meetings at such times and places as are duly called and approved by the Board. Notices shall not be required with respect to regular meetings of the Board.

(b) *Special Meetings*. The Chair may call a special meeting of the Board in his discretion at any time. The Chair shall call a special meeting of the Board if so requested by three Board members. The Chair shall provide to each member of the Board at least five business days' advance written notice of such special meeting. Presence at a meeting shall constitute waiver of notice. Members may also waive notice of a special meeting by a written waiver, which shall be filed with the minutes of the meeting.

(c) *Telephonic Meetings*. Any meeting of the Board may be held by conference telephone call or through similar communications equipment which allows Board members participating in the meeting to hear one another. Participation in any such telephonic meeting shall constitute presence in person at such meeting.

(d) *Written Consents.* Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the Board unanimously consents thereto in writing. Any such written consents shall be filed with the minutes of the proceedings of the Board.

(e) *Voting; Quorum.* Each member of the Board shall be entitled to one vote. A quorum of the Board shall be a majority of the members of the Board at the time of a Board meeting. A quorum must be present at the time of the vote in order for valid Board action to be taken. Votes must be cast in person, and proxy voting is not permitted.

(f) *Requirements for Board Action on Rules of the Arbitration System.* All actions of the Board directly affecting the rules of the Arbitration System, including the adoption, amendment or deletion of any rule and any modification or repeal of the voting requirement of this paragraph (f), shall require (i) the affirmative vote of 2/3 of all the members of the Board at the time of the action, and (ii) the affirmative vote of a majority of Public-interest Members of the Board, as defined in Section 2.1(f).

(g) *Requirements for Board Action on Matters other than Rules of the Arbitration System.* Except as otherwise provided in section 2.1(e), section 2.3(f) and 5.1, all actions of the Board shall require the affirmative vote of a majority of the members of the Board at the time of such action.

(h) *Minutes*. The Board shall keep regular minutes of all of its meetings and shall file them with the official records of the Association.

2.4 ***Officers of the Association.***

(a) *Chair of the Board*. The Chair of the Board shall preside at all meetings of the Board and shall appoint a Vice-Chair, who shall preside in the absence of the Chair. Both the Chair and Vice-Chair shall be Board members. The first Chair shall be selected by Health

Plan. The successor to the first Chair and each subsequent successor shall be nominated by the then-current Chair and Vice-Chair jointly with Health Plan and shall be approved by the members of the Board. The Chair may serve successive terms.

(b) *Secretary*. The Board shall appoint a capable and qualified individual or organization to serve as the Secretary of the Association. The Secretary shall report to the Chair and shall perform such clerical and administrative duties as the Chair shall direct.

(c) *Other Personnel*. The Board may authorize the hiring of employees or contracting for services and other necessary personnel from time to time in conformity with procedures and policies adopted or approved by the Board and consistent with the Oversight.

2.5 ***Board Compensation***.

(a) *Chair of the Board*. The Chair of the Board shall receive an annual stipend, payable in equal monthly installments, regardless of the number of meetings of the Board. The initial stipend of the Chair shall be as agreed in writing between Health Plan and the Chair, which shall remain in effect for a three-year term as specified in the writing. The stipend of the Chair for periods thereafter shall be subject to the approval of the Board. The Chair shall not be an employee of the Association.

(b) *Board Members.* Board members, other than the Chair of the Board, shall receive a stipend per meeting of the Board or committee thereof, regardless of whether such meeting is a physical meeting or telephonic meeting. Board members shall be reasonably available outside of Board meetings without compensation for informal consultation regarding the affairs of the Association.

(c) *Board Expenses*. The Board members, including the Chair of the Board, shall be paid their reasonable expenses, if any, incurred in connection with the activities of the Association, including the reasonable expenses of attendance at each meeting of the Board.

2.6 ***Board Committees***. The Board may establish one or more committees, each committee to consist of one or more of the Board members. The Board may designate one or more members as alternate members of any committee, who may replace any member who is unable to participate at any meeting of the committee. Any committee shall have all the powers and authority delegated to it by the Board. Committee meetings and action shall be governed by the procedures outlined in Section 2.3.

2.7 ***Memorandum of Understanding***. Not later than October 1 of each year, the Chair or his designee shall present detailed information to Health Plan regarding the Association's expense budget for the succeeding year and shall use his or her best efforts to reach an agreement with Health Plan regarding the budget. The Association and Health Plan will enter into an annual memorandum of understanding by December 31, which memorandum will set forth the time and amounts of Health Plan's contributions to the Trust for the purpose of funding the Association's budgeted expenses for the succeeding calendar year.

ARTICLE III.
INDEMNIFICATION AND INSURANCE

Each Board member and the Secretary and any other personnel of the Association (each, an "Indemnified Person"), shall not be liable, responsible or accountable in damages or otherwise to the Association for any act or omission performed or omitted by such Indemnified Person (i) in good faith on behalf of the Association, (ii) in a manner reasonably believed by the Indemnified Person to be within the scope of the authority granted in accordance with these bylaws, and (iii) in a manner not constituting willful misconduct or gross negligence. Pursuant to a separate agreement, Health Plan shall indemnify, defend and hold harmless Indemnified Persons for any such acts or omissions, and for any acts or omissions not meeting such requirements to the extent that a court determines that in view of all the circumstances of the case, such Indemnified Person is fairly and reasonably entitled to indemnification for those expenses which the court deems proper. Such indemnification shall include advancement of reasonable legal defense costs incurred, including, without limitation, those incurred prior to any judgment. The Association or Health Plan shall purchase and maintain insurance, to the extent and in such amounts as the Board or Health Plan shall deem reasonable, on behalf of any of the Indemnified Persons and such other persons as the Board shall determine, against any liability that may be asserted against or losses or expenses that may be incurred by any such person in connection with the activities of the Association or such persons, regardless of whether the Association would have the power to indemnify such person against such liability under this Article 3. The indemnification and insurance provided under this Article may not be canceled or materially altered without 30 days advance notice to all Board members.

