APPLICATION FOR JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: PAUL RANDALL BAYS
I was the Republican Candidate for Superior Court Judge, Division 1 and lost to Laura Cardinal in the General Election on November 6, 2018

2. Have you ever used or been known by any other name? _YES If so, state name: P. RANDALL BAYS

3. Office Address: 100 S 7TH STREET, SIERRA VISTA, AZ 85635

4. How long have you lived in Arizona? I WAS BORN IN ARIZONA What is your home zip code? 85650

5. Identify the county you reside in and the years of your residency. COCHISE 59 YEARS. I went to law school in Sacramento, CA and Served in the US Marines as a JAG but always had my home residency as Arizona.

6. If appointed, will you be 30 years old before taking office? X☐ yes ☐no

If appointed, will you be younger than age 65 at the time of appointment? X☐ yes ☐no

7. List your present and any former political party registrations and approximate

dates of each: Republican, 1977

8. Gender: MALE

Race/Ethnicity:_WHITE, ¼ HISPANIC_ My grandmother was born in Sonora, Mexico in 1903 and immigrated to Arizona through Nogales in 1919.

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

	Graduated
Phoenix College- Phoenix, Arizona (College Wrestling Scholarship)	1979
Arizona State University- Tempe Arizona	1981
University of the Pacific, McGeorge School of Law- Sacramento, CA	1990
Naval Justice School- Newport, Rhode Island	1991

10. List major and minor fields of study and extracurricular activities.
Phoenix College- General Business (Wrestling- Junior Olympics)
Arizona State Universtity- BS Business Marketing
University of the Pacific- Juris Doctorate
Naval Justices School- Judge Advocate General

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Phoenix College- Wrestling scholarship
Experiment in International Living Scholarship- Switzerland
Arizona State University- Sigma Alpha Epsilon Fraternity
McGeorge School of Law- Moot Court Honors Award
Selected as staff writer for California Forms and Procedures.
U.S. Marine Corps JAG- American Bar Association (LAMP) Award for outstanding legal services, and received two Navy Achievement Medals for outstanding contribution as a Tax Attorney and Legal Assistance Attorney. Mr. Bays began Marine Corps legal career working for the prestigious Office of Counsel to the Commandant of the Marine Corps in Washington, D.C. He was then transferred to Camp Lejeune, North Carolina, where he worked at the world's largest Marine Corps installation as a defense counsel, Special Assistant United States Attorney, legal assistance attorney and tax attorney. His legal military career culminated with his appointment as

an Assistant Staff Judge Advocate for the U.S. Space Command (NORAD) in Colorado Springs, Colorado. During his JAG career, Mr. Bays also taught criminal law at Carteret Community College in Morehead City, North Carolina.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Mr. Bays is licensed to practice in the Arizona State and Federal Courts, Washington State Courts, Federal Claims Court, Federal Tax Court, U.S. Court of Veteran's Appeals, Military Courts and the U.S. Court of Military Appeals.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? __NO_ If so, explain.

b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? _YES_ If so, explain any circumstances that may have hindered your performance. I graduated from a California Law school in 1990, and took an Arizona bar in July. I studied Arizona law and sat for the Arizona bar again in February 1991 and passed. Generally, law school prepare students for the bars of the state where the law school is located.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
BAYS LAW PC	1994-Present	Sierra Vista, AZ
City Attorney for Tombstone	1996- Present	Tombstone, AZ
US SPACE COMMAND (NORAD)	1994-1997	Peterson AFB, CO
Marine Corps JAG	1991-1994	Camp Lejeune, NC
Marine Corps Commandant Attorney	1990-1991	Washington DC
Completed 3rd year of law school	1990	Sacramento, CA
Officer Candidate School	Summer 1989	Quantico, VA
Law school	1987	Sacramento, CA
Fairchild Data Corp. Marketing	1981-1987	Scottsdale, AZ

15. List your law partners and associates, if any, within the last five years. You may

attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.
Family Law (60 percent)
Criminal Law (15 percent)
Municipal Law (15 percent)
Property Law (10 percent)

17. List other areas of law in which you have practiced.
Civil Litigation
Property Tax Litigation
Employment Law
Corporations and LLCs
Military Courts Martial

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. None

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

As the Tombstone City Attorney, I have negotiated and drafted contracts with 3rd party contractors, Intergovernmental Agreements (IGA) with State, County and Municipal agencies, including an IGA with the State Parks and Recreation for Tombstone to operate the Tombstone Courthouse State Park to prevent its closure during the budget crisis

Also, as Tombstone City Attorney from 1996 to Present and Town Attorney for Huachuca City to (2003-2005), I redrafted the City Codes and more than 100 ordinances and resolutions.

