

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
EDGAR E. LIM,) **Supreme Court #SC87849**
)
Respondent.)

INFORMANT'S BRIEF

OFFICE OF
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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Disciplinary Case

By letter dated September 20, 2004, attorney Andrew Neill reported to the Office of Chief Disciplinary Counsel what he believed was professional misconduct committed by attorney Edgar Lim. Mr. Neill's office was, at the time of the misconduct report, representing some former clients of Mr. Lim in a suit brought by Lim against them to collect attorney fees. **App. 2.**¹

A complaint file was opened and referred to a St. Louis disciplinary committee. The committee voted to file an information against Respondent Lim in October of 2005. The information was served on Respondent in late January of 2006. Mr. Lim filed a timely answer to the information. **App. 3-59.**

In early March of 2006, a disciplinary hearing panel was appointed to hear the case. **App. 60.** The hearing occurred on April 18, 2006. The panel issued its decision on May 18, 2006, recommending suspension with leave to apply for reinstatement after six months for violation of Rules 4-1.16(d) (failure to surrender client property at termination of representation), 4-1.6(a) (revealed client information without client consent), and 4-1.9 (used information obtained during representation to the disadvantage of a former client). The panel also recommended an admonition for violation of Rule 4-7.5(f) (implied practice was a partnership when it was not). **App. 69-72.**

¹ Mr. Lim's former clients lived in Michigan at the time of the disciplinary case. They did not participate in the hearing.

Mr. Lim did not concur in the panel's recommendation. **App. 73-74.** Since there was no concurrence, the record was filed with the Court pursuant to Rule 5.19.

Respondent's Background

Respondent Edgar Lim was admitted to the bar in 1975. He has practiced immigration law throughout his career. **App. 91.** Mr. Lim accepted an admonition in 2003 for violation of Rules 4-1.3 (diligence) and 4-3.1 (lawyer shall not advance a claim unless there is a good faith basis for doing so). **App. 133-135.** At the time of the disciplinary hearing, Mr. Lim maintained a part-time practice in St. Louis. **App. 89-90.**

Conduct Underlying Disciplinary Case

In 1994, Respondent Lim began representing clients named Ganesh Krishnamurthy and Padma Ganesh. **App. 82, 90.** Mr. Lim was employed to obtain a work visa for Mr. Krishnamurthy, and subsequently a labor certification. **App. 93.** He was also retained to obtain the necessary document to allow Mr. Krishnamurthy's wife, Padma, to live in the United States while her husband worked here. **App. 93-94.**

Mr. Lim told the Krishnamurthys that his fee would be \$4,500.00. **App. 95.** Although no copy of a written fee agreement was produced, Mr. Lim testified there was one and that it provided for a late charge of \$20.00 per month on unpaid fees, as well as a 9% annual interest fee charge added to the late fees. **App. 96.** The Krishnamurthys paid Mr. Lim \$1,000.00. **App. 127.**

Mr. Lim terminated his representation of the Krishnamurthys in October of 1997. **App. 4-5, 16.** In a letter dated November 3, 1997, Mr. Lim advised Mr. Krishnamurthy that Lim had obtained the labor certification, but that it would not be turned over to Mr.

Krishnamurthy until all outstanding fee invoices, said to equal \$2,441.11, were paid. The letter states “Once we are paid, . . . we will release your labor certification which is still our property until you pay for it” (emphasis in original). **App. 136.**

Mr. Lim never turned the labor certification over to Mr. Krishnamurthy. **App. 99.** Mr. Lim sent the November 3 letter threatening to keep the certificate as a means of getting Mr. Krishnamurthy to pay him. The certificate was not Mr. Lim’s property. **App. 99-100.**

Respondent Lim’s daughter, Priscilla Lim, began practicing law with Respondent in late 2002. **App. 137.** The two Lims never formalized a partnership agreement, never filed any partnership paperwork with the Secretary of State’s office, opened no partnership bank account, and made no partnership purchases. **App. 104-105.** Formal correspondence was sent out on “Lim & Lim” letterhead in January and February of 2004. **App. 138-139.**