ARTICLE IV.
ACCOUNTING, RECORDS AND REPORTS

4.1 ***Fiscal Year.*** The fiscal year of the Association shall be the calendar year.

4.2 ***Books and Records.*** The Secretary or its designee shall maintain proper and complete records and books of account of the Association.

4.3 ***Progress and Other Reports.*** At the conclusion of each fiscal year, the Board shall prepare a report describing the progress toward achieving the goals of the Oversight, as provided in Section 1.4 of these By-Laws.

4.4 ***Audit***. No less than every three years, a financial audit of the affairs of the Association shall be undertaken and shall be made available to Health Plan. The auditing firm shall be selected by Health Plan.

4.5 ***Inspection***. All Board members shall have the right to inspect the books and records of the Association upon reasonable notice to the Association.

ARTICLE V.
DISSOLUTION AND TERMINATION

5.1 ***Termination by Board Vote.*** The Association may be terminated upon the vote of two thirds of the members of the Board.

ARTICLE VI.
MISCELLANEOUS PROVISIONS

6.1 ***Notices.*** Any written notice or communication to any of the Board members required or permitted under these bylaws shall be deemed to have been duly given and received (i) on the date of service, if served personally or sent by electronic mail or facsimile transmission to the member at the electronic mail address or the facsimile number set forth in the records of the Association, or (ii) on the third business day after mailing, if mailed by first class registered or certified mail, postage prepaid, and addressed to the member at the address set forth in the records of the Association, or (iii) on the next day, if sent by a nationally recognized courier for next day service and addressed to the party to whom notice is to be given at the address set forth in the records of the Association. Notices to the Association shall be similarly given and addressed to it at its principal place of business.

6.2 ***Confidentiality***. Except as otherwise required by applicable law or as allowed by a policy adopted by the Board, no Board member shall disclose any information regarding the Association or the Oversight without obtaining the prior approval of the Board.

6.3 ***Amendments***. These bylaws may be amended or restated in their entirety by action of the Board as provided in Section 2.3(f) and (g).

EXHIBIT L

Party and Attorney Evaluations of Neutral Arbitrators

Party or Attorney Evaluation of Neutral Arbitrator

Instructions: In accordance with Rule 49 of the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of Independent Administrator,* we ask that you complete the enclosed anonymous evaluation. It will be placed in the folder of the neutral arbitrator who handled your case and copies of it will be sent to other parties who are considering using your neutral arbitrator in the future. We ask for comments where you have them and are glad to receive any that you have the time to offer. Please feel free to add sheets if you need additional space. A stamped, self-addressed envelope is included for your convenience. Please send your response to the address below in the enclosed self-addressed envelope. Thanks for your help.

Office of Independent Administrator
3580 Wilshire Boulevard, Suite 2020
Los Angeles, California 90010

I am the Claimant _____ OR

I am the attorney who represented _____ the Claimant OR _____the Respondent

This claim was:
_____ Withdrawn
_____ Settled
_____ Dismissed by the Neutral Arbitrator
_____ Decided by a Motion for Summary Judgment
_____ Decided After a Hearing:
  _____ For Claimant
  _____ For Respondent
_____ Other - please specify: _____

Type of injury:
_____ Medical Malpractice
_____ Benefits
_____ Third Party Lien
_____ Premises Liability
_____ Other Tort
_____ Other - please specify:_____

Neutral Arbitrator's Name:_____
_____ Chosen Jointly OR _____ Chosen through Strike and Rank Process

---

On the scale below, please rank your experiences with your Neutral Arbitrator. Please circle the number that applies. If the statement does not apply to your case, please circle the "N/A" which appears at the right-hand side. We ask for your comments where you have time and inclination.

1. The neutral arbitrator was impartial and treated all parties fairly.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment:_____
_____

2. The neutral arbitrator treated all parties with respect.

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

3. The neutral arbitrator kept the case moving in a timely fashion.

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

4. The neutral arbitrator responded within a reasonable time to telephone calls or written communications.

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

5. The neutral arbitrator explained procedures and decisions clearly.

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

6. The neutral arbitrator understood the applicable law governing my case.

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

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

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____
_____

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

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____
_____

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

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____
_____

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

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____
_____

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

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____
_____

Analysis of All Evaluations the OIA has Received

OIA - Party Evaluation / Total Counts

Report Date Range: 1/1/00 through 12/31/02

General Counts

	Sent	Received	
Cnt Evaluations	3,034	1,433	(148 of these are Blank)
Cnt of Pro Pers	443	84	
Cnt of Claimant Counsel	1,074	412	
Cnt of Respondents	1,517	885	
Cnt Anonymous		52	

Counts of Received

Blanks

Cnt Blank	148
Cnt Blank and Settled or Withdrawn Early	73

By Disposition

Cnt Disp Withdrawn	201	Cnt Disp Hearing Claimant	138
Cnt Disp Settled	525	Cnt Disp Hearing Respondent	207
Cnt Disp Dismissed by NA	43	Cnt Disp Hearing	5
Cnt Disp MSJ	189	Cnt Disp Other	7