As an attorney in private practice, I have negotiated and drafted hundreds of decrees, parenting plans and settlement agreements. I have contributed a printer in the Bisbee Courthouse as well as 2 more printers in the 2 separate divisions in Sierra Vista for the sole purpose of printing out settlement documents as they are being negotiated.

In 2017, I launched a program in Cochise County called "Quick Court" which negotiates settlements between litigants BEFORE the first pleading is filed. The parties sign a stipulated order at the same time that the Complaint/Petition and Acceptance of Service is filed. Quick Court saves the litigants time, money and emotional frustration as well as simplifies the Courts' calendars. It has been successfully used in Domestic Relations, Civil and Forcible Detainer Actions.

20. Have you practiced in adversary proceedings before administrative boards or commissions? __NO___ If so, state:

    a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

    b. The approximate number of these matters in which you appeared as:

    Sole Counsel: _____

    Chief Counsel: _____

    Associate Counsel: _____

21. Have you handled any matters that have been arbitrated or mediated? _YES___ If so, state the approximate number of these matters in which you were involved as:

    Sole Counsel: _600+__

    Chief Counsel: _____

    Associate Counsel: _____

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

    A. Mejia v Villa (DO201700953)
        (1) 12-4-2017 to 12-10-2018
        (2) Laura Cardinal- lc@cardaz.com, (520) 452-1002, Mejia (Petitioner)
        (3) Divorce involving custody and a jewelry store business
        (4) The business (S. Corp) was owned by Villa prior to marriage, but

Mejia was added after marriage. Significant issues concerning ownership and community value. A business valuation was conducted by Henry & Horne valuing the business at $525,000. Settlement was made for roughly $200,000 to Mejia where approximately $100,000 was in the form of Spousal Maintenance to begin in December 2018 in order to take advantage of the current tax law. Beginning in January 2019, spousal maintenance payments are no longer deductible.

B. James Allen v. John Allen and Carrie Moshier (SV201800008)

(1) 3-7-2018 to 12-7-2018

(2) Joy Kemp, Esq., joylkemp@gmail.com, (520) 803-3270, Attorney for Child

Joan M. Sacramento, Esq., sacramento.msw.jd@gmail.com , 520-603-7086 Attorney for Mother

Benna Troup, Esq, BTroup@cochise.az.gov, (520)432-8901 Attorney for Father

(3) Termination of Parental Rights of Mother and Father in a private severance hearing. I represented James Allen, the paternal grandfather.

(4) This case was complicated because we were severing the rights of both parents at the same time in order to pave the way for James (the paternal grandfather) to adopt the 15 year old minor child. Both parents objected and were provided attorneys free of charge. Mother and Father had significant drug issues. Mother was ordered to participate in a drug test and father is incarcerated until 2023. The parties settled on an informal communication agreement in exchange for a consent to severe parental rights.

C. Guardianship of Wendell Gilbert (GC201800230)

(1) 10-5-2018 to 11-2-2018

(2) Paul Melo, Esq., paul@williamsmelolaw.com, (520)458-1891, Guardian and Conservator for Mr. Gilbert

Christopher Russell, Esq., Chris@russellslawfirm.com, (520) 458-7246, Attorney for Mr. Gilbert in Dissolution action

Joan M. Sacramento, Esq., sacramento.msw.jd@gmail.com , 520-603-7086 Attorney for Mr. Gilbert in Guardianship

(3) Guardianship and Conservatorship over Mr. Gilbert. I represent Mrs. Gilbert, the Petitioner in the Guardianship/Conservatorship

(4) Also, I represented the Petitioner, Vicki Gilbert in her dissolution. The guardianship was necessary because of the incapacity of Mr. Gilbert during the dissolution process. His previous attorney argued in Court that Mr. Gilbert did not need a guardian. A number of persons, including his previous divorce attorney, were exploiting Mr. Gilbert such that, from February until August 2018, Mr. Gilbert spent over $250,000, which included money paid to a prostitute

"caregiver" hired by the previous attorney. Mr. Gilbert purchased this "caregiver" a Audi. Adult protective services was contacted and that agency opened up 2 criminal and 2 civil cases. The attorneys listed above and I were able to negotiate a settlement that led to the appointment of a guardian and conservator, with the hope of recouping the Audi car and some of the money spent.

