

DONALD THOMAS BERGERSON  
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Respondent in *pro. per.*

**FILED**  
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JAN - 2 2019  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

IN THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES VENUE

*In re:*

No. 17-N-07436  
Related: 18-TT-18298]

DONALD THOMAS BERGERSON  
CSBN 91263

ANSWER AND PLEA IN  
ABATEMENT

A Member of the State Bar

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COMES NOW Respondent and in response to the complaint on file herein answers and otherwise pleads as follows:

1. (a) The parties have already agreed that the consequence of the instant disciplinary proceeding (17-N-07436) is the placement of Respondent on Inactive Enrolment. At the Early Neutral Evaluation Conference regarding the captioned matter, the parties agreed to stipulate to the filing of a stipulation enrolling Respondent as an inactive member of the



Bar pursuant to Business and Professions Code section 6007(b)(3). It was contemplated that, if accepted, the stipulation will fully dispose of the captioned matter. The stipulation has been filed and is now pending before this Court as action 18-TT-18298. Because this stipulation will resolve the controversy posed in this case, Respondent pleads that it should be considered as his full answer to the instant complaint.

(b) Respondent should be permitted to enter a plea-of-abatement in this action. A practical issue remains: under normative Bar procedures, the finalization of the stipulation is likely to take considerably longer to achieve than would litigation of the instant case at the ordinary pace of Bar disciplinary proceedings. This would logically endanger the success-and-fruit of the stipulation. However, the parties have, as part of the stipulation, agreed to avoid this undesired consequence. Page 4 lines 7-11 of the stipulation provide that "any pending filed matters" including this instant case "should remain abated during the pendency of Respondent's inactive enrolment unless otherwise ordered by the State Bar Court". Respondent therefore alleges that this instant matter should be placed in a state of abeyance forthwith and unless and until Respondent's inactive enrolment is denied or terminated, and that no further pleadings on part of Respondent shall be required in this matter.

2. **Substantive Answers and Affirmative Defenses:** In the event that the stipulation fails and the matter proceeds to a merits-resolution other than that

described in paragraph 1 of this pleading, Respondent answers the within complaint as follows:

- a) He admits the jurisdiction of the State Bar in this case;
- b) He denies the allegations contained in count I of this complaint;

c) In addition to the foregoing, Respondent asserts the following equitable defense: Respondent substantially and in good faith complied with the requirements of Cal. Rules of Court, Rule 9.20 by submitting a series of increasingly detailed declarations in response to communications by the Office of Probation stating, in cryptic terms, that Respondent's Rule 9.20 compliance was inadequate but not further specifying why that was the case. This prevented the timely filing of what the Bar ultimately appears to have regarded as a complete Rule 9.20 declaration.

The untimeliness of the declaration which eventually was filed was exacerbated by procedural manipulations of the Office of Probation; ordinary mail service between Respondent's residence in Shoreline, Washington and the Probation Office in Los Angeles is slow such that such a mailing typically takes a week or more in either direction. Respondent early recognized that these built-in delays would imperil his timely cooperation with the filing requirements of the Rule, particularly given that the Bar repeatedly deemed his declarations deficient without articulating why this was so. Respondent's efforts to expedite the process by, e.g., tendering advance copies of his proposed declarations by electronic mail so that the Bar could more

expeditiously comment on them - (Respondent always recognized that an inked-paper copy would ultimately have to be filed in order to comply with the Rule but sought to use email to avoid delay during the ongoing negotiations about the contents of his declaration) - were resisted, without reasonable explanation, by but the Office of Probation. The result was that repeated full mail exchange-cycles of ten-plus days (despite that Respondent used Express Mail for *his* leg of the exchange) ate-up all of the short compliance period allowed by the Rule.

As a result, Respondent's filings were late due to conduct on part of Petitioner which equitably estops Petitioner from faulting Respondent for the delay(s).

d) It is unclear whether the Bar is currently taking the position that Respondent might never adequately comply with the Rule because his disability simply prohibited him from amassing the funds to satisfy the "refund-and-return" notions of the Rule. Since the Bar ultimately accepted as substantively adequate Respondent's final filing which asserted his inability to pay for this reason, Respondent would plead that he ultimately satisfied the Rule. If the Bar takes the position that he did not satisfy the Rule because his physical impairments made him unable to repay his client, he pleads that such a position violates fundamental principles of Due Process and / or ameliorative statutes such as the Americans With Disabilities Act by refusing to make

reasonable accommodation to disabilities which are beyond respondent's

control.

**3. Reservation of Right to Make Further Amended Answers:** Because this

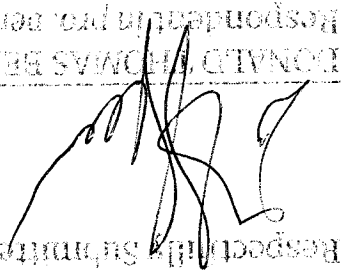
instant answer is necessarily filed before completion of discovery, Respondent

reserves the right to amend it in light of any disclosures to him of facts and

defenses in the context of such discovery as shall later ensue.

DATED: December 27, 2018

Respectfully Submitted:



DONALD THOMAS BERGERSON

Respondent in person

**VERIFICATION**

I, DONALD THOMAS BERGERSON, declare that I have read the foregoing

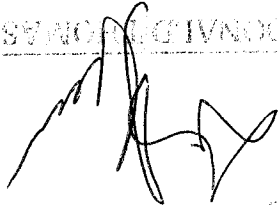
answer and know the contents thereof to be true save where alleged on

information and belief, which I believe to be true.

EXECUTED, under penalty of perjury under the laws of the state of

California this December 28, 2018 in the city of Shoreline, county of King, state

of Washington.



DONALD THOMAS BERGERSON

CERTIFICATE OF MAILING

I, Deloris K. Middelley, declare that I am over eighteen

years of age, not a party hereto, and that on December 29, 2018, I served the  
within ANSWER AND ANCILLARY PLEA IN ABATEMENT on counsel for  
Petitioner by inserting a true copy of the same into lawful course of United  
States Mail, postage fully prepaid, in the city of Seattle, county of King, state of  
Washington, from which place there is lawful and regular postal  
communication with the address(es) below listed.

State Bar of California, Office of Chief Trial Counsel - Enforcement  
845 S. Figueroa Street, Los Angeles, CA 90017

I declare under penalty of perjury that the foregoing is true save for portions  
alleged on information and belief, which portions I believe to be true.

EXHIBIT: This Document 29 December 29, 2018 in the city of Seattle, county of  
King, state of Washington.

Deloris K. Middelley