By Method Chosen

Cnt JOINT	430
Cnt STRIKE	767

Claimant and Attorney Evaluations of Neutrals; Statistical Summary of Total Responses

As of 12/31/02

Claimant or Respondent?	Evals Rec'd	Fair Q1	Respectful Q2	Timely Q3	Response Q4	Explained Q5	Knew Law Q6	Knew Facts Q7	Decision Q8	Fees Q9	Fees Q10	Recommend Q11	Cnt/Avg
Unidentified Count	52	30	31	31	31	31	30	30	30	29	29	30	
Unidentified Average		4.1	4.5	4.5	4.6	4.4	4.1	4.3	4.4	4.8	4.7	4.0	4.4
Unidentified Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Unidentified Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Claimant Attorney Count	412	362	363	361	359	358	352	345	347	328	327	349	
Claimant Attorney Average		4.4	4.7	4.7	4.7	4.4	4.4	4.4	4.5	4.5	4.4	4.2	4.5
Claimant Attorney Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Claimant Attorney Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Pro Per Count	84	76	74	74	75	75	69	70	70	61	59	66	
Pro Per Average		3.3	4.0	4.2	4.2	3.8	3.7	3.5	3.9	4.4	3.8	3.2	3.8
Pro Per Median		4.0	5.0	5.0	5.0	5.0	5.0	4.0	5.0	5.0	5.0	5.0	4.8
Pro Per Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Respondent Count	885	822	819	816	815	817	815	805	807	783	779	790	
Respondent Average		4.7	4.9	4.7	4.8	4.7	4.6	4.6	4.7	4.8	4.7	4.5	4.7
Respondent Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Respondent Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Total Count	1433	1290	1287	1282	1280	1281	1266	1250	1254	1201	1194	1235	
Total Average		4.5	4.7	4.6	4.7	4.6	4.5	4.5	4.6	4.7	4.6	4.3	4.6
Total Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Total Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0

Analysis of Evaluations the OIA has Received in 2002

OIA - Party Evaluation / Total Counts

Report Date Range: 1/1/02 through 12/31/02

General Counts

	Sent	Received	
Cnt Evaluations	682	358	(16 of these are Blank)
Cnt of Pro Pers	100	21	
Cnt of Claimant Counsel	241	108	
Cnt of Respondents	341	216	
Cnt Anonymous		13	

Counts of Received

Blanks

Cnt Blank	16
Cnt Blank and Settled or Withdrawn Early	5

By Disposition

Cnt Disp Withdrawn	19	Cnt Disp Hearing Claimant	50
Cnt Disp Settled	102	Cnt Disp Hearing Respondent	67
Cnt Disp Dismissed by NA	15	Cnt Disp Hearing	0
Cnt Disp MSJ	69	Cnt Disp Other	3

By Method Chosen

Cnt JOINT	84
Cnt STRIKE	232

Claimant and Attorney Evaluations of Neutrals; Statistical Summary of 2002 Responses

As of 12/31/02

Claimant or Respondent?	Evals Rec'd	Fair Q1	Respectful Q2	Timely Q3	Response Q4	Explained Q5	Knew Law Q6	Knew Facts Q7	Decision Q8	Fees Q9	Fees Q10	Recommend Q11	Cnt/Avg
Unidentified Count	13	6	6	6	6	6	6	6	5	5	5	6	
Unidentified Average		4.3	4.5	4.8	4.6	4.6	4.2	4.5	4.8	5.0	5.0	4.2	4.6
Unidentified Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	4.5	5.0
Unidentified Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Claimant Attorney Count	108	99	101	101	99	99	98	98	98	91	89	96	
Claimant Attorney Average		4.1	4.6	4.5	4.6	4.2	4.1	4.2	4.4	4.3	4.3	4.0	4.3
Claimant Attorney Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Claimant Attorney Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Pro Per Count	21	20	20	20	21	21	19	19	20	17	18	19	
Pro Per Average		3.5	4.0	3.6	4.3	3.5	3.6	3.2	3.3	5.0	4.6	3.3	3.8
Pro Per Median		5.0	5.0	5.0	5.0	5.0	5.0	4.0	4.0	5.0	5.0	5.0	4.8
Pro Per Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Respondent Count	216	212	212	212	211	211	211	206	209	205	204	204	
Respondent Average		4.7	4.9	4.6	4.8	4.7	4.6	4.6	4.6	4.8	4.7	4.4	4.7
Respondent Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Respondent Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Total Count	358	337	339	339	337	337	334	329	332	318	316	325	
Total Average		4.5	4.7	4.5	4.7	4.5	4.4	4.4	4.5	4.7	4.6	4.2	4.5
Total Median		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Total Mode		5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0

EXHIBIT M

Neutral Arbitrator Evaluation of OIA Procedures and Rules

Questionnaire for Neutral Arbitrators

Instructions: In accordance with Rule 48 of the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of Independent Administrator*, we ask that you complete the enclosed questionnaire about the arbitration named below. Your answers will be used to evaluate and make changes in the OIA system. We ask for comments and are glad to receive any that you have to offer. Please feel free to add sheets if you need additional space. A stamped, self-addressed envelope is enclosed for your convenience. Please send the returned form to the address below in the enclosed self-addressed, stamped envelope. Thanks for your help.

