

INSIDE THIS ISSUE:

President's Address 1

Recap: Ethics Luncheon 1

Meet The Solo & Small Firm (S&SF) Committee 2

S&SF Committee Events Listing 3

Membership discounts 5

Calendar Of Events (Register today!) 6

Registration: Annual Golf Tournament 7

Announcements 6

# THE BULLETIN

P A L O A L T O A R E A B A R A S S O C I A T I O N

## P R E S I D E N T ' S A D D R E S S

*Soyeun Choi*

Sarcasm. Cynicism. Dark humor. Raised in Rhode Island, I, like all children raised in New England, know that when the butcher or the baitman leans over and asks "Is it hot enough for ya?" on a sweltering August day, there's only one answer: "Yeah, right."

These means of communicating negativity bond us in adversity against the irritating aspects of life whether it be the weather, "cursed" baseball teams or smart-alecks. It's a useful shortcut to say, "Even if we're scoreless in this game of Life, you and I are on the same team." So I remain unfazed when, upon mentioning PAABA to some of our esteemed members, hear comments like, "The Bulletin? No one reads that!" or "Luncheons—like people go to those things." The meta message: we have no time!

As attorneys, we have special obligations and responsibilities that the general public may not understand so we commiserate with each other

and it's refreshing, even at PAABA's expense.

However, it would also be misleading to suggest that PAABA is an apathetic, superfluous organization in our lives. We are a responsive group of attorneys, ready to execute good suggestions for lunches and events, at low cost and in convenient locations. And the amount of good deeds in the upcoming months is quite admirable: we're educating attorneys on eliminating bias and on substance abuse, providing free legal advice to the community, running for the fight against breast cancer, golfing to raise funds (without any skimming!) for East Palo Alto Community Legal Services, and building unity through happy hours and enriching outdoor activities.

So go ahead and complain about the potato salad or the President's address—but keep going to our events.

PS from the Board: Renew your memberships today and tell your friends! More details on Page 5.

### ETHICS LUNCHEON

*Serena Patitucci Torvik*

Attorneys who attended the "Ethics & ADR" lunch event on August 26 got a double benefit—we obtained one of those hard-to-get MCLE units while being treated to an informative, pragmatic and insightful presentation by retired judges John A. Flaherty and Joseph F. Biafore, Jr. Judges Flaherty and Biafore currently use their expertise at resolving cases as neutrals out of the San Jose office of JAMS and were kind enough to come to Palo Alto for the event. The format of the presentation allowed the Judges and the audience to interact and discuss several ethical scenarios related to mediation and alternative dispute resolution, in general.

The key, overarching practice pointer emphasized by the Judges was – if you settle, put it in writing right then and there, making sure to include reference to enforceability pursuant to Code of Civil Procedure section 664.6, and have

Cont. p. 4



Retired Judge Joseph F. Biafore (left)



Retired Judge John A. Flaherty (below)

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# PAABA

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## Welcome PAABA SOLO & SMALL FIRM COMMITTEE

Solo and Small Firm Lawyers!

Welcome to the Solo and Small Firm Practice Group of PAABA! We are committed to creating a unified community of solo practitioners and small firm attorneys through educational, professional and social activities so that we may best serve the Palo Alto Area community. We are proud and excited to announce this newly formed committee and welcome solos and attorneys that work in offices with 12 or fewer attorneys to get involved. Our co-chairs have some exciting things planned for the coming year. See the event listing on page 3 for specifics.

Sincerely, Steve Pappas, Barbara Muller, and Peter Pham  
Co-Chairs, Solo and Small Firm Practice Group Palo Alto Area Bar Association

### Meet the Co-Chairs



Barbara Muller is originally from Honolulu and specializes in Criminal Law and Civil Rights Litigation. She works at the Law Office of Mark Martel and takes on contract work in the area of criminal defense from other solo and small firm attorneys in the Palo Alto Area. Barbara will be organizing the first PAABA surf club, scheduling group tee times at the various golf courses in the South Bay, and will be assisting Peter Pham in coordinating MCLE lunches.

425 Sherman Avenue #330 Palo Alto, CA 94306  
(650) 470-2652 (650) 470-2654 (fax)



Steve Pappas is a solo practitioner whose practice emphasizes business litigation, business planning and personal injury work. He also participates on our Lawyer Referral Service, was a past PAABA board member and coach of the PAABA softball team. Steve has taken the lead on organizing bike rides, soccer, softball, and tennis.