23. Have you represented clients in litigation in Federal or state trial courts? __Yes____ If so, state:

The approximate number of cases in which you appeared before:

Federal Courts:	2 in Tucson and 100+ in Military Courts Martial
State Courts of Record:	1106
Municipal/Justice Courts:	200+

The approximate percentage of those cases which have been:

Civil:	70 %
Criminal:	30 %

The approximate number of those cases in which you were:

Sole Counsel:	95%
Chief Counsel:	_____
Associate Counsel:	5% (A few Courts Martial as a civilian attorney because the defendants are entitled to a military JAG. Chris Russell, Esq. was one of the JAG co-counsel in a few Courts Martial at Fort Huachuca)

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion:	10%
You argued a motion described above	80%

You made a contested court appearance (other than as set forth in the above response)	80%
You negotiated a settlement:	20%
The court rendered judgment after trial:	80%
A jury rendered a verdict:	20%

The number of cases you have taken to trial:

Limited jurisdiction court	100
Superior court	2000+
Federal district court	2
Jury	100+

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible. An exact count is not possible because I have been a litigation attorney for 25 years, beginning as a JAG attorney in Camp Lejeune, NC. Still serving in the Marine Corps, I was selected as a Special Assistant U.S. Attorney, prosecuting civilian cases on behalf of the USMC, U.S. Forest Service, and US Coast Guard in the Federal District Court in New Bern North Carolina. In 1994, I opened up my private practice in Arizona. Most of the records are not accessible. However, if one types BAYS, P into Public Access to Court Information, the top 1000 entries involve me P RANDALL BAYS

24. Have you practiced in the Federal or state appellate courts? _YES_ If so, state:

The approximate number of your appeals which have been:

Civil: _39 (34 in Division 2, 2 in Division 1, 4 in Federal Court, which was successful). NOTE: 2 State Appeals and 1 Federal Appeal were published. 1 Federal Appeal was City of Tombstone v U.S. Forest Service (water rights), 1 Federal Appeal was Forrester v Chertoff (EEOC), 1 Federal Appeal was Armstrong v Huachuca City (EEOC)

Criminal: _____

Other: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief: 39

Personally in oral argument: 1

25. Have you served as a judicial law clerk or staff attorney to a court? __NO__ If so, identify the court, judge, and the dates of service and describe your role.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

NOTE: The following cases were all appealed:

A. In re Marriage of Foster (2 CA-CV 2015-0192), 240 Ariz. 99 (Ariz.App. Div. 2, 2016)

(1) June 8, 2016
(2) Court of Appeals Div 2- Judge Vasquez/ Superior Court Judge Elledge
(3) Paul Bays (for Charles Foster)
Edward Matchett (for Jackie Foster)
(4) Divorce- Legal Analysis of Separate Property
(5) The issue presented on appeal was whether the community property presumption that all property acquired during the marriage is community property applies to guns Charles claimed he inherited, thus requiring proof of their separate-property character by clear and convincing evidence.

B. DeLuca v DeLuca (Division of Military Retired Pay)(2 CA-CV 2010-0037)

(1) July 23, 2010
(2) Court of Appeals Div 2- Judge Brammer/Superior Court Judge

Conlogue.

(3) Paul Bays (for Mary DeLuca)
Christopher Russell (for Richard DeLuca), Chris@russellslawfirm.com, (520) 458-7246

(4) Division of Military Retired Pay

(5) Mary Deluca appealed Judge Conlogue's order requiring her husband, Richard Deluca, from whom she had separated in 1996, to pay her a portion of his military retirement pay. Mary successfully prevailed at the appellate court level to show that the trial court incorrectly calculated the payment amount based on Richard's retirement benefits at the time of her 2009 petition to convert the decree of legal separation to a marriage dissolution, rather than at the time of the decree of legal separation the court had entered in 1996.

C. Barry B. v Pamela L. (Termination of Parental Rights)(JV 2014-0136

(1) May 11, 2015

(2) Court of Appeals Div 2- Judge Vasquez/ Superior Court- Judge Elledge.

(3) Paul Bays (for Pamela L.), rbays@bayslaw.com, 520-459-2639
Daniel J. DeRienzo (for Barry B.), derienzo@hotmail.com, (928) 493-1177
Mark A. Suagee (for minor child), MSuagee@cochise.az.gov, 520-432-8440

(4) Termination of Parental Rights

(5) The court of appeals affirmed Judge Elledge's decision made after a two-day hearing on a termination of parental rights petition filed by A.L.'s mother, Pamela L., who alleged that Barry had abandoned A.L. and that termination of his parental rights was in A.L.'s best interests

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement

conferences, contested hearings, administrative duties, etc.).

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

29. Describe any additional professional experience you would like to bring to the Governor's attention.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? __Yes_ If so, give details, including dates. AQUA TIME, LLC (09-27-2007 to (04-12-13) was a scuba diving charter boat business wherein dive groups originated in Arizona and were taken to San Carlos, Mexico to board Sharks Dive II, a 12 passenger dive boat owned by AQUA TIME.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? _YES_ If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service. BAYS LAW PC, law practice, president. Also, I am the statutory agent for the SIERRA VISTA LITTLE LEAGUE.

    Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are appointed? _YES_ If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them?__YES_ If not, explain.

33. Have you paid all state, federal and local taxes when due? YES_ If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? _NO_ If so, explain.

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? _NO_ If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? _YES_ If so, identify the nature of the case, your role, the court, and the ultimate disposition. Real Property dispute in Cochise County Superior Court CV-201101088. Complaint filed against me and my wife on November 22, 2011 and Dismissed on March 7, 2012

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest?__No___ If so, explain.

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? _No__ If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? __No__ If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? _No__

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

Branch of Service	Character of Service	Entered Active Duty	Released/Discharged
Marine Corps	Honorable	August 18, 1989	December 15, 1994

One or more service-connected disabilities:	Yes
Combined service-connected evaluation is:	100%

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. None

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. None

44. List and describe any sanctions imposed upon you by any court. $500 fine by Judge Elledge for failing to file a **Joint** Resolution Statement. I filed a Separate Resolution Statement, as had been the practice in Cochise County, until Judge Elledge took the bench around 2012. Many other Cochise County attorneys were sanctioned around the same time for the same thing. It took only one sanction to change the practice.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? __YES__ If so, in each case, state in detail the circumstances and the outcome.

On July 21, 2016, the Attorney Discipline Probable Cause Committee of the Supreme Court ("Committee") issued an Order of Diversion (Fee Arbitration and LOMAP) to me for violations of Rule 42, ER 1.2, ER 1.5(d)(3), and ER 1.5(d), Ariz. R. Sup. Ct.

It appeared that the Committee believed that ER 1.5 or ER 1.15 requires that I place "client expenses" (such as filing fees and process server expenses) in the trust account despite my flat fee arrangement with the client. In reviewing those rules, it was still my belief that a flat fee, which includes known out-of-pocket expenses, would all be placed in the operating account. That is the way I have practiced family law since 1994. There is a lack of express wording in the Rules on that issue. I began using a flat fat in order to simplify my law practice for the vast amount of clients who do not possess a lot of money. I want to avoid a situation wherein I am writing a check to the trust account in order to cover credit card fees. Nevertheless, I entered the diversionary program and paid the state bar to rewrite my fee agreement which allowed me to continue to charge a minimum, non-refundable advanced fee, but then allow me to charge

additional funds. It is called a hybrid contract. In essence, the state bar actually did a great service. I have shared my fee agreement with other local attorneys.

In approximately 1997, I received an informal letter of reprimand for writing an adverse comment about Judge Borowiec in a letter to his attorney son Joel Borowiec. I had to write a letter of apology to Judge Borowiec.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? __NO_ If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? _No___ If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? _No__ If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? _YES__ If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

On September 14, 2009, the Jensen's loaned my wife and I $150,000 to finish a house we had purchased in a foreclosure. The terms were as follows:

1. In consideration for the payment of $150,000 ($100,000 paid on September 1, 2009 and reflected in the Second Addendum) BAYS will pay 12 percent interest until the principal and interest are paid in full. Interest paid on the initial note shall be credited toward the interest payments on this note.

2. Additionally, BAYS shall quit claim to JENSEN parcel 105-20-026Q as collateral toward the note. $150,000 represent the fair market value of parcel 105-20-026Q. Upon payment of $150,000, JENSEN agrees to transfer parcel 105-20-026Q back to

BAYS.

The payment was secured by a vacant lot that I had purchased in 2007 for $150,000. Around October 2011, I wrote the Jensen's a letter stating that I unable to continue to pay them on the note and was relinquishing the lot to them. On November 22, 2011, we were served with a complaint requesting repayment of the note. Roger W Frazier, Esq. (520-882-4294), represented the Jensens. No answer was filed. Despite the fact that the agreement stated that the lot had the same value as the loan, we relinquished any claim to the lot and paid an additional $30,000. On March 7, 2012, the Jensens filed a Notice of Voluntary Dismissal.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? _NO__ If so, list with the citations and dates.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? __YES_ If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? _YES__ If so, describe. While serving in the Marine Corps in Camp Lejeune, from 1991 to 1994, I taught business law at Carteret Community College.