Office of Independent Administrator
3580 Wilshire Boulevard, Suite 2020
Los Angeles, California 90010

Arbitration Name: **Arbitration Number:**

This claim was:

_____ Withdrawn
_____ Settled
_____ Dismissed by the Neutral Arbitrator
_____ Decided After a Motion for Summary Judgment
_____ Decided After a Hearing

On the scale below, please rank your experiences in this matter. Please circle the number that applies. If the statement does not apply to your case, please circle the "N/A" which appears at the right-hand side. We ask for your comments where you have time and inclination.

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

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

2. Based on my experience in this case, I would participate in another arbitration in the system administered by the Office of Independent Administrator.

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

3. In this case, the Office of Independent Administrator accommodated my questions and concerns.

5 4 3 2 1 N/A
Agree Disagree

Please comment:_____

_____

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

____manner of neutral arbitrator's appointment ____the system's rules overall
____early management conference ____hearing within 18 months
____availability of expedited procedures ____availability of complex/extraordinary procedures
____award within 15 days of hearing ____other (please describe):_____
____claimant's ability to have respondent
pay cost of neutral arbitrator

Please comment:_____
_____
_____

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

____manner of neutral arbitrator's appointment ____the system's rules overall
____early management conference ____hearing within 18 months
____availability of expedited procedures ____availability of complex/extraordinary procedures
____award within 15 days of hearing ____other (please describe):_____
____claimant's ability to have respondent
pay cost of neutral arbitrator

Please comment:_____
_____
_____

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

Please comment:_____
_____
_____

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

_____
_____
_____

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

_____
_____
_____

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

_____
_____
_____

Analysis of All Evaluations the OIA has Received

NA Questionnaire / Count by Disposition - Total Responses

Disposition	Count
Decided After Hearing	305
Decided After MSJ	218
Dismissed by NA	40
Settled	509
Withdrawn	189
Unidentified	16
No Questions Answered	108
Total Returned	1385
Total Mailed	1517

Neutral Arbitrator Questionnaire - Responses to Questions 1 thru 3 - Total Responses

Count	Disposition	Procedures Worked Well Q1	Would Participate Again Q2	OIA Accommodated Questions/Concerns Q3
307	**Decided After Hearing Count**	303	303	296
	Decided After Hearing Average	4.7	4.9	4.9
	Decided After Hearing Median	5.0	5.0	5.0
	Decided After Hearing Mode	5.0	5.0	5.0
	Decided After Hearing Min	1.0	1.0	3.0
	Decided After Hearing Max	5.0	5.0	5.0
222	**Decided After MSJ Count**	214	215	207
	Decided After MSJ Average	4.7	4.9	4.9
	Decided After MSJ Median	5.0	5.0	5.0
	Decided After MSJ Mode	5.0	5.0	5.0
	Decided After MSJ Min	1.0	2.0	1.0
	Decided After MSJ Max	5.0	5.0	5.0
45	**Dismissed by NA Count**	39	38	39
	Dismissed by NA Average	4.8	4.9	5.0
	Dismissed by NA Median	5.0	5.0	5.0
	Dismissed by NA Mode	5.0	5.0	5.0
	Dismissed by NA Min	3.0	1.0	4.0
	Dismissed by NA Max	5.0	5.0	5.0
555	**Settled Count**	495	492	479
	Settled Average	4.7	4.9	4.9
	Settled Median	5.0	5.0	5.0
	Settled Mode	5.0	5.0	5.0
	Settled Min	1.0	1.0	1.0
	Settled Max	5.0	5.0	5.0
217	**Withdrawn Count**	175	177	170
	Withdrawn Average	4.8	4.9	4.9
	Withdrawn Median	5.0	5.0	5.0
	Withdrawn Mode	5.0	5.0	5.0
	Withdrawn Min	2.0	2.0	3.0
	Withdrawn Max	5.0	5.0	5.0
39	**BLANK Count**	13	13	13
	BLANK Average	4.5	4.8	4.8
	BLANK Median	5.0	5.0	5.0
	BLANK Mode	5.0	5.0	5.0
	BLANK Min	3.0	4.0	4.0
	BLANK Max	5.0	5.0	5.0
1385	**Total Count**	1239	1238	1204
	Total Average	4.7	4.9	4.9
	Total Median	5.0	5.0	5.0
	Total Mode	5.0	5.0	5.0
	Total Min	1.0	1.0	1.0
	Total Max	5.0	5.0	5.0

NA Questionnaire / Count of Questions 4-5

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

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

Report Date Range: 1/1/2000 through 12/31/2002

		4. Worked Well	5. Needs Change/ Improvement
a.)	manner of neutral arbitrator's appointment	936	22
b.)	early management conference	989	28
c.)	availability of expedited procedures	351	7
d.)	award within 10 days of hearing	285	93
e.)	claimant's ability to have respondent pay cost of neutral arbitrator	475	31
f.)	the system's rules overall	789	28
g.)	hearing within 18 months	442	28
h.)	availability of complex/extraordinary procedures	86	11
Other)		8	29

NA Questionnaire / Results of Question 6

6. Have you had experience with a similar case in Superior Court?
   If yes, what was your role?
   If yes, was your experience in this system with this case Better, Worse, or About the Same?

