ANTI-BIAS RULES REQUIRE VIGILANCE

An extra slice of pie to the authors of the two letters to the editor in March 2017: Andrew Halaby, Brianna Long, and Stephen Baum. As we all are aware now, the adoption of ABA Model Rule 8.4(g) provides the basis for attorney discipline based on conduct that someone finds to be indicative of bias against a comprehensive list of favored subgroups of humanity, in any venue, and—shockingly—includes “verbal conduct.”

The Halaby/Long piece provided an eye-popping, behind-the-scenes look at just how flawed and outcome-oriented the process was that resulted in that expansion of Rule 8.4. The ABA has reason to be embarrassed. The Baum piece provided a clear run-down of how flawed that subsection is, both in a legal and a practical sense (not to mention being a fun read).

Although Arizona does not lock-step behind the ABA Model Rules, ARIZONA ATTORNEY would do its readership a service to provide information as to who in the future might consider a similar addition to the ethical rules applicable to Arizona attorneys. For one would like to get ahead of such a potential train wreck and start expressing my opposition—early and often—to any such change.

—Mary L. Frederickson, Prescott

LAWYER QUIRKS AMUSE

Loved your article “What Drives Me Crazy About Lawyers? How Much Time Do You Have?” (March 2017). However, the authors failed to mention their profession’s penchant for restating themselves. As if reiterating the exact same idea with slightly different words may somehow enhance us lesser mortal’s capacity to understand what they are really saying.

Or, perhaps, saying something over, and over, and over again, repeatedly, to the point of repetitious redundancy, will make them appear smarter...? What we are really thinking: Loves Own Voice? vs Paid By Word!

—M. Suzanne Rowe, Phoenix

BAIL “REFORM” BAD FOR AZ

I am a 43-year member of the Bar, the majority of which has been spent representing the interests of bail bond companies and their sureties. I found your shill-like and “it’s all sunshine and lollipops” critique of the bail “reforms” advanced by the Task Force On Fair Justice For All discussed in your From The Editor column (March 2017) to be a gross disservice to the members.

For instance, you cite the problems in Ferguson, Missouri, City Court as a justification for some of the Task Force’s recommendations. This is so, even though from territorial days to the present, there has never been a hint of an Arizona political subdivision’s court acting in such a reprehensible way. No, like tort reform or voter fraud, such action by the Task Force was a solution in search of a problem.

Even more offensive was your alternative-facts remark that bail “helps simply to jail the poor and release the rich.” I will tell you that most bail bonds posted in Arizona are for $5,000 or less. That means the indemnitor (the person who signs for the bond), generally a family member or close friend of the defendant, at most, would be obliged to pay the $500 premium and pledge collateral (see Department of Insurance Regulation R20-6-601(c)(4)) to secure the bond, usually a car title, cash or other personal property.

In 2002 the Arizona Court of Appeals decided the case of State v. Old West Bonding Company, 56 P.3d 42 (Ariz. Ct. App. 2002). In Old West the court determined that in absence of a valid explanation or excuse (see Arizona Rule of Criminal Procedure, Rule 7.6(c)(2)) to exonerate the bond in its entirety, the court adopted a number of factors a trial court should use to determine “how much or how little” to forfeit. One of those factors—“any other mitigating or aggravating factor”—has routinely been used over the years by indemnitors who wanted the court to understand and take into account what a financial hardship the forfeiture of the bond would create for them.

I have seen and heard many, many “financial hardship” arguments in

What Drives Me Crazy About Lawyers? How Much Time Do You Have?

A Good Look in the Mirror to Reflect on Some of the Annoying Idiosyncrasies of Our Beloved Profession

Why do so many people find the humor in some of our legal colleagues’ tendencies to “drag their feet” and “dillydally” on top of being singularly “mystified” and “confused” about the legal ramifications of many of the court orders issued in our cases? It is no secret that what is not said is often more important to the outcome than what is said, a platform that many a reputable attorney has used to secure their planets in the blank.

Without belaboring the point (which you may find comical), the adage that “a picture is worth a thousand words” is as useful for the plaintiff as it is for the defendant. Unfortunately, our clients are often caught up in a mere snapshot of a legal issue and not a full color picture of the impact on their lives and the lives of their families. We may have once asked “Will this ever happen,” but do we ever ask “What will it feel like when it happens?”

We see the world from a different perspective. We see a world of facts, not an emotional panorama. We may be able to explain the “why” of a decision, but few of us can explain the “how” or “what” of a decision. We may be able to explain the “why” of a decision, but few of us can explain the “how” or “what” of a decision. We may be able to explain the “why” of a decision, but few of us can explain the “how” or “what” of a decision. We may be able to explain the “why” of a decision, but few of us can explain the “how” or “what” of a decision.
court over the years. Most of them would break your heart. What these arguments have told me is that the people who have gone out on a limb for the friend or loved one they bailed out are far from rich. Like the majority of Americans they are simply hard-working folk trying to do the right thing by such friend or loved one. Indigent, no. But not rich, either.

No, the real reason for “bail reform” can be found in State v. International Fidelity Insurance Company, 355 P.3d 624 (Ariz. Ct. App. 2015). In that case the State (Pima County) was able to enter into evidence (in violation of the disclosure rules, incidentally) its request that it be reimbursed for a post-surrender incarceration of a bailed defendant who had absconded, and was later caught and returned. The amount requested for that defendant was calculated by Pima County at $7,039.12 for 84 days—approximately $84 a day in 2013 dollars (cf. State v. Int’l Fidelity Ins. Co.). I understand that other counties which have done similar studies have determined a “per diem cost” in the same neighborhood as Pima County. N.B.: This “aggravating factor” ploy was too much even for Division II, as it reversed the trial court’s determination for taking the per diem cost into account when it forfeited a giant portion of the bond.

Nevertheless, one can see how much a “tab” an alleged felonious indigent can run up on an Arizona county’s nickel during a pre-trial detention, or that of a political subdivision of this State which seeks to release indigents and still have them monitored by a bondsman. However, I was figuratively “patted on the head” by Mr. Byers, the Task Force Chair, and told, essentially, “Oh, the indigent defendants will show up to court even if a very small or no bond is required.”

Maybe, but probably not. Maricopa County is different than most of all the other counties in this State in that if the bond is put in jeopardy of forfeiture (by the defendant failing to appear) the trial judge in the underlying criminal cause does not handle the matter. Rather, all bond matters are directed to one “Bond Division,” which has its hearings every Tuesday afternoon.

The Bond Division notifies everyone in the local bonding community with an email blast of its calendar every Monday. What I have noticed in the calendars which I have been recently receiving are trending with more and more of these “low cost bonds” on the calendar. I do not know whether or not the bonds on the Bond Division calendar represent just an unfortunate few of the many responsible indigents, but I believe this trend is like the canary in the coal mine.

Oh well, it’s all sunshine and lollipops, until it’s not; when Arizona is overrun by indigents with bench warrants who had no financial incentive to appear in court, nor anyone, like a professional bondsman, contractually obligated to search for them. This could be what happens when a group of Arizona bureaucrats decide, in their collective wisdom, that they can improve upon a bail system which worked without their help for the past 750 years.

—Cliff Sherr, Phoenix