550 S. California Avenue Suite 320 Palo Alto, CA 94306  
(650)858-8400 (650)858-8508 (fax)



Peter Pham is a partner of Mousalam & Pham, whose practice specializes in Family, Estate Planning and Real Estate matters. Peter will be organizing weekend hikes here in the South Bay and other nearby communities, and scheduling MCLE lunches that highlight solo and small firm interests.

2600 El Camino Real, Suite 505 Palo Alto, CA 94306  
(650) 494-2888 (650) 494-2822 (fax)

## PAABA SOLO & SMALL FIRM COMMITTEE EVENTS LISTING

### Bicycle Rides

Weekly bike rides in the month of September. We'll meet on Wednesdays at 5:45 p.m. at the corner of Stanford Avenue and Junipero Serra (the starting point for the hike to the "Dish"), gauge the interests of participants and plan on riding a 10 – 20 mile loop from there.



### Golf

E-mail Barbara Muller at [barbarajmuller@aol.com](mailto:barbarajmuller@aol.com) if you would like to join us for regularly scheduled golf outings. Our first golf game: Sunday, October 3 at 9:00am at Crystal Springs Golf Course in Burlingame, If you would like to join us, please email Barbara by September 27th. The cost per player at Crystal Springs for 18 holes is reasonable at \$80. Crystal Springs Golf Course is located at 6650 Golf Course Drive, which crosses the Black Mountain Road west exit off the 280) and boasts beautiful views of the reservoir and wildlife!

### Happy Hours

The second Thursday of each month, testing a different local watering hole each time. Thursday, October 14: La Bodeguita del Medio, 463 California Ave (<http://www.labodeguita.com/main.htm>) 5:45 pm to 7:00 p.m. Mark your calendars, we'll see you there!!!



### Hiking

Email Peter@mousalampham.com regarding your interest in joining us for hikes in the South Bay and beyond. The first group hike will take place on September 25th. Time and exact location to be announced via e-mail to S&SF Committee members.

### MCLE

As our membership for this brand new committee grows, we will be scheduling MCLE lunches that highlight solo and small firm interests. Please contact Barbara Muller or Peter Pham via email if you are interested in being a guest speaker on a topic which is relevant to our solo and small firm needs for MCLE credit.

### Soccer, Softball & Tennis

Email Steve at [sportlaw1@aol.com](mailto:sportlaw1@aol.com) regarding your interest in these events. If we have enough players, soccer and softball teams will be entered in leagues at Twin Creeks in Sunnyvale. As for tennis, once we have an idea how many want to play, Steve will reserve enough courts with the City of Palo Alto once a month on a regular weeknight.



### Surf Club

Email Barbara Muller at [barbarajmuller@aol.com](mailto:barbarajmuller@aol.com) to sign up for PAABA's first Surf Club! Sunday, October 10, 2004 we will be taking all S&SF committee members interested in learning to surf to Linda Mar for a beginner surfing lesson. Schedule for the day:

- 9:30am–10:30am: Surfboard and wetsuit rentals at Sonlight Surf Shop in Pacifica;
- 10:30am–12:30am: Lessons
- 12:30pm – 1:30pm: Free surf (practice your newly learned skills!)

Please note that your board and wetsuit rental will only cost you \$30 for the whole day. You may pay an extra \$4 for booties (not necessary but recommended by your instructor). If you don't need a lesson, come join us that day for a group surf session!

Ethics Luncheon, cont from p. 1

everyone sign. Don't just use bullet points. Taking the extra time to do this is a worthwhile endeavor, otherwise the settlement is likely not enforceable or admissible (see Evidence Code section 1123). The Judges suggested a number of different ways to accomplish this, including: bring your laptop and type something up; bring a form and fill it in; or write it out on a piece of paper.

The ethical scenarios presented involved the Rules of Professional Conduct, primarily Rule 3-310. The participants discussed identification of actual and potential conflicts and when such conflicts may be waived. It was pointed out that even

when a conflict may be waived, waiver might not always be the best idea. In other words, sometimes sending a client to seek new counsel is the best, most ethical course. The Judges pointed out different ways in which conflicts can arise for the first time at mediation and how that impacts the neutral. Sometimes, mediation cannot proceed in the face of the conflict.