In December of 2002, Respondent Lim filed a two count petition against the Krishnamurthys in St. Louis County alleging the Krishnamurthys owed him \$2,441.11 for fees, along with interest at 9%, and that the Krishnamurthys had been unjustly enriched in that same amount by way of legal services performed without payment. **App. 117-118.** The court in which the case was filed eventually ruled that the matter was barred by the applicable statute of limitations. **App. 107.**

At Mr. Lim’s direction, his daughter sent a letter dated January 26, 2004, to the Krishnamurthys warning that a petition for unjust enrichment would be filed in circuit

court for the \$6,759.00 in fees, interest, late fees, and court costs allegedly owed to Mr. Lim. The letter further provided that:

Furthermore, since you have not paid us, this proves that you lack good moral character, which the Immigration and Naturalization Services (INS) requires from one prior to allowing him/her naturalization benefits. Thus, if we are not in receipt of your total outstanding balance by February 2, 2004, we must, as officers of the court, notify INS of your amoral character.

App. 138.

Respondent Lim thereafter, on February 18, 2004, sent a letter to a United States Immigration & Naturalization Service office regarding the Krishnamurthys. The letter stated in part:

Please be advised that Mr. Ganesh Krishnamurthy and Ms. Padma Ganesh, lack the good moral character needed to obtain immigration benefits. They have lied and deceived our office and currently they have an outstanding account balance due us of over \$7,000.00.

Please place this letter in their file to prevent them from obtaining any further immigration benefits.

App. 139.

By Mr. Lim's calculation, in February of 2004 the Krishnamurthys owed him \$7,128.60.

App. 144.

Mr. Lim sent the letter to the INS to inform the agency of what he believed was his former clients' amoral character. **App. 108.** He asked the agency to leave his letter in the Krishnamurthys' file to prevent them from obtaining future benefits. **App. 109.** Mr. Lim acknowledges that his dispute with the Krishnamurthys was basically fiscal, but he thinks it is amoral to promise to pay someone and then not do it. **App. 114-115.** According to Mr. Lim, "The only reason this case became so onerous was the fact that Mr. Krishnamurthy had told us repeatedly, one excuse after another, basically running the statute of limitations on us, and we did in fact inform Immigration of his amoral character. . . . I took it upon myself to judge his character, but I felt at the time it was my prerogative as a practitioner, as his creditor, as an officer of the Court, as an immigration practitioner, to notify Immigration of his character. And if I had to do it all over again, I probably would do exactly the same thing." **App. 55.**

POINT RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT LIM BECAUSE HE VIOLATED THE RULE REQUIRING SURRENDER OF PROPERTY TO WHICH THE CLIENT IS ENTITLED AT TERMINATION OF THE REPRESENTATION (4-1.16(d)) IN THAT HE RETAINED THE LABOR CERTIFICATION; THE RULE PRECLUDING REVELATION BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION (4-1.6(a)) IN THAT HE REPORTED TO THE IMMIGRATION & NATURALIZATION SERVICE INFORMATION CONCERNING HIS FEE DISPUTE WITH THE FORMER CLIENT; THE RULE PROHIBITING USE BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION TO THE FORMER CLIENT'S DISADVANTAGE (4-1.9(b)) IN THAT HE USED THE FEE ISSUE TO PREJUDICE THE FORMER CLIENTS' STANDING WITH THE INS; AND THE RULE PROHIBITING A LAWYER FROM IMPLYING THAT HE PRACTICES IN A PARTNERSHIP UNLESS THAT IS THE FACT (4-7.5(f)) IN THAT IN 2004 HE HELD HIMSELF OUT AS PRACTICING IN A PARTNERSHIP WITH HIS DAUGHTER WHEN THE PARTNERSHIP WAS NEVER FORMED.