Report Date Range:
1/1/2000 through 12/31/2002

Role	CntQ6a is Yes	Cnt Better	Cnt Worse	Cnt Same	Cnt BLANK
	27	9	1	11	6
6b BLANK	32	15	1	13	3
Attorney	171	83	9	64	15
Judge	529	162	5	298	64
Mediator	17	6	0	10	1
Neutral Arbitrator	90	37	1	48	4
Party Arbitrator	2	1	0	1	0
Referee	1	0	0	1	0
TOTALS	**869**	**313**	**17**	**446**	**93**

Analysis of Evaluations the OIA has Received in 2002

NA Questionnaire / Count by Disposition - 2002 Responses

Disposition	Count
Decided After Hearing	96
Decided After MSJ	66
Dismissed by NA	8
Settled	89
Withdrawn	25
Unidentified	2
No Questions Answered	22
Total Returned	308
Total Mailed	341

Neutral Arbitrator Questionnaire - Responses to Questions 1 thru 3 - 2002 Responses

Count	Disposition	Procedures Worked Well Q1	Would Participate Again Q2	OIA Accommodated Questions/Concerns Q3
97	**Decided After Hearing Count**	96	95	95
	Decided After Hearing Average	4.6	5.0	4.9
	Decided After Hearing Median	5.0	5.0	5.0
	Decided After Hearing Mode	5.0	5.0	5.0
	Decided After Hearing Min	1.0	4.0	3.0
	Decided After Hearing Max	5.0	5.0	5.0
68	**Decided After MSJ Count**	66	66	63
	Decided After MSJ Average	4.7	5.0	4.9
	Decided After MSJ Median	5.0	5.0	5.0
	Decided After MSJ Mode	5.0	5.0	5.0
	Decided After MSJ Min	2.0	4.0	3.0
	Decided After MSJ Max	5.0	5.0	5.0
9	**Dismissed by NA Count**	8	8	8
	Dismissed by NA Average	5.0	5.0	5.0
	Dismissed by NA Median	5.0	5.0	5.0
	Dismissed by NA Mode	5.0	5.0	5.0
	Dismissed by NA Min	5.0	5.0	5.0
	Dismissed by NA Max	5.0	5.0	5.0
97	**Settled Count**	88	88	85
	Settled Average	4.8	5.0	4.9
	Settled Median	5.0	5.0	5.0
	Settled Mode	5.0	5.0	5.0
	Settled Min	3.0	4.0	4.0
	Settled Max	5.0	5.0	5.0
32	**Withdrawn Count**	22	23	22
	Withdrawn Average	4.8	4.9	4.8
	Withdrawn Median	5.0	5.0	5.0
	Withdrawn Mode	5.0	5.0	5.0
	Withdrawn Min	3.0	3.0	3.0
	Withdrawn Max	5.0	5.0	5.0
5	**BLANK Count**	1	1	1
	BLANK Average	5.0	5.0	5.0
	BLANK Median	5.0	5.0	5.0
	BLANK Mode	5.0	5.0	5.0
	BLANK Min	5.0	5.0	5.0
	BLANK Max	5.0	5.0	5.0
308	**Total Count**	281	281	274
	Total Average	4.7	5.0	4.9
	Total Median	5.0	5.0	5.0
	Total Mode	5.0	5.0	5.0
	Total Min	1.0	3.0	3.0
	Total Max	5.0	5.0	5.0

NA Questionnaire / Count of Questions 4-5

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

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

Report Date Range: 1/1/2002 through 12/31/2002

		4. Worked Well	5. Needs Change/ Improvement
a.)	manner of neutral arbitrator's appointment	224	5
b.)	early management conference	235	7
c.)	availability of expedited procedures	91	2
d.)	award within 10 days of hearing	84	30
e.)	claimant's ability to have respondent pay cost of neutral arbitrator	119	9
f.)	the system's rules overall	200	7
g.)	hearing within 18 months	110	5
h.)	availability of complex/extraordinary procedures	34	3
Other)		0	2

NA Questionnaire / Results of Question 6

6. Have you had experience with a similar case in Superior Court?
   If yes, what was your role?
   If yes, was your experience in this system with this case Better, Worse, or About the Same?

Report Date Range:
1/1/2002 through 12/31/2002

Role	CntQ6a is Yes	Cnt Better	Cnt Worse	Cnt Same	Cnt BLANK
	6	0	0	5	1
6b BLANK	0	0	0	0	0
Attorney	37	19	2	14	2
Judge	128	36	1	71	20
Mediator	2	1	0	1	0
Neutral Arbitrator	20	7	1	11	1
Party Arbitrator	1	1	0	0	0
TOTALS	**194**	**64**	**4**	**102**	**24**

