VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF DIANE BAILY FENTON
VSB DOCKET NO. 13-022-094878

AGREED DISPOSITION MEMORANDUM ORDER

On April 17, 2014, this matter was heard by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by the Rules of the Supreme Court of Virginia. The panel consisted of William H. Atwill, Jr, Acting Chair, J. Casey Forrester, Jeffrey L. Marks, Samuel R. Walker and Anderson W. Douthat, IV, Lay Member. The Virginia State Bar was represented by Paul D. Georgiadis, Assistant Bar Counsel. Diane Baily Fenton was present and was not represented by counsel. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Terry S. Griffith, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Answer and Respondent's Disciplinary Record,

It is **ORDERED** that the Board accepts the Agreed Disposition and the Respondent shall receive a 120-Day Suspension, as set forth in the Agreed Disposition, which is attached to this Memorandum Order.

It is further **ORDERED** that the sanction is effective May 1, 2014.

It is further **ORDERED** that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the Suspension of her license to practice law in the Commonwealth of Virginia, to all clients for whom she is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her client. Respondent shall give such notice within 14 days of the effective date of the 120-Day Suspension, and make such arrangements as are required herein within 45 days of the effective date of the 120-Day Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the 120-Day Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of 120-Day Suspension, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing before a three-judge court.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9 E. of the Rules.

A copy teste of this Order shall be mailed by certified mail to Diane Baily Fenton, at her last address of record with the Virginia State Bar, 5122 Greenwich Road, Virginia Beach, VA 23452 and hand-delivered to Paul D. Georgiadis, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

ENTERED THIS 17th DAY OF April, 2014

VIRGINIA STATE BAR DISCIPLINARY BOARD

William H. Atwill, Jr., Acting Chair

APR 16 2014

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DIANE BAILY FENTON **VSB Docket No. 13-022-094878**

AGREED DISPOSITION
(120 Day Suspension)

Pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, by Paul D. Georgiadis, Assistant Bar Counsel and Diane Baily Fenton, Respondent, *pro se*, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1) At all times relevant hereto, Respondent Diane Baily Fenton has been an attorney licensed to practice law in the Commonwealth of Virginia.
2) On or about January 7, 2005, Shelley Lynn Kocsis retained Respondent to represent her in a contested divorce.
   a) On September 28, 2006, the parties appeared before the Chesapeake Circuit Court having resolved all contested matters. At that time, the parties affirmed that the matter was now uncontested, affirmed on the record the terms of the settlement agreement, and offered evidence of the separation of the parties. At the conclusion of the hearing, the Court ordered Respondent to draft the final decree of divorce, and Respondent agreed to do so.
   b) Notwithstanding the Court's order, Respondent failed to draft the decree at that time and failed to submit a first draft to opposing counsel for nearly four (4) years, forwarding her first draft to opposing counsel on April 19, 2010. Thereafter, Respondent failed to take further steps to finalize the divorce. At all times, Kocsis authorized and directed Respondent to finalize the divorce. As a result of Respondent's continued neglect of this matter, Shelley Kocsis remains married and Respondent remains counsel of record.

c) From November 14, 2006 to the present, Respondent has failed to keep Kocsis informed of the status of the matter and has failed to respond to Kocsis's requests for information.

d) After April 19, 2010, Respondent has de facto withdrawn from the case by failing to finalize the divorce without any notice to the client and without formally moving to withdraw, all as further set forth below.

3) On November 14, 2006, Kocsis e-mailed Respondent as to the status of the divorce. Respondent did not reply.

4) On September 17, 2009, Kocsis e-mailed Respondent to demand a copy of her file by September 24, 2009, "so that I can take it to the courts and finalize my divorce. It has been three years this month since everything was finished and I need to get this over with." Notwithstanding the request, Respondent did not reply.

5) On October 28, 2009, Respondent resumed active representation after the husband, by counsel, filed a motion for pendente lite change of physical custody. On January 10, 2010, the Court heard the matter.

6) On January 20, 2010, and February 5, 2010, Kocsis telephoned Respondent about the status of the matter.

7) On or about April 19, 2010, Respondent finalized her first draft of the sketch final decree of divorce and forwarded the sketch decree to opposing counsel. In the ensuing year, Respondent failed to make any effort to prod opposing counsel to act on the sketch decree—accept it or modify it. Finally, on April 4, 2011 opposing counsel replied to Respondent's April 19, 2010 sketch decree with some proposed changes. When Respondent failed to act on the proposed changes, opposing counsel followed up by writing to her on August 2, 2011 asking for a status on the requested changes. Respondent did not reply to opposing counsel and failed to take any further action on finalizing the final decree such as incorporating the requested changes, responding to opposing counsel's requests, or by presenting any controversy regarding the decree to the Court.

8) On April 1, 2010, Kocsis advised Respondent that as to the division of the marital share of her Thrift Plan, she would "prefer the language in the transcript." Thereafter, she advised Respondent that she would agree to either pay over $30,000 from the Plan

or have her husband's attorney compute the amount per the agreed formula. Kocsis continued to want the divorce finalized: "I would like to be divorced by December 31, 2010." On December 9, 2010, Kocsis e-mailed Respondent and wrote, "I would really like to wrap this up." Respondent did not reply. On December 15, 2011, Kocsis e-mailed Respondent again, requesting an update and once again stating that she "would like to get this done." Respondent did not reply and failed to take any action in response.

9) On July 23, 2012, Kocsis sent a check for $2,000 to Respondent and again reiterated that she would "like to get my divorce done." She also requested that Respondent "send me a statement and let me know what else is needed from me to get this done." Respondent did not reply or take any action in response.

10) Finally, on January 16, 2013, Kocsis wrote again to inquire and urge action. To this request, Respondent made no response.

11) If this matter were to proceed to hearing, Respondent would present evidence and argument that Kocsis failed to cooperate by failing to provide instruction and clarification on disputed property issues and in failing to meet agreed upon minimal and regular payments of legal fees and costs.

II. NATURE OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 DILIGENCE

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court.

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of a 120 day suspension of her license to practice law in the Commonwealth of Virginia as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board.

In consideration of Respondent's cooperation with the bar, the length of the suspension, and the interests of her current clients, the bar and the Respondent request that the suspension commence effective May 1, 2014.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

THE VIRGINIA STATE BAR

By: _____
Paul D. Georgiadis, Assistant Bar Counsel

_____
Diane Baily Fenton, Respondent, Pro Se