

# **Exhibit B**

**Affirmation  
Of  
Walter Capell, Esq.**

STATE OF NEW YORK  
SUPREME COURT COUNTY OF MONROE

DIANE R. MARKHAM,  
Plaintiff,

-vs-

MICHAEL D. MARKHAM,  
Defendant.

ATTORNEY AFFIRMATION

Index No.: 2015/9826

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STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

WALTER R. CAPELL, ESQ., an attorney duly licensed to practice in the Courts of the State of New York, affirms under penalties of perjury as follows:

1. I am a partner in the law firm of Davidson Fink LLP, attorneys for Defendant, MICHAEL D. MARKHAM, in the above-entitled action and make this Affirmation with respect to Defendant's, MICHAEL D. MARKHAM, pending Motion to Vacate the Default Judgment of Divorce against him. The original Judgment of Divorce is dated January 18, 2017 and Amended Judgment of Divorce dated March 20, 2017.

2. A motion was made on behalf of Defendant, MICHAEL D. MARKHAM, and granted, copy of Order annexed as **Exhibit A**, by which terms the Monroe County Clerk was ordered to provide Defendant's attorney, Gregory J. Mott, Esq. or Walter R. Capell, Esq. from Davidson Fink LLP, with copies of the following pleadings:

A. Copy of Summons with Notice/Summons and Complaint, Consent to Change Attorney Form, Findings of Fact and Judgment of Divorce.

B. Notice of Appearance.

3. In addition and on June 19, 2017, Your Affiant was given the opportunity and did, in fact, review Justice Fisher's file in this case for the purpose of attempting to locate the missing documents listed in the Order, dated May 24, 2017, see **Exhibit A**. Your Affiant found none of those documents in Justice Fisher's file.

4. Defendant advised that the Monroe County Clerk provided Defendant, via Federal Express, with copies of the following documents:

- A. Original Judgment of Divorce.
- B. Application for Index Number Form.
- C. Only page 3 of the Summons.
- D. Complaint.

Affirmed this 23<sup>rd</sup> day of June, 2017.

  
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WALTER R. CAPELL, ESQ.