EXHIBIT N

Newspaper Column Written
By Sharon Lybeck Hartmann re: Ethics Standards

LOS ANGELES
Daily Journal

FRIDAY,
MAY 31, 2002
VOL. 115 NO. 105

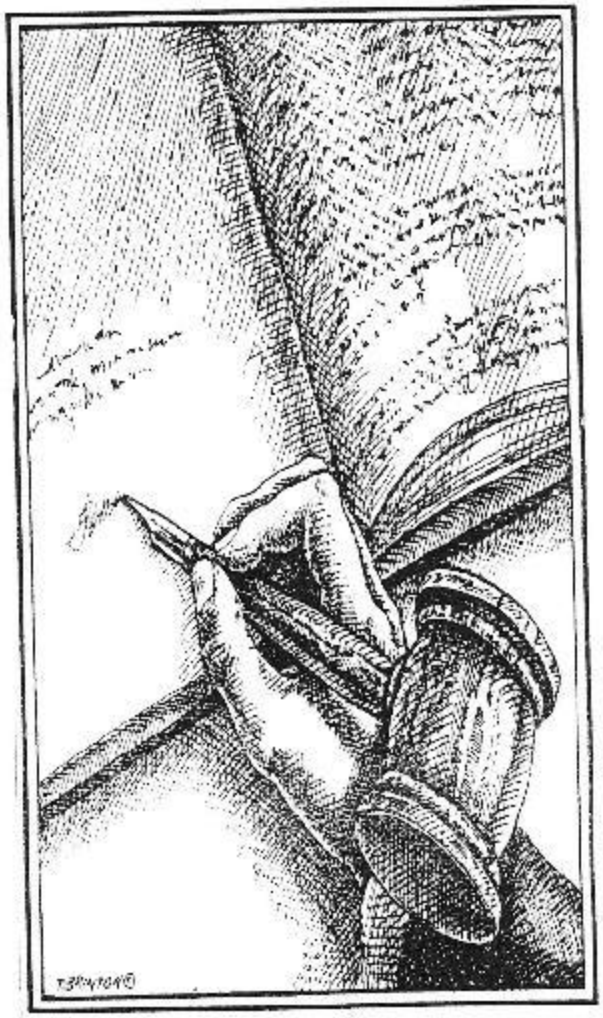
Out in the Open

California's new ethics code for arbitrators, the country's first, sets standards for disclosure and disqualification throughout the process.

BY SHARON LYBECK HARTMANN

Effective July 1, 2002, all California arbitrators must follow mandatory ethics standards. In a national first, the state enacted this requirement last year and directed the Judicial Council to write the Code of Civil Procedure Section 1281.85.

The new ethics standards, given final approval by the council in April, expand the information that an arbitrator must disclose and make the duty to disclose continuous throughout the arbitration. Ethics Standards for Neutral Arbitrators in Contractual Arbitration, Standards 7 and 8 (available at Judicial Council Web site: www.courtinfo.ca.gov/; also available as Division VI of the Appendix to the California Rules of Court (hereafter "Ethics").



Each time arbitrators make a new disclosure, parties have the opportunity to disqualify them. Violation of these provisions may be enforced by vacatur under the ethics standards and new statutes passed last year. California Code of Civil Procedure Sections 1281.9, 1286.2; Ethics 8; see also Ethics 1 at Comment (citing statutes).

The statute mandating the code, passed last September, provides that the new standards may expand but not limit the disclosure and disqualification requirements established by the Legislature. It also requires that the new rules "shall address disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualification, acceptance of gifts, and establishment of future professional relationships." California Code of Civil Procedure Section 1281.85.

California's statutes also were amended in 2001 to expand disclosure obligations. They now require that an arbitrator disclose "all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial." California Code of Civil Procedure Section 1281.9(a).

Sharon Lybeck Hartmann, a Los Angeles attorney who heads her own downtown law firm, is the independent administrator of the Kaiser Permanente arbitration system for disputes with its 6 million members in California. For full information on the system, which handles a thousand arbitrations a year, see www.slhartmann.com/oia/.

Previously, the statute contained only a list of specific items that had to be disclosed. But case law required a broader disclosure similar to the amendment. See, for example, *Schmitz v. Zilveti*, 20 F.3d 103 (9th Cir. 1994); *Johnson v. Security Ins. Co. of Hartford*, 3 Cal.App.3d 839, 8 Cal.Rptr. 133 (1970). The amended statute now requires that all matters covered by the new ethics standards also be disclosed. California Code of Civil Procedure Sections 1281.9(b), 1281.9(a).

Another 2001 statutory amendment makes failure to disclose within the time required by the statute grounds to vacate an arbitration award. California Code of Civil Procedure Section 1286.2(6)(A). This last had been somewhat uncertain under prior case law. See "California Practice Guide: Alternative Dispute Resolution," 7-116 to 7-124 (2001).

The ethics standards greatly expand the information that arbitrators must disclose. Ethics 7. After July 1, they must make reasonable efforts to inform themselves about, and disclose, any matter that might cause a person aware of the facts to entertain a doubt about their impartiality. Ethics 7(b). Previously, this duty applied only to financial interests.

Arbitrators must make disclosures about themselves, their immediate families — including domestic partners and former spouses — and extended family members resident in the household. Ethics 7(b)(2), but see 7(d)(1). For the first time, arbitrators must disclose significant personal relationships with a lawyer for a party, both their own such relationships and those of immediate family members. Ethics 7(b)(3).

Arbitrators also must disclose any service they have rendered as any kind of dispute resolution neutral (that is, a mediator or referee) to any party or lawyer for a party in the particular arbitration within the past two years. Before, they specifically were required only to disclose their work in past arbitrations. Ethics 7(b)(5); California Code of Civil Procedure Section 1281.9(a)(3), (4). The term "lawyer for a party" is defined, and the definition includes attorneys involved in the arbitration and those currently associated with them in their practice. Ethics 2(l).

The duty to disclose now continues throughout the arbitration, whereas previously it was discharged at the beginning of the case. Ethics 7(e). The arbitrator must serve another disclosure statement within 10 days of learning about an item covered by the code that was not disclosed initially. Ethics 7(f). Each time the arbitrator makes a new disclosure, a 15-day period opens for disqualification by any party subject to the restrictions of California Code of Civil Procedure Section 1281.91. Ethics 8(a)(3).

The standards also deal with the controversial issue of offers of new business to the arbitrator by an entity or individual involved in a pending arbitration. First, Standard 10 forbids arbitrators to accept any offers of employment as lawyers, experts or consultants from any party or lawyer for a party in a pending arbitration. Ethics 10(a). It requires that arbitrators disclose, at the outset of a given arbitration, whether they will entertain offers of employment in any other capacity, such as arbitrator or mediator, from a party or a lawyer for a party while the matter is pending. Ethics 10(b).