53. List memberships and activities in professional organizations, including offices held and dates. None

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? _No_

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like. None

54. Describe the nature and dates of any relevant community or public service you have performed. From 1994 to present, I have been an active member of the Knights of Columbus, a charity organization. From 2016 to present, I have been the statutory agent for the Sierra Vista Little League as well as their legal advisor. I have been the legal advisor to the Sierra Vista Youth Football and Cheer Organization since August 2016 to present.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received. In 1993-1994, I received a number of awards to include being selected to the MOOT Court Honors Board, an American Bar Association (LAMP) Award for outstanding legal services, and received two Navy Achievement Medals for outstanding contribution as a Tax Attorney and Legal Assistance Attorney. I am a former staff writer for California Forms and Procedures.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates. None

Have you ever been removed or resigned from office before your term expired? ___ If so, explain.

Have you voted in all general elections held during the last 10 years? _____ If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Governor's attention. I am a certified Dive Master Scuba Diver and still coach youth football and baseball.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? __YES__

ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

PAUL RANDALL "RANDY" BAYS was born in Bisbee, Arizona. My father, George Bays (also born in Bisbee) served the state of Arizona for 52 years, 20 years in the Arizona Highway Patrol and then as a District Commander for the Arizona Department of Transportation in Cochise County. His Mother immigrated from Sonora, Mexico in 1919, and married Earl Bays, a World War I veteran in 1922. My sister, Terry Bays Smith, is a lawyer and judge pro temp in Maricopa County. My brother, Michael, is an Ears, Nose and Throat Surgeon at the VA Hospital in Tucson. While serving in the Marine Corps, I suffered injuries sufficient for a 100% disability rating but none that prevent me from fulfilling my obligations as a judge or a lawyer.

60. Provide any additional information relative to your qualifications you would like to bring to the Governor's attention. As a former college wrestler (Phoenix College), Marine Corps Officer and Boy Scout, integrity and hard work are the hallmark of each. Those experiences taught mental and physical discipline, as well as great organizational skills. From 2005 to 2006, joined my sister's law practice in Maricopa County. When I returned to Cochise County at the end of 2006, I assisted the Superior Court in implementing some of the ideas that seemed to work there. For example, when pleadings are filed in Maricopa County, each judge has a box for a copy of the pleadings to be deposited. When I returned to Cochise County, I donated boxes at the Courthouse so that the judges could obtain copies of pleadings quickly. Additionally, I donated printers to 3 court jury rooms to be used by litigants during settlement conferences. Almost all cases can be placed on the calendar for settlement. Before the settlement begins, I have already drafted a proposed form of order or decree that I have saved on my laptop, which I bring to court. As the settlement discussions develop, I modify the terms. Once a settlement is reached on all issues, I connect the printer and print copies of the order for review and signature of all parties and their attorneys, and judge. It was based on this process, the I launched QUICK COURT in 2017. QUICK COURT brings litigants together before any paperwork is filed and assist the litigants in coming to terms and drafting a Consent Order or Decree that the parties sign before the first pleading is filed. Once the parties have signed the Order/Decree, the Complaint/Petition is drafted which explains the issue and informs the court that the parties have reached a settlement. The defendant signs an acceptance of service. In most cases, nobody has to appear in Court and the parties eventually received a signed Court Order that binds the parties to the terms. This process could be implemented into the Court system as a practical way to resolve issues. It is this type of thinking that was the basis for me being awarded two (2) Navy

Achievement Medals and the ABA LOMAP award. If appointed as Judge, I would like Cochise County to be the experimental bed for this QUICK COURT concept, that will hopefully make it into the other counties of the state.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? _YES_ If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

I view a judge as similar to a referee or umpire. I have been playing the game as an attorney for more than 25 years. I believe I have been successful. As in sports, some athletes retire to permit the younger players an opportunity to play while the order players become umpires and referees. Throughout my years as a litigation attorney, especially in family law, I believe I developed strong emotional awareness that bring people to the court. In some cases, I have found that the attorneys have taken on the emotions of their clients. I believe I have become successful in settling cases and have developed a reputation for fairness because I am empathetic to the emotions of the litigants, and their attorneys. Once we are able to calm the emotions, we can look at the issues rationally and logically to come to a conclusion that is fair, equitable and legal.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and

commission vote reports from your last three performance reviews.

-- INSERT PAGE BREAK HERE TO START SECTION II (CONFIDENTIAL INFORMATION) ON NEW PAGE --

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JACQUELINE FOSTER	)	**No.** 2 CA-CV 2015-0192
	)	
Petitioner/Appellee,	)	Department: A
	)	County: Cochise
v.	)	Cause No. DO201300543
	)	
CHARLES SIDNEY FOSTER	)	
	)	
Respondent/Appellant.	)	
	)	

APPELLANT'S OPENING BRIEF

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State Bar No. 013479
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Attorney for the Appellant

ARGUMENT

¶ 15 WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW IN CHARACTERIZING A NUMBER OF HISTORIC GUNS SPECIFIED IN PARAGRAPH (C) OF THE APRIL 9, 2015 DECISION AS COMMUNITY PROPERTY

¶ 16 Although this Court reviews the family court's division of property for an abuse of discretion, the characterization of the property is a conclusion of law which this court reviews *de novo*. *Helland v. Helland*, 236 Ariz. 197, 199 ¶ 8, 337 P.3d 562, 564 (2014); In re *Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15, 5 P.3d 911, 915 (App.2000).

