In re Matthew Eric Peek
Attorney-Respondent

Commission No. 2022PR00045

Synopsis of Hearing Board Report and Recommendation
(February 2023)

Respondent failed to respond to a motion for summary judgment, did not communicate with his clients about the motion, and did not inform them that a judgment was entered against them. In another matter, Respondent received and held 13 garnishment checks owed to a client but did not deposit them in a client trust account. He did not timely respond to his client's inquiries about the checks, provide an accounting, or promptly deliver the garnishment funds owed to the client. While representing a client in a domestic relations matter, Respondent made gratuitous comments of a sexual nature to opposing counsel and a paralegal.

The Hearing Panel found that Respondent failed to act with reasonable diligence and promptness; failed to promptly inform the client of a decision or circumstance that required the client's informed consent; failed to reasonably consult with the client about the means by which the client's objectives were to be accomplished; failed to keep the client reasonably informed about the status of the matter; failed to promptly comply with reasonable requests for information; failed to hold property of clients or third persons separate from the lawyer's own property; failed to promptly notify the client of his receipt of funds in which the client had an interest, deliver funds the client was entitled to receive, and provide a requested accounting; and, in representing a client, used means that had no substantial purpose other than to embarrass, delay, or burden a third person. The Hearing Panel recommended that Respondent be suspended for six months and until he makes restitution or provides proof of a settlement with his former clients and his consistent compliance with such settlement.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MATTHEW ERIC PEEK,

Attorney-Respondent,

No. 6313706.

Commission No. 2022PR00045

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent with failing to diligently represent and communicate with clients in two civil matters, failing to properly handle garnishment checks owed to one of the clients, and making vulgar comments of a sexual nature to opposing counsel and a paralegal while representing a client in a domestic relations matter. The Hearing Board panel found that the Administrator proved the charged misconduct by clear and convincing evidence. The Hearing Board panel recommended that Respondent be suspended for six months and until he makes restitution or provides proof of a settlement with his former clients and his compliance with such settlement.

INTRODUCTION

The hearing in this matter was held remotely by video conference on November 16, 2022, before a Panel of the Hearing Board consisting of Sonni Choi Williams, Chair, Stuart H. Shiffman, and Brian B. Duff. Tammy L. Evans represented the Administrator. Respondent was present and represented himself.

PLEADINGS AND ALLEGED MISCONDUCT

The Administrator charged Respondent in a three-count Complaint with failing to act with reasonable diligence and promptness in representing a client (Counts I and II), failing to promptly inform the client of a decision or circumstance that required the client's informed consent (Count I), failing to reasonably consult with the client about the means by which the client's objectives were to be accomplished (Count I); failing to keep the client reasonably informed about the status of the matter (Counts I and II), failing to promptly comply with reasonable requests for information (Counts I and II), failing to hold property of clients or third persons separate from the lawyer's own property (Count II); failing to promptly notify the client of his receipt of funds in which the client had an interest, deliver funds the client was entitled to receive, and provide a requested accounting (Count II); and, in representing a client, using means that have no substantial purpose other than to embarrass, delay, or burden a third person (Count III), in violation of Rules of 1.3, 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(d) and 4.4(a) of the Illinois Rules of Professional Conduct (2010).

In his Answer, Respondent admitted most of the factual allegations and the charges of misconduct in Counts I and II, except for the charge that he violated Rule 1.15(a). He denied making the statements and committing the misconduct alleged in Count III.

EVIDENCE

The parties filed a joint stipulation as to Counts I and II. At hearing, the Administrator presented testimony from three witnesses and Respondent as an adverse witness. Respondent testified on his own behalf. Neither party offered exhibits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

I. In Count I, Respondent is charged with providing less than diligent representation and failing to communicate with clients he represented in a civil matter, in violation of Rules 1.3, 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), and 1.4(a)(4).

