

If You Do Not Have an Attorney

This handout is for people who represent themselves in arbitration without a lawyer. The legal term for this is *in propria persona* or “in pro per.” The following information provides some facts, and answers some questions most asked by pro pers. This handout does not replace the *Rules for Kaiser Member Arbitrations Administered by the Office of the Independent Administrator (Rules)*. Everyone is responsible for following the *Rules*.

What is arbitration?

Arbitration is a legal proceeding. It is like a case filed in court. At the arbitration hearing, you and the other side present evidence and witnesses, including medical experts. Unlike most trials in court, there is no jury. Arbitrators hear the evidence and serve as “judges.” Arbitrators decide cases based on the evidence presented by both sides and the law. The arbitrator’s decision is final, binding, and can be enforced in court. Only rarely can a court overturn the arbitrator’s decision.

Are arbitration and mediation different?

Yes. Arbitration is a proceeding where evidence is presented like a case in court. In mediation, parties solve their dispute with the help of a neutral person called the “mediator,” who tries to help the parties reach an agreement and end their dispute. Mediation is an attempt to settle the dispute voluntarily. A mediator cannot force the parties to accept a decision.

Who are the parties in an arbitration?

The party who files a demand for arbitration is the claimant. There may be more than one claimant named in a demand for arbitration. The parties who the arbitration is filed against are called respondents. A demand for arbitration must name the respondents by their legal names.

What are the legal names of the Kaiser respondents?

In Northern California, the respondents are Kaiser Foundation Health Plan, Inc., Kaiser Permanente Insurance Corporation, Kaiser Foundation Hospitals, and The Permanente Medical Group, Inc.

In Southern California, the respondents are Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, and Southern California Permanente Medical Group.

What is the Office of the Independent Administrator (OIA)?

The OIA is a neutral entity that administers the arbitration process used by Kaiser and its members. It is not a part of Kaiser. The *Rules* and California law govern the arbitrations. If you represent yourself, the OIA will tell you what the *Rules* mean. However, the OIA cannot advise you on how the *Rules* might affect your specific case. Neither the OIA nor the neutral arbitrator can give you legal advice or help you find an attorney or expert witness.

What are my responsibilities when proceeding without a lawyer?

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

- Understand and comply with the *Rules* governing Kaiser member arbitrations administered by the OIA;
- Learn the California law that applies in your case;
- Find and subpoena witnesses you need;
- Find, hire, and pay expert witnesses you need; and
- Write and deliver all documents that the *Rules*, California law, or the neutral arbitrator directs you to prepare.

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

What is discovery?

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

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

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

Are any other expert witnesses needed?

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

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

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

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

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

If both sides give up their right to a party arbitrator, a single neutral arbitrator will hear your case. The other side will pay all the neutral arbitrator's fees and expenses if you sign both the Waiver of Objection to Payment of Fees and the Waiver of Party Arbitrator – Claimant Forms. For more information see Rules 13, 14, 15, and 22. Having your case heard by a single neutral arbitrator does not limit the amount of damages you can claim.

Most OIA arbitrations are decided by a single neutral arbitrator.

What is an *ex parte* communication?

Ex parte communication occurs when one party communicates with the neutral arbitrator (in writing, by telephone, or in person) without giving the other side a chance to participate or respond. *Ex parte* communication is prohibited unless it is about the time or place of a hearing or conference. If you need to contact the neutral arbitrator for any other reason, email or write a letter to the neutral arbitrator and send a copy of the email or letter to the other side. You may also ask for a conference call with the neutral arbitrator and the other side.

What is a motion for summary judgment?

Summary judgment, which also occurs in the court system, is frequently used to end cases before an arbitration hearing. Kaiser may make a motion for summary judgment. This means they argue that there is no dispute about the facts in your case. They also argue that they deserve to win under the law. The hearing on the motion generally takes place by phone but may take place in person or by video. If the neutral arbitrator grants a motion for summary judgment, the case is over.

Why is summary judgment important to my claim?

If Kaiser makes a motion for summary judgment, you must prepare your position in writing, called an opposition, and send it to the neutral arbitrator and the other side before the deadline. If Kaiser has included an expert declaration, you probably need to do the same. If you fail to send your opposition, including an expert declaration, by the deadline, the neutral arbitrator will probably grant the motion and your case will be over.

Are there other resources to help people who represent themselves?

There are books and other writings for people to learn about how best to represent themselves in legal proceedings available online, in libraries or in bookstores. If you need help finding a lawyer, call the State Bar and/or your County Bar Association.

Contact us

If you have questions about the *Rules*, please call the OIA at (213) 637-9847, email us at oia@oia-kaiserarb.com, or visit the OIA's website at www.oia-kaiserarb.com. Copies of the *Rules* for Kaiser member arbitrations, forms, and other helpful items can be found at the OIA website.