Parties may disqualify arbitrators on the basis of their disclosure that they will entertain offers of such work. Ethics 10(b). If arbitrators omit this disclosure or if they state that they will not accept such employment, all such new employment is forbidden until the conclusion of the arbitration. Ethics 10(c).

The new ethics standards ... expand the information that an arbitrator must disclose. ... Each time arbitrators make a new disclosure, parties have the opportunity to disqualify them. Violation of these provisions may be enforced by vacatur under the ethics standards and new statutes passed last year.

Standard 10 contains a unique feature. In consumer arbitrations, a term defined within the code, if neutrals disclose that they will entertain offers of additional work from parties or lawyers for a party in a pending arbitration, they may not accept any such offer without first obtaining the consent of the parties in the first arbitration. Ethics 10(d), 2(d).

Parties have seven days to object, following the neutral's disclosure of an offer of new work. Silence is treated as consent. Ethics 10(d)(2). If neutrals disclose initially that they will entertain such offers and seek consent of the parties, they avoid the reopening of disqualification provided in Standard 8(b). Ethics 10(d)(3).

Arbitrators also must make extensive disclosures about the organization that referred the case to them. Ethics 7(b)(12). However, the code recognizes that they may not be able to get the information in some cases, and it allows them to rest on the information given to them by the organization. Ethics 7(b)(12)(F).

The ethics standards require arbitrators to set forth their own relationship with the organization and any significant past, present or expected financial or professional relationship between the provider and a party or lawyer in the arbitration. Ethics 7(b)(12)(A)-(B).

Before the standards became final, some national organizations such as the American Arbitration Association and the National Association of Securities Dealers told the Judicial Council in public comment forums that their disclosures could run to thousands of cases, thus filling hundreds of pages. The ethics standards now permit this organizational information to be posted on the Web. The arbitrator can simply incorporate the Web address and offer hard copies if they are desired. Ethics 7(b)(12)(F).

As noted, an award can be vacated for failure to disclose. California Code of Civil Procedure Sections 1281.91(a), 1281.95(b), 1286.2(a)(6)(A). Violations of other code requirements also may give rise to vacatur. See California Code of Civil Procedure Sections 1281(a)(3) or (a)(5) (if "the rights of the party were substantially prejudiced by the violation"); Ethics 1 at Comment.

In November, Chief Justice Ronald George named a 19-member panel of experts to advise the Judicial Council staff in its drafting. The panel included judges, arbitrators, law school faculty members and representatives of labor, consumers, the Legislature, the governor's office and provider organizations. It met several times throughout this process and reviewed and commented on staff-written drafts and the public suggestions received.

EXHIBIT O

Glossary of Report Terms

Glossary for Annual Report

(Alphabetical Order)

This glossary was written at the request of an Arbitration Oversight Board Member and is meant to explain the meaning of some of the terms used in the "4th Annual Report." Anyone who wishes further information is welcome to contact the OIA.

abandoned claim
claimant has not paid the $150 filing fee or qualified to be excused from payment of the fee

award the name for the decision made by the arbitrator(s) after a hearing

claimant the Kaiser member who makes the arbitration demand, also sometimes called a plaintiff

claims demands for arbitration forwarded to the OIA by Kaiser at any time

claims not opted in
claims made by Kaiser members under employer contracts which do not require the use of the OIA where claimants have either (a) rejected use of the OIA or (b) never responded to offers to allow them to join the system

closed matters
those claims in which a decision has been entered or the case has been withdrawn from consideration by action of the parties or abandoned by failure to pay the filing fee or obtain a waiver of it

closed-non-opt-in
the claim was returned to Kaiser for handling under the old arbitration system. This happens in two ways. Either the member affirmatively refused to join the OIA system, which happens rarely, or else the member or member attorney never responded to our letters, which happens often. We must return such cases to Kaiser for handling under the old system because our only legal authority for handing a case is the contract between Kaiser and the employer. Unless the member consents, we cannot handle the claim.

consolidated claim
claim joined with another one in our system because it arises from the same set

of actions, for example, separately filed wrongful death claims, one from a patient's spouse and one from the patient's child

dismissed claim

claim dismissed by the neutral arbitrator, usually for failure to appear at hearings, produce evidence, or carry the claim forward. (legal term "failure to prosecute.") This is a final disposition of the matter.

hearing a formal proceeding very much like a trial. It is held before one or three judges, called arbitrators; witnesses are sworn and testify; evidence is taken and the arbitrators decide the dispute, usually either by declaring that Kaiser was not at fault or by giving a monetary award to the Kaiser member. If there is more than one arbitrator, the decision is by majority vote of the arbitrators. The decision is made in writing and is served on the parties.

mandatory claims

claims made by Kaiser members under employer contracts entered since 2000 which require the use of the OIA.

neutral arbitrator

the person who presides at an arbitration and serves as the judge. This arbitrator must impartially view the evidence and arguments presented and is not aligned with any party in the dispute. If there is only one arbitrator, then that person is neutral. If there is a panel of three arbitrators, only one of them is neutral but that person still presides.

new claims demands for arbitration made by Kaiser members on or after March 29, 1999 when the OIA system first began to operate

old claims demands for arbitration made by Kaiser members before March 29, 1999 when the OIA system first began to operate which were subsequently forwarded to the OIA for administration

open claims those claims which remain in the OIA system where no decision has been entered and the claim has not been closed in some other manner

opt in claims claims made by Kaiser members under employer contracts which do not require the use of the OIA where the members have voluntarily elected to join the OIA system

party arbitrator

where there is a panel of three arbitrators (which California statutes provide for) one of them is neutral and each of the other two is called a party arbitrator who represents one side in the dispute and is chosen by that side alone.