A. Summary

Based on Respondent's admissions and the parties' joint stipulations, the Administrator proved by clear and convincing evidence that Respondent committed misconduct when he did not file a response to a motion for summary judgment, failed to communicate with his clients about the motion, and failed to inform them when judgment was entered against them.

B. Admitted Facts and Evidence Considered

Respondent was licensed to practice law in Illinois in 2013. He is currently a sole practitioner with a general practice. During the time periods at issue, Respondent was employed by three different law firms: Erwin, Martinkus & Cole, Ltd. (2016-2019); Kesler, Nelson, Garman, Brougher & Townsley, P.C. (Kesler firm) (2019-2020); and Rincker Law, PLLC (Rincker Law) (February 2021-November 2021). (Tr. 68).

In 2016, Respondent agreed to represent Samuel and Kellie Preston in a civil lawsuit alleging that the Prestons failed to disclose a defect in property they sold to Jeremy and Renee Walker. The Prestons paid Respondent a $2,500 retainer, and Respondent filed an appearance on

their behalf on December 7, 2016. On December 16, 2020, the Walkers filed a motion for summary judgment, and the court set a briefing schedule. Respondent did not inform the Prestons of the motion for summary judgment, nor did he file a response. (Jt. Stip. at pars.1-5).

On February 5, 2021, the court granted the motion for summary judgment and entered judgment against the Prestons. Respondent received the court's order but did not inform the Prestons of it. (Jt. Stip. at pars.6-7).

When the Prestons learned of the judgment by checking the online court docket, they tried to contact Respondent by email. Respondent did not respond to them. (Jt. Stip. at pars.8, 9). After Samuel Preston went to Respondent's office on August 17, 2021, Respondent filed a motion to vacate the judgment. (Jt. Stip. at pars.10, 11).

On September 1, 2021, the court denied the motion to vacate. Following a hearing on damages, the court entered judgment against the Prestons in the amount of $64,120.36. (Jt. Stip. at pars.12, 13).

Respondent admits that he failed to act diligently in representing the Prestons and failed to properly communicate with them. (Ans. at par. 14; Jt. Stip. at par. 14). He did not respond to the motion for summary judgment in the Preston matter because he was overwhelmed at the time. He did not respond to the Prestons' emails because of his anxiety in owning up to his mistake. (Tr. 72).

C. Analysis and Conclusions

Respondent has admitted the factual allegations and charges of misconduct related to his representation of the Prestons. We find that his admissions establish by clear and convincing evidence that he engaged in all of the misconduct charged in Count I. Specifically, Respondent failed to act with reasonable diligence and promptness, in violation of Rule 1.3; failed to promptly inform the client of any decision or circumstance with respect to which the client's informed

consent was required, in violation of Rule 1.4(a)(1); failed to reasonably consult with the client about the means by which the client's objectives were to be accomplished, in violation of Rule 1.4(a)(2); failed to keep the client reasonably informed about the status of the matter, in violation of Rule 1.4(a)(3); and failed to promptly comply with reasonable requests for information, in violation of Rule 1.4(a)(4).

II. In Count II, Respondent is charged with failing to diligently represent and communicate with his client in a second matter, failing to deposit garnishment checks belonging to the client in a client trust account, failing to timely deliver the garnishment funds to which the client was entitled, and failing to provide an accounting, in violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), and 1.15(d).

A. Summary

Based on Respondent's admissions and the parties' Joint Stipulations, the Administrator proved by clear and convincing evidence that Respondent failed to diligently represent and communicate with his client Unique Homes, failed to inform Unique Homes of his possession of 13 garnishment checks owed to Unique Homes, did not promptly deliver the garnishment funds owed to Unique Homes, and ignored Unique Homes' request for an accounting. The Administrator also proved the disputed charge of failing to deposit the garnishment checks in a client trust account.