¶ 17 In Arizona, dissolution of marriage proceedings are creatures of statute, and jurisdiction to decide such cases is conferred on the courts by the legislature. *In re Marriage of Waldren*, 217 Ariz. 173, 175, ¶ 8, 171 P.3d 1214, 1216 (2007), citing *Weaver v. Weaver*, 131 Ariz. 586, 587, 643 P.2d 499, 500 (1982). A court's jurisdiction of the subject matter in a family law matter exists when a constitution or statute specifically confers upon the court such jurisdiction. *Leon v. Numkena,* 142 Ariz. 307, 309, 689 P.2d 566, 568 (App. 1984).

¶ 18 Under A.R.S. § 25-211(A), there is a presumption that all property acquired by either husband or wife during the marriage is the community property of the husband and wife *except* for property that is (1) acquired by gift, devise or

descent or (2) acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment. *Hatcher v. Hatcher,* 188 Ariz. 154, 157, 933 P.2d 1222, 1225 (App.1996).

¶ 19 This Court views all evidence and its reasonable inferences in the light most favorable to sustaining the trial court's decision regarding the nature of property as community or separate. *Sommerfield v. Sommerfield*, 121 Ariz. 575, 577, 592 P.2d 771, 773 (1979). "The trial court's findings of fact will not be set aside unless shown to be clearly erroneous, because due regard shall be given the court's opportunity to judge the credibility of the witnesses." *Carrasco v. Carrasco*, 4 Ariz.App. 580, 582, 422 P .2d 411, 413 (1967).

¶ 20 In this case, the trial court concluded: "the Respondent produced *no records* in court (other than self-serving documents) to trace the acquisition of the guns which were not inherited." It is difficult to imagine a law that limits the characterization of personal property inherited by a party to a *record* that clearly *traces* the property to an heirloom in the estate of that party's heirs in order to prove that it fits within the exception to A.R.S. § 25-211. Yet, that is what the trial court did in this case.

¶ 21 There were 38 guns listed in Exhibit Z, which are the only guns at

issue here. In its April 9, 2015 decision, the trial court stated: "While there is no dispute a number of the guns were inherited, the Respondent produced no records in court (other than self-serving documents) to trace the acquisition of the guns which were not inherited." (ROA # 95). Although the trial court acknowledged some of the guns listed in Exhibit Z were inherited by CHARLES, it failed to identify (characterize) those guns that it determined to be inherited from those guns it determined to be community. The character of the property, as to being separate or community, becomes fixed at the time it is acquired. *Kingsbery v. Kingsbery*, 93 Ariz. 217, 225, 379 P.2d 893, 898 (1963). Further, when the status is once fixed, the property retains its character until changed by agreement of the parties or by operation of law. *Id.* Neither A.R.S. §§ 25-211 nor 25-318 authorize the trial court to distribute separate property. Thus, the trial court was required to consider the evidence before it in determining whether the guns listed in Exhibit Z were community or separate in nature.

¶ 23 In it's de novo review of the evidence, CHARLES requests that this Court consider the testimony of JACQUELINE and Cathy wherein they both acknowledge that the guns listed in Exhibit Z were inherited. Additionally, this Court should consider that JACQUELINE's testimony merely corroborates the information contained in Exhibit 6 and Exhibits (A) and (B) of the decree. See,

Attachment (5) to the Appendix (JACQUELINE's Transcript of Trial, page 69, lines 23-24, page 83, lines 18-22, page 84, lines 16-18, page 42, lines 3-5). Based on this evidence, this Court should conclude that the trial court erred as a matter of law in its characterization of the guns listed in Exhibit Z and reverse the decision. Therefore, the trial court's characterization of the guns was clearly erroneous.

¶ 24 WHEREFORE, CHARLES requests that this Court overrule the trial court's characterization of the guns listed in Exhibit Z as community, and reaffirm the guns listed in Exhibit Z as CHARLES' sole and separate property by inheritance.