The ethical scenarios presented also involved the Evidence Code, particularly admissibility of evidence pursuant to sections

The key, overarching practice pointer emphasized by the Judges was – if you settle, put it in writing right then and there . . .

1119 and 1120 and the July 12, 2004, opinion *Rojas v. Superior Court*. These sections and the recent case interpreting them generally establish the mediation privilege—protection for evidence prepared “for the purpose of, in the course of, or pursuant to, a mediation....” Ultimately, as suggested by *Rojas*, the trial court may have to conduct hearings on how the mediation privilege applies to the facts of a particular case. It is important to examine when the evidence in question came into being vis-à-vis the litigation, the order to mediation, and other key facts.

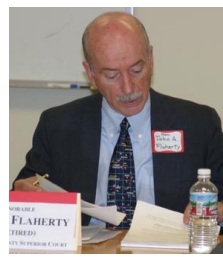
Other scenarios involved the issues of when a mediation is concluded (Evidence Code section 1125) and when a mediator can communicate about the case with the judge (*Foxgate Homeowners’ Ass’n, Inc. v. Bramalea Cal., Inc., et al* (July 9, 2001)).

Thank you to Judges Flaherty and Biafore and to JAMS. And last, but not least, many thanks to our gracious host Pillsbury Winthrop in Palo Alto for providing the conference room and lunch.

**Update:** Anyone interested in this topic should also read a new case that came out on Aug. 31, 2004, which discusses Evidence Code section 1123: *Fair v. Bakhtiari*, No. A100240, 04 C.D.O.S. 8023.



Above: participants pose questions  
Below: Biafore (left) and Flaherty (right) discussing answers



**NEW PAABA MEMBERSHIP  
DISCOUNT POLICIES**

On September 1, 2004, the PAABA Board authorized discount programs available to our members:

**TWO FOR ONE:** When a PAABA member brings in a new member, both enter at half the yearly rate.

*Member A and Attorney A both sign up for \$100: Member A pays \$50 to renew and Attorney A pays \$50 to join.*

**Groups of 10 or more:** Groups of ten or more at one firm can join at last year's membership rate of \$90. This is regardless of prior PAABA membership.

Firm A renews eight memberships every year and recruits two more to sign up ten attorneys at \$90 each. OR Firm A always signs up ten attorneys every year and renews them all at \$90 each.

Yes, Firm A could have five existing PAABA members and have them recruit five new members to take advantage of the 2 for 1: go for it!

If you have already renewed your membership for 2004-2005 but would like to take advantage of either of these discount opportunities, let us know and we will retroactively adjust the rates.!

**Lawyer Referral Service  
CALL FOR SERVICE**

PAABA Lawyer Referral Service would like to have more attorneys join our referral panels.

We especially need expertise in the following areas:

- Employment
- Intellectual Property
- Police Misconduct
- Taxation
- Social Security
- Workers compensation

There is also room for growth in the following areas:

- Appellate
- Civil rights
- Consumer
- Education
- Medical and legal malpractice
- Municipal and administrative law

We also seek a *non-LRS panel* attorney to join the LRS Committee.

Required attendance at bimonthly lunchtime meetings in the PAABA office.

*For more information, contact PAABA.*

**THE BULLETIN NEEDS  
YOU**

Writers, Photographers,  
Layout Designers and  
Ad Managers

Like Law Review but WAY more  
fun—and without a write-on!

Contact information on masthead, p. 2

# PAABA Fall Calendar of Events

## SEPTEMBER

- September 9:** Meet the Solo and Small Firm Committee!  
5:15 pm—6:45 pm, \$4 Mai Tais At Trader Vics, 4261 El Camino Real, Palo Alto
- September 22:** Community Law Night  
6:30-9:00 pm, Mitchell Park Community Center (3800 Middlefield Rd, Palo Alto)
- September 25:** S&SF Hiking Trip (see p.3)
- September 26:** Race for the Cure in SF
- September 30:** Elimination of Bias CLE: Judge Ken Kawaichi (& tentative Judge David Garcia )  
11:45-1:00pm, Cooley Godward, 3175 Hanover Street, Palo Alto