B. Admitted Facts and Evidence Considered

On January 25, 2018, following an agreement to represent Unique Homes and Lumber (Unique Homes) in a pending breach of contract action, Respondent substituted as Unique Homes' counsel. On October 1, 2018, the court entered judgment in Unique Homes' favor in the amount of $130,530, and the parties agreed to a payment plan. After the opposing parties defaulted on the payment plan, the court entered a wage deduction order. Beginning in March 2020, garnishment checks payable to Unique Homes were mailed to the Kesler firm, where Respondent was employed

at the time, and deposited in the Kesler firm's client trust account. The Kesler firm then issued checks in the garnishment amount to Unique Homes. (Jt. Stip. at pars.16-21).

The Kesler firm disbanded in January 2021, and Respondent joined Rincker Law on February 8, 2021. On April 6, 2021, Respondent told Unique Homes he would file an updated withholding agreement so the garnishment checks would be sent directly to Unique Homes, but he never did so. Between April 1, 2021 and November 22, 2021, Respondent received 13 garnishment checks that were owed to Unique Homes but did not deposit them, provide Unique Homes with an accounting of those checks, or file an updated withholding agreement. (Jt. Stip. at pars.22-26).

On June 30, 2021, Unique Homes' Chief Financial Officer and Vice-President, Randy Porter, sent Respondent an email message asking for an accounting and information about the garnishment checks. Respondent did not respond. Porter then hired a new attorney to substitute for Respondent. Respondent did not respond to the new attorney's requests to forward the garnishment checks and provide an accounting. It was not until February 8, 2022, that Respondent provided Unique Homes with an accounting and the 13 garnishment checks. (Jt. Stip. at pars.27-32, 40).

Respondent testified that he did not communicate with Unique Homes because he did not want to confront his errors and deal with the situation he created. (Tr. 72).

C. Analysis and Conclusions

Respondent has admitted the material factual allegations and allegations of misconduct in Count II, except for the allegation that he violated Rule 1.15(a) by failing to deposit the 13 garnishment checks in a client trust account. Rule 1.15(a) provides that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, and further provides that such funds shall

be deposited in a client trust account. Respondent acknowledges that he did not deposit the garnishment checks but asserts in his Answer that he lacked signing authority for all but two of the checks, which were payable to the Kesler firm.

Respondent's position is not persuasive. He accepted and retained possession of the garnishment checks and therefore was required to handle them in compliance with Rule 1.15(a). It is well-established that holding checks that belong in whole or in part to a client or third person, rather than depositing them into a client trust account, is a violation of Rule 1.15(a). See In re Sweeney, 2013PR00101 (Hearing. Bd. at 14) (keeping settlement checks in a desk drawer does not comply with Rule 1.15(a)). Moreover, any difficulties in negotiating the checks were of Respondent's own making. He could have filed an updated withholding agreement so that the checks went directly to Unique Homes, or he could have complied with Unique Homes' requests to turn over the checks. He did neither, and his inaction does not absolve him of his obligation to safeguard the checks that were in his possession. For these reasons, we find the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.15(a).

Respondent has admitted the remaining allegations of misconduct related to his representation of Unique Homes. We find that these admissions establish by clear and convincing evidence that Respondent engaged in the following misconduct: failed to act with reasonable diligence and promptness in representing a client, in violation of Rule 1.3; failed to keep the client reasonably informed about the status of the matter, in violation of Rule 1.4(a)(3); failed to promptly comply with reasonable requests for information, in violation of Rule 1.4(a)(4); upon receiving funds or other property in which a client or third person has an interest, failed to promptly notify the client or third person; failed to promptly deliver to the client or third person any funds or other

property that the client or third person is entitled to receive; and, upon request by the client or third person, failed to promptly render a full accounting, in violation of Rule 1.15(d).

III. In Count III, Respondent is charged with, in representing a client, using means that have no purpose other than to embarrass, delay, or burden a third person, by making comments of a sexual nature to opposing counsel and her paralegal, in violation of Rule 4.4(a).