¶ 25 **WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING TO JACQUELINE THE GUNS LISTED IN THE DECREE WHEN IT DID SO WITHOUT CONSIDERING EXHIBITS AND TESTIMONY THAT SUBSTANTIALLY CONFIRM THE GUNS WERE CHARLES' SEPARATE PROPERTY**

¶ 26 This Court reviews a trial court's order relating to apportionment of community property for an abuse of discretion. *Danielson v Evans,* 201 Ariz. 401, 406, ¶13, 36 P.3d 749, 754 (App. Div. 2 2001). To constitute an abuse of discretion, "the record must be devoid of competent evidence to support its decision." *Fought v. Fought*, 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963). This Court will not weigh the conflicting evidence; rather, it limits the inquiry to a

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FILED
2018 FEB 26 PM 3:47
MARY ELLEN DUNLAP
CLERK OF SUPERIOR COURT
BY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

In re the Marriage of:

MELISSA D. FONTANEZ,

Petitioner,

and

MILTON JOSE FONTANEZ,

Respondent.

CASE NO. ~~**DO201000820**~~ DO200701049

MOTION TO SET ASIDE DEFAULT AND DECREE PURSUANT TO SCRA

(Rule 44(C) and 85(C) ARFLP)

Assigned to The Honorable Charles A. Irwin, Division I

COMES NOW the Respondent, MILTON JOSE FONTANEZ, through his attorney, P. RANDALL BAYS, and moves this Court for an order setting aside the default and default decree that was entered in this matter on March 21, 2008 for the reasons that Respondent's Rights under the Servicemembers Civil Relief Act (SCRA) of 2003 were violated at the time Petitioner filed for the dissolution action, default and request for a decree. See, 50 USC App. § 521. At the time the default was filed and the decree was signed, MILTON was on active duty serving overseas pursuant to military orders and therefore was reasonably unavailable to participate in a dissolution proceeding. Additionally, he had a meritorious defense on all issues. This Motion is supported by the attached memorandum of points and authorities.

RESPECTFULLY submitted this 26 day of February, 2018.

BAYS LAW PC

P. RANDALL BAYS
Attorney for Respondent

COPY OF ORIGINAL

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MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

¶ 1 Attached hereto as exhibit (A) and incorporated herein by this reference is a copy of MILTON's DD214, which shows that he was serving overseas in Operation Enduring Freedom from January 9, 2008 through January 7, 2010. The affidavit and entry of default was filed on February 13, 2008 and the decree was signed on March 21, 2008.

LEGAL ARGUMENT:

¶ 2 Rule 85(C)(1)(f), ARFLP, authorizes this Court to set aside decree for any other reason justifying relief from the operation of the judgment.

¶ 3 50 USC App § 521 applies to *any* civil action or proceeding, including any divorce or child custody proceeding, in which the defendant does not make an appearance. See, 521(a). Section 521(a) provides specific federal requirements which must be fulfilled ***before*** a default judgment may be entered against an active duty servicemember. *See, Twentieth Century Fox Film Corp. v. Streeter*, 438 F.Supp.2d 1065, 1070 (D.Ariz. Mar 21, 2006); *and see, Akers v. Bonifasi*, 629 F.Supp. 1212 (Tenn. 1984)(The requirements of this provision of the Soldiers' and Sailors' Civil Relief Act of 1940 are mandatory and restrict the Court's power to render a default-judgment until they have been met); *McDaniel v. McDaniel*, 259 S.W.2d 633 (Tex.Civ.App., 1953)(It was mandatory to appoint an attorney to represent the absent party when it was shown to the Court that he was in the army before inquiring into whether his army status would prejudice his ability to defend, and before the judgment by default could be rendered against him); *Matter of Marriage of Thompson*, 17 Kan.App.2d 47, 832 P.2d 349 (Kan.App. 1992)(It is mandatory that the decree be set aside where there was no affidavit filed showing husband was in the military service, no request was made and the trial court did not appoint an attorney to represent husband and protect his interest, which is also required).

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¶ 4 Section 521(b) provides: In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. See, 521(b). An affidavit was not filed in this case.