## OCTOBER

- October 3:** S&SF Committee Golf Trip to Crystal Springs (see p.3)
- October 5:** Women Lawyers' Committee presents *Five Things You Should Know About Growing Your Business* featuring Nancy Mueller, Entrepreneur and Founder of Nancy's Specialty Foods  
5:30 pm, Gray Cary, 2000 University Ave., East Palo Alto
- October 14:** Happy Hour at La Bodeguita del Medio, 5:45 pm (see p.3)
- October 28:** Estate Planning Updates Luncheon  
11:45– 1:00 pm, Wilson Sonsini Goodrich Rosati, 650 Page Mill Road, Palo Alto
- October 10:** S&SF Surf Trip (see p. 3)
- October 11:** Golf Tournament (see p. 7)

## NOVEMBER

- November 5:** Substance Abuse CLE featuring speaker Barry Rosen  
11:45– 1:00 pm, Morrison Foerster, 755 Page Mill Road, Palo Alto

Check boxes for registration of event. All luncheons \$30 members \$35 non-members, add \$10 for MCLE . RSVP to PAABA, 405 Sherman Avenue, Palo Alto, 94306 or call (650) 326-8322 or email info@paaba.org and follow by mailing check.

NAME/FIRM \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

TOTAL ENCLOSED: \$ \_\_\_\_\_

\*The Palo Alto Area Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California in the amount of one hour. The Palo Alto Area Bar Association is a State Bar of California MCLE approved provider.

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**15TH ANNUAL GOLF TOURNAMENT**  
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**Stanford University Golf Course**

**Monday, October 11, 2004**

*Play* one of the nation's top golf courses

*Enjoy* a great day of fun

*Help* a very deserving cause

The Palo Alto Area Bar Association's  
15TH ANNUAL GOLF TOURNAMENT  
Stanford University Golf Course  
Monday, October 11, 2004

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**AN EVENT NOT TO BE MISSED!!!**

On behalf of PAABA, Thoits, Love, Hershberger & McLean has again agreed to organize and run this year's event and has committed itself to ensure that this is the can't miss golf tournament of 2004!

Golf at one of the premier courses in the Bay Area

Enjoy lunch and dinner among friends, plus a raffle and silent auction,  
and support COMMUNITY LEGAL SERVICES IN EAST PALO ALTO

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## ANNOUNCEMENTS

Submit announcements to the Bulletin by the 15th day of the preceding month in which you wish your listing to be posted. Send to the PAABA office or to Soyeun Choi at [SoyeunDChoi@yahoo.com](mailto:SoyeunDChoi@yahoo.com) or call 650-566-9510. Ads run for three months and may be extended. This service is FREE to all PAABA members!

The East Palo Alto YMCA Youth & Government program seeks an adult to volunteer as a program advisor for its Youth & Government program. Contact Cat Bening at 650-328-YMCA or [cbening@ymcamidpen.org](mailto:cbening@ymcamidpen.org)

Palo Alto law office available on Sherman Ave. For more information, please call 650-327-5400.

Downtown Palo Alto law firm has extra office available. Library, conference room, secretary and reception available. Please Contact Basil P. Fthenakis 650-326-1397.

Palo Alto law firm has two offices for sublease near California Avenue w/high speed internet, copier, conference room, kitchen, furnished or unfurnished. Please call 650-556-2290.

Palo Alto Office & work area for lawyer in suite shared by 7 lawyers. Located across from courthouse. Many amenities (library, on-site parking, skylights, balcony, kitchenette, conf. rm, reception area, etc.). 2501 Park Blvd. Contact Peter Giamalis at 650-324-0222 or "giamalis@aol.com."

## Community Law Night!

Planning for Community Law Night is under way!

This year's event is on September 22<sup>nd</sup>, 2004 at Mitchell Park Community Center from 6:30pm-9:00pm.

If you would like to volunteer for the night of the event or to plan this event, please contact the PAABA office.

## ALCOHOL, DRUGS OR OTHER SUBSTANCES?

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For more information:  
650-326-8322  
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E-mail: [info@paaba.org](mailto:info@paaba.org)

The Palo Alto Area Bar Association is unique in that its geographical and professional area straddles two counties and two county bar associations. It was formed to provide a more personal and more responsive professional association for attorneys in the mid-peninsula, ranging from Menlo Park, Atherton, Woodside, East Palo Alto, and Portola Valley through Palo Alto, Los Altos and Mountain View.