A. Summary

While representing a client in a domestic relations matter, Respondent made comments to opposing counsel and a paralegal of a vulgar, sexual nature that had no legitimate purpose. However, the Administrator failed to prove that one comment by Respondent was made in representing a client.

B. Evidence Considered

In 2021, Respondent and attorney Kristen Fischer represented opposing parties in a domestic relations matter. Fischer's law office and the office of Rincker Law, where Respondent was employed, were on the same floor of an office building in Champaign. Fischer shared office space with another attorney, Sami Anderson. Stephanie Schnepper worked as a paralegal for both Fischer and Anderson. (Tr. 23, 24).

Schnepper testified that, in August 2021, Respondent entered the Fischer/Anderson office space. Schnepper greeted him and asked, "How are you today?" Respondent replied that "he was great, he had just been naked in his office." After he said this, Respondent went into Anderson's office. (Tr. 26). Anderson heard Schnepper's exchange with Respondent and heard him say "he had been naked on his couch in his office." (Tr. 59). Both Schnepper and Anderson denied that they misheard Respondent. (Tr. 62). Respondent denied saying he had been naked on his couch in his office and testified that he did not have a couch in his office. (Tr. 78).

According to Anderson, the manner in which Respondent speaks "can come off as crude," so she did not have a reaction to his comment. (Tr. 59). Anderson acknowledged that she and Respondent had used profanities in conversation in the past and that Respondent did not have a couch in his office. (Tr. 64).

The other statements at issue were made on October 4, 2021. That morning, Fischer and Respondent met in the Rincker Law office to attempt to reach a settlement in a domestic relations matter in which they represented opposing parties. (Tr. 38-40). During this meeting, while discussing that the matter had been difficult and frustrating, Respondent said he thought the solution with respect to his client was to "butt f**k her with sand put on it." (Tr. 41). Later that day in Fischer's office, Respondent repeated this statement to Fischer and Schnepper, saying his client "needed to be butt f***ed and for some added torture some sand put on it." (Tr. 27, 42).

Schnepper testified she was disgusted and taken aback by Respondent's statement. She felt his language was violent. (Tr. 28). In Fischer's view, Respondent's statements negatively impacted the integrity of the settlement process by putting everyone in a difficult position. She felt it was disrespectful for Respondent to speak about his client that way. (Tr. 44).

According to Respondent, his actual words were that "[the client] should be involuntarily sodomized, and just for her I would throw in some sand." (Ans. at par. 51). Fischer denied that Respondent used the word "sodomized." (Tr. 49). Respondent testified that his client was the most difficult client he ever had, and he made the statements about her to "blow off steam." (Tr. 80).

Also on October 4, 2021, while in Fischer's office discussing the domestic relations matter, Respondent brought up a proposal that Fischer had previously rejected. When Fischer told Respondent she did not want to revisit that issue, Respondent replied, "Would you just let me

finish, I promise I won't get any in your hair." Fischer, Schnepper, and Anderson heard Respondent make that statement. (Tr. 28-29, 45-46, 60). According to Respondent, he said, "I will get out of your hair." (Tr. 78-79). Fischer, Schnepper, and Anderson denied that Respondent said, "I will get out of your hair." (Tr. 33-34, 52, 64).

Schnepper was mortified by Respondent's remark and went to speak to Respondent's employer, Cari Rincker, but Rincker was not in her office. (Tr. 29). Schnepper was so upset by Respondent's disrespect toward Fischer that she cried. (Tr.30).

Fischer was stunned by Respondent's remark but did not react because she wanted to focus on her client. (Tr. 46). She testified that Respondent's behavior caused a strain on the working relationship between her office and the Rincker Law office. (Tr. 47). Respondent's employment at Rincker Law was terminated as a result of his statements to Fischer and Schnepper. (Tr. 76-77).