pro per(s) a member who is proceeding without an attorney, and thus representing him or herself in the case and acting as his/her own lawyer

respondent Kaiser Health Plan, the Permanente Groups and the various individual medical personnel against whom a member files a demand for arbitration

settled the parties have agreed to end the case on a basis which they each find acceptable. Often this occurs through payment by respondent to claimant of some sum of money agreed upon in return for releases of liability.

summary judgment

a process by which an arbitrator (or a judge in a court) grants judgment for one side or the other based completely on the law, and not on the facts. The judgment is final and ends the case; it is the equivalent of a trial verdict. In effect, the judgment says that there is no legal basis for the claim. In the OIA system, it often occurs because the claimant has not obtained an expert witness to testify that the standard of medical care provided fell below that offered in the community, something that is nearly always required to prove a medical malpractice claim whether it is asserted in arbitration or in a court.

total claims all arbitration demands forwarded to the OIA by Kaiser at any time

withdrawn claim

the claimant has decided to drop the claim and so informs the OIA in writing. The case leaves the OIA system without prejudice, which means that it may return at some future date

EXHIBIT P

Kaiser Arbitration Oversight Board
Report Review

Kaiser Arbitration Oversight Board

March 25, 2003

Ms. Sharon Lybeck Hartmann
Independent Administrator
3580 Wilshire Blvd., Suite 2020
Los Angeles, California 90010

Dear Ms. Hartmann:

The members of the Arbitration Oversight Board received for review a draft copy of the Fourth Annual Report of the Office of the Independent Administrator (OIA) in late February. The report was discussed at the Board meeting of March 13th. On behalf of the Board, I send these comments for inclusion in the Fourth Annual Report.

Once again, the Board commends the OIA for a thorough, well-documented account of the administration of the Kaiser arbitration system. An excellent Summary, well-organized Table of Contents, and useful set of Exhibits enhance the presentation. The data presented in the report are consistent with those provided by staff throughout the year at the Board's quarterly meetings.

Board members identified a number of points in the text and Report Summary which they thought could be stated with greater clarity. Their suggestions were, for the most part, adopted and incorporated in the final version of the report. I would note that the suggested changes were essentially editorial, not substantive, in nature.

In discussion of the Fourth Annual Report, the Board had opportunity to reflect on an eventful past year. Legislation and a new Judicial Council code of ethics effected significant changes in arbitration procedures. The Kaiser arbitration system responded remarkably well, adjusting its rules and procedures accordingly. It was a year in which the Arbitration Oversight Board came fully into its own as a governance structure for the arbitration system, with by-laws and trust fund designed to assure that the OIA would remain independent of Kaiser. It was a year in which the Board learned, with regret, that its pioneering Independent Administrator planned retirement. Fortunately selection of a highly qualified successor from amongst her associates promised a smooth transition of leadership.

The experience of the past year, so well accounted in the Fourth Annual Report, could now be viewed, as well, in the broader context of the entire span of years in which the Kaiser arbitration system has been administered independently. One can see the evolutionary development of the OIA and the Oversight Board and gain an appreciation of what has been accomplished in these last several years since the Blue Ribbon Panel's recommendations for improvement of the Kaiser arbitration system. How well the Panel's recommendations have been achieved, in letter and spirit, is described fully in Exhibit B. While "buried" in the Exhibits section, the record of accomplishment documented in Exhibit B is, perhaps, the most important

information in the Fourth Annual Report. It shows a successful effort, by all parties, to develop a fair, timely and continuously improving arbitration system.

Board discussion of the Annual Report did not simply dwell on review of past accomplishments. It looked to the body of information contained in the report to ask how the arbitration system could be further improved. The report will serve as a reference in developing the Board's future agenda. How well does the system function under its current rules? How does the arbitration system relate to "pre-arbitration" procedures? Are there additional ways to improve dispute resolution mechanisms and reduce the need for arbitration? What further modification in procedures for *pro per* cases might be helpful? Can the arbitrator pool be expanded, its diversity increased? What is the value of the mandatory settlement conference as currently configured? Should it be changed? Are Kaiser member contract provisions consistent with current arbitration system rules? How can we best obtain constructive criticisms of the system from arbitrators, litigants, claimants? This is just a sampling of questions arising in the course of discussing the Annual Report, which will be revisited in greater depth at future Board meetings.

The Arbitration Oversight Board concludes that the report of the OIA provides a clear and thorough account of the administration of the arbitration system, which should be of great value to the many parties interested in the system. The report describes the current status of the system and documents significant achievement in implementing the original Blue Ribbon Panel recommendations. The Kaiser mandatory arbitration system is now administered independently by the OIA with public Board oversight. Conducted in a spirit of continuous improvement, the arbitration system seeks conscientiously to provide fair, timely and cost-efficient arbitration for Kaiser members.

The Board takes the occasion of this comment on the Fourth Annual Report to express to you, Sharon Hartmann, its admiration and deep appreciation for your remarkably fine service as the first Independent Administrator of the Kaiser arbitration system, and for the steadfast sense of fairness that characterized all your endeavors.

The Board, by unanimous resolution, has appointed you **Independent Administrator Emeritus**, with all the powers and prerogatives pertaining thereto. Congratulations.

Sincerely,

David Werdegar, M.D., Chair