In re Carey & Danis, 89 S.W.3d 477 (Mo. banc 2002)

In re Cupples, 952 S.W.2d 226 (Mo. banc 1997)

In re Boeltner, 139 Wash.2d 81, 985 P.2d 328 (banc 1999)

Advisory Committee Formal Opinion #115 (adopted March 4, 1988)

Rule 4-1.16(d)

Rule 4-1.6(a)

Rule 4-1.9(b)

Rule 4-7.5(f)

POINT RELIED ON

II.

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S
LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT
FOR SIX MONTHS BECAUSE HE KNOWINGLY VIOLATED
DUTIES TO HIS FORMER CLIENTS IN THAT HE SENT A
DISPARAGING LETTER ALLEGING CONFIDENTIAL
INFORMATION ABOUT THE CLIENTS TO A THIRD PARTY
WITH THE INTENT TO HARM THEM.**

ABA Standards for Imposing Lawyer Sanctions (1992 amendments)

Rule 4-7.5(f)

Rule 4-1.6

Rule 4-1.9

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT LIM BECAUSE HE VIOLATED THE RULE REQUIRING SURRENDER OF PROPERTY TO WHICH THE CLIENT IS ENTITLED AT TERMINATION OF THE REPRESENTATION (4-1.16(d)) IN THAT HE RETAINED THE LABOR CERTIFICATION; THE RULE PRECLUDING REVELATION BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION (4-1.6(a)) IN THAT HE REPORTED TO THE IMMIGRATION & NATURALIZATION SERVICE INFORMATION CONCERNING HIS FEE DISPUTE WITH THE FORMER CLIENT; THE RULE PROHIBITING USE BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION TO THE FORMER CLIENT'S DISADVANTAGE (4-1.9(b)) IN THAT HE USED THE FEE ISSUE TO PREJUDICE THE FORMER CLIENTS' STANDING WITH THE INS; AND THE RULE PROHIBITING A LAWYER FROM IMPLYING THAT HE PRACTICES IN A PARTNERSHIP UNLESS THAT IS THE FACT (4-7.5(f)) IN THAT IN 2004 HE HELD HIMSELF OUT AS PRACTICING IN A PARTNERSHIP WITH HIS DAUGHTER WHEN THE PARTNERSHIP WAS NEVER FORMED.

The route chosen by Mr. Lim to resolve his dispute with the Krishnamurthys over fees was wrong on a number of different ethical levels, but they all trace back to the bedrock principle of a lawyer's duty of loyalty to a client. The fiduciary nature of the lawyer/client relationship prohibits dangling a desired document, in this case the labor certificate, in front of a former client's nose with the warning that it will be turned over only upon payment in full of outstanding fees. That same principle precludes a lawyer from revealing the dispute to the federal agency that controls the clients' legal standing, and calling them liars, deceivers, and amoral to boot. Loyalty to the client, even one who allegedly owes the lawyer money, is a fundamental principle of the legal profession. See *In re Carey & Danis*, 89 S.W.3d 477, 503 (Mo. banc 2002); *In re Oliver*, 285 S.W.2d 648, 655 (Mo. banc 1956).

Disciplinary counsel alleged in its information, and the disciplinary hearing panel concluded, that Mr. Lim's "collection conduct" violated the following Rules of Professional Conduct: Rule 4-1.16(d) (failure to surrender client property at termination of representation), Rule 4-1.6(a) (reveal client information without client consent), and Rule 4-1.9 (used information obtained during representation to disadvantage a former client). Both the evidence of record and the law substantiate the panel's conclusions.