C. Analysis and Conclusions

Rule 4.4(a) provides in relevant part that, "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person." Violations of Rule 4.4(a) have been found when a lawyer, in the course of representing a client, used vulgar, offensive, or intimidating language. See In re Moore, 2015PR00076, M.R. 028896 (Sept. 22, 2017) (Hearing Bd. at 12).

First, we address whether the Administrator proved that Respondent made the remarks alleged in Count III. We find the Administrator proved by clear and convincing evidence that Respondent made the alleged remarks. Schnepper, Fischer and Anderson were credible witnesses who testified unequivocally to the words Respondent used. We do not find Respondent's denials credible, nor do we find credible his assertion that he used the words "involuntarily sodomized" in his statements about his client.

To violate Rule 4.4(a), the conduct in question must occur in representing a client. The comments Respondent made on October 4, 2021, were clearly made in representing a client, given that Respondent made them while discussing his client's domestic relations matter with Fischer. We do not find sufficient evidence, however, to establish that Respondent's remark about being "naked in his office" was made in representing a client. The Administrator made no allegation in the Complaint that Respondent's presence in the Fischer/Anderson office in August 2021 was related to a representation, nor did the Administrator elicit any testimony as to why Respondent was in the office when he made that comment. Schnepper testified that Respondent went into Anderson's office after he made the remark, which suggests he was not there in connection with the matter he and Fischer were handling. Consequently, the evidence does not establish that Respondent's remark about being naked in his office was made "in representing a client."

Turning to Respondent's remarks on October 4, 2021, we find they had no substantial purpose other than to burden or embarrass Schnepper and Fischer. There was no legitimate reason for Respondent's gratuitous sexual comments. They were disrespectful and offensive, caused Schnepper distress, and created an uncomfortable situation for both Fischer and Schnepper. Respondent's statement about his client is particularly egregious because it suggests sexual violence against her. Our finding would be the same were we to accept Respondent's assertion (which we do not) that he used less profane words that similarly referred to sexual assault. Based on our findings that the Administrator established all of the elements of Rule 4.4(a) with respect to the comments Respondent made on October 4, 2021, we find this charge proven by clear and convincing evidence.

EVIDENCE IN AGGRAVATION AND MITIGATION

Aggravation

Respondent has not made restitution to the Prestons. He testified he is in settlement negotiations with them. (Tr. 103).

When Respondent made the explicit statements about his female client, she was present in a conference room on the same floor as Fischer's office. Respondent does not believe it was possible for her to hear his comments. (Tr. 74-75).

Mitigation

Respondent acknowledges that the Prestons are entitled to restitution and compensation for the additional legal expenses they have incurred. (Tr. 103). He also acknowledged that he should not have made the inappropriate statements about his client. (Tr. 73, 74). He testified he was not in the habit of making sexual remarks to Fischer or Anderson. (Tr. 79).

Prior Discipline

Respondent does not have prior discipline.

RECOMMENDATION

A. Summary

Based on our findings that Respondent committed all of the charged misconduct, we recommend that he be suspended for six months and until he makes restitution to the Prestons or presents proof to the Administrator's satisfaction of a settlement agreement with Prestons and his consistent compliance with such agreement.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from

reproach. In re Edmonds, 2014 IL 117696, ¶ 90. In arriving at our recommendation, we consider these purposes as well as the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We seek consistency in recommending similar sanctions for similar types of misconduct but must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

The Administrator asks us to recommend a suspension of six months and until Respondent makes restitution to the Prestons. Respondent acknowledges that a sanction is warranted but asks for a shorter suspension in the interest of enabling him to make restitution as soon as possible.

Respondent's misconduct was extremely serious. His dilatory conduct caused substantial financial harm to the Prestons and needlessly delayed Unique Homes' receipt of funds owed to them. Respondent's vulgar sexual comments caused Schnepper emotional distress and had no place in a professional setting. "Attorneys are held to a high standard of conduct and such unprofessional behavior brings disgrace to the entire legal profession." In re Craddock, 2017PR00115, M.R. 030266 (March 13, 2020) (Hearing Bd. at 18-19).