¶ 5 There is a violation of the SCRA where the record shows that no attorney made an appearance on MILTON's behalf in the trial court proceedings and that the trial court did not appoint an attorney to represent MILTON. *Harris v. Harris*, 922 N.E.2d at 638; *Matter of Marriage of Thompson*, 17 Kan.App.2d 47, 832 P.2d 349 (1992) (holding that a judgment of divorce and child support violated the former version of the Servicemembers Civil Relief Act where no affidavit was filed showing that the father was in military service and no request was made and the trial court did not appoint an attorney to represent father and protect his interests). The trial court in this case never appointed an attorney prior to the default being entered, thus making the judgment voidable. *Vockroth v. First Circuit Family Court of Hawaii*, 747 F.Supp.2d 1297 (M.D.Ala. Nov 01, 2010); *Sarfaty v. Sarfaty*, 534 F.Supp. 701, 704 FN 3 (E.D.Pa. Mar 23, 1982); *Smith v. Lafrinere*, 2018 WL 4575143 (D.Kan. Sep 30, 2018)(Judgments entered in violation of the SCRA are voidable). Voidable and erroneous judgments, could only be modified on appeal or by proper and timely post-judgment motion. *State v. Bryant*, 219 Ariz. 514, 518, ¶ 14, 200 P.3d 1011, 1015 (App. Div. 2, 2008); *Auman v. Auman*, 134 Ariz. 40, 42, 653 P.2d 688, 690 (1982).

¶ 6 "The purposes of this [Servicemembers Civil Relief] Act are–

(1) to provide for, strengthen, and expedite the national defense

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through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." H.R. Rep. 108–81, at 32 (2003); 50 U.S.C. App. § 502; *United States v. Kaufman,* 453 F.2d 306, 309 (2d Cir.1971) (purpose of the SSCRA is to prevent default judgments from being entered against members of the armed services in circumstances where they might be unable to appear and defend themselves); *In re Realty Associates Securities Corporation*, 53 F.Supp. 1015, 1016 (E.D.N.Y. 1944)(Congress intended to protect any persons in the military service against any personal liability where such person had no opportunity to appear in the action either in person or through personal counsel, and that where the failure of a person to make such appearance is due to the fact that he is in the military service); *McMurtry v. City of Largo*, 837 F.Supp. 1155, 1157 (M.D.Fla.1993)(The SCRA "was enacted to protect active military personnel from having their legal remedies expire during that time in which they are unable to assert them due to the unique demands placed upon personnel by virtue of their military service."); *see also* H.R. Rep. 108–81, at 32 (2003) ("With hundreds of thousands of servicemembers fighting in the war on terrorism and the war in Iraq, many of them mobilized from the reserve components, the Committee believes the Soldiers' and Sailors' Civil Relief Act (SSCRA) should be restated and strengthened to ensure that its protections meet their needs in the 21st century.").

¶ 7 Section 521(c) provides: "If in an action covered by this section it appears that the defendant is in military service, the court shall not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate

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the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember." See, 521(c).

¶ 8 Since a default was entered in the dissolution action without appointing MILTON an attorney in accordance with 50 USC App § 521(c), the court entering the judgment ***is required,*** upon application by or on behalf of MILTON, to ***reopen*** the decree for the purpose of allowing MILTON to defend on the issues of custody, child support, spousal maintenance, and the division of property and debt.

¶ 8 If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it. See, 521(g).

¶ 9 In this case, since MILTON has retired at this point, the Court may choose to calculate retirement under *Koelsch v. Koelsch*, 148 Ariz. 176, 713 P.2d 1234 (1986).

¶ 10 To the extent that MELISSA is requesting reimbursement of payment of military retired pay from the date of the decree, MILTON raises the defense of laches, unclean hands and equitable estoppel. *Flynn v. Rogers*, 172 Ariz. 62, 66, 834 P.2d 148, 152 (1992); *Beltran v. Razo*, 163 Ariz. 505, 507, 788 P.2d 1256, 1258 (App.1990)(The court may deny complete retroactivity and then proceed to divide the funds from the date of the petition to divide). Instead, MILTON asserts

that the division of military retired pay should commence at the time this Court makes a determination under *Koelsch* as to MELISSA's percentage.

WHEREFORE, Respondent requests that this Court:

1. Set Aside the Default;
2. Reopen the Decree for the purpose of calculating military retired pay;
3. Order payment to commence at the time the percentage is calculated;
4. Order each party to pay his or her own attorneys fees and costs.

RESPECTFULLY SUBMITTED this 26 day of February, 2018.

BAYS LAW PC.

P. RANDALL BAYS
Attorney for Respondent

copies of the foregoing mailed this 26 day of February 2018 to:

~~MELISSA D. FONTANEZ~~
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25	2 CA-JV 2010-0130	SHERI L. v. ALEX T.
26	2 CA-JV 2011-0012	JOSEPH N. v. STEFANIE G. and MACKENZI N.
27	2 CA-JV 2014-0136	BARRY B v. PAMELA L., and A.L.
28	2 CA-SA 2003-0017	STEVENSON v. STEVENSON
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30	2 CA-SA 2012-0001	IRA M. LAMPING v. HON. ANN R. [illegible]TRELL, ERIKA LAMPING
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32	2 CA-SA 2012-0079	PENNEY L. BELL v. MICHAEL BELL
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