The harm caused by Respondent's misconduct is one significant factor in aggravation, and there are others. Respondent's misconduct was not an isolated instance. In the Preston and Unique Homes matters, he engaged in a pattern of neglect and poor decision-making that lasted for more than a year. In addition, although Respondent expressed his intent to make restitution to the Prestons, they have yet to be made whole.

We also find in aggravation that Respondent did not testify truthfully when he denied making the offensive statements at issue. His denials were simply not credible when compared to the consistent and unequivocal testimony of Schnepper, Fischer and Anderson. Lack of candor

before the Hearing Board is a factor that may be considered in aggravation. Gorecki, 208 Ill. at 366.

In mitigation, Respondent cooperated in this proceeding and has no prior discipline. While he takes responsibility for some of his misconduct, he has not taken responsibility for all of it, which lessens the mitigating effect of his admissions. We also note that Respondent did not present any evidence of good character or contributions to the legal profession or his community.

In determining the appropriate sanction recommendation, we consider the totality of the proven misconduct. Discipline for neglecting client matters can range from a reprimand to a period of suspension, depending on the aggravating and mitigating factors present. The Administrator cites to In re Wildermuth, 2015PR00080, M.R. 029456 (Sept. 20, 2018) (six-month suspension) and In re Reu, 2010PR00122, M.R.25381 (Sept. 17, 2012) (one-year suspension). Wildermuth failed to diligently represent a client in a breach of contract action and charged an unreasonable fee. Reu neglected a post-dissolution child support matter. We do not find Wildermuth and Reu particularly applicable because, unlike this case, their misconduct involved dishonesty and both of them had prior discipline. Our research has revealed the following cases that we find more comparable: In re Leonardi, 2013PR00117, M.R. 27005 (Jan. 16, 2015) (ninety-day suspension for failing to diligently represent a client, failing to deposit checks in a client trust account and failing to promptly deliver funds to a client); In re Marshall 05 CH 97, M.R. 23146 (Sept. 24, 2009) (suspension for ninety days and until respondent paid restitution and completed a law office management course for failing to diligently represent a client in administering an estate); and In re Levin, 77 Ill. 2d 205, 395 N.E. 2d 1374 (1979) (three-month suspension for neglecting one personal injury matter). Having considered these cases, we believe an appropriate suspension for

Respondent's neglect of two matters is three months. Respondent's improper remarks to Fischer and Schnepper warrant additional suspension.

The attorneys in Craddock, 2017PR00115 and In re Cohn, 2018PR00109, M.R. 030545 (Jan. 21, 2021) received suspensions of three months and six months, respectively, for using vulgar language toward opposing counsel. Cohn committed additional misconduct of making false statements maligning the integrity of a judge. Based on these cases, we conclude that an additional three months of suspension is warranted for the proven misconduct in Count III.

Having carefully considered the proven misconduct, relevant circumstances, applicable case law, and purposes of the disciplinary process, we recommend that Respondent be suspended for six months and until he has made restitution to the Prestons or provides proof that he has entered into and is consistently complying with a settlement agreement with them. This recommendation accounts for Respondent's neglect of the Preston and Unique Homes matters as well as his vulgar remarks to Fischer and Schnepper. We determine that this sanction is necessary to make the Prestons whole, protect the public and the profession, and impress upon Respondent and other attorneys the importance of protecting client interests and conducting oneself in a respectful and ethical manner.

Accordingly, we recommend that Respondent, Matthew Eric Peek, be suspended for six months and until he makes restitution to the Prestons or provides proof to the Administrator's satisfaction of consistent compliance with a settlement agreement with the Prestons.

Respectfully submitted,

Sonni Choi Williams
Stuart H. Shiffman
Brian B. Duff

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on February 2, 2023.

/s/ Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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