Mr. Lim's November 3, 1997, letter to Mr. Krishnamurthy (**App. 136**) is a bald effort to coerce payment of a fee by withholding a document to which the client was

entitled.² Such a tactic is clearly contrary to Advisory Committee Formal Opinion #115 (adopted March 4, 1988) and *In re Cupples*, 952 S.W.2d 226, 234 (Mo. banc 1997) (“The client’s files belong to the client, not to the attorney representing the client.”).³ Formal Opinion 115 discusses the lawyer’s obligations under Rules 4-1.15(b) and 4-1.16(d) to safeguard and deliver promptly to clients property to which they are entitled. While the Advisory Committee’s opinion recognized that whether a common law retaining lien exists in Missouri is not clearly addressed in our state’s case law, it was the opinion of the Committee that even if such a lien were recognized:

for a lawyer to force payment of his fees or expenses by resorting to a lien which can only be effective by causing embarrassment, inconvenience or worry to his client is for the lawyer to act in a manner totally inconsistent with the above-cited disciplinary rules [1.15(b) and 1.16(d)] and, further, is inconsistent with the spirit of his professional responsibility. This is particularly true since other methods are available for use by an attorney for the collection of those fees and expenses to which he may be legally entitled.

² Mr. Lim offered no evidence to suggest the certificate was obtained by an advance of Mr. Lim’s funds, in which event the lawyer may retain the item until reimbursed for the out-of-pocket expense. See Missouri Supreme Court Advisory Committee Formal Opinion #115 (as amended 1988).

³ *In re Cupples* was handed down two and a half months prior to Mr. Lim’s letter.

Mr. Lim's November 3, 1997, letter to his former clients, which can be fairly characterized as hectoring and demeaning, violated Rule 4-1.16(d).

The February 18, 2004, letter sent by Mr. Lim to the Immigration & Naturalization Service is an even more egregious affront to ethical principles. Having failed in his effort to collect the alleged unpaid fee by filing suit against the Krishnamurthys in 2002,⁴ Mr. Lim's daughter, at his direction, sent a letter to the former clients advising that a petition for unjust enrichment would be filed against them inasmuch as the fees were still, according to Lim, owed.⁵ The letter further chastised the former clients by telling them that they lacked good moral character, information that Mr. Lim said "must" be reported by him, as an officer of the court, to the INS, unless the "total outstanding balance" was paid by February 2, 2004. This letter to the former clients is, in effect, a threat to reveal

⁴ The arithmetic regarding the fee is less than clear. The initial fee, according to Mr. Lim, was \$4,500.00. Mr. Lim testified the Krishnamurthys made two \$500.00 payments. The 2002 petition on account prayed for judgment in the amount of \$2,441.11 plus 9% interest. Mr. Lim's January 26, 2004, letter to the Krishnamurthys demands \$6,759.00, an amount said to include the "balance of your invoice, late fees, interest, attorney's fees, and court costs." **App. 138.** By February 18, 2004, Mr. Lim calculated that the amount owed was \$7,128.60. **App. 144.** Mr. Lim was unable to produce a written fee agreement.

⁵ The propriety of the threatened cause of action is questionable, given that the same theory had been pled in the 2002 petition that was dismissed. **App. 141-142.**

confidential information,⁶ a threat contingent on payment of the fee and its ever escalating surcharges.

If the threat weren't disturbing enough, Mr. Lim's suggestion that such a report from him was necessary in view of his position as an "officer of the court," is worse. The exception to Rule 4-1.6(b), allowing constrained revelation of client confidences, is permissive, not mandatory as the letter suggests. Further, the exception applies only to allow the lawyer to "establish a claim." Mr. Lim's letter to the INS does nothing to establish Mr. Lim's legal claim to the fee; rather, it was a mean-spirited effort to prejudice the former clients' standing with immigration authorities. Mr. Lim's follow-up to the INS, wherein he "reported" his former clients' alleged lack of good moral character, is a serious affront to the fiduciary principles lawyers are bound to uphold.⁷

⁶ Confidential client information is "all information relating to representation of a client, whether in oral, documentary, electronic, photographic, or other forms. . . . In the course of representation, a lawyer may learn confidential information about the client that is not necessary for the representation but which is of a personal . . . nature or other character such that the client evidently would not wish it disclosed. Such information is confidential." Restatement (Third) of the Law Governing Lawyers § 59 comment b (2002). "Information acquired during the representation . . . or after the representation is confidential so long as it is not generally known." *Id.* at comment c.

⁷ That is not to say that a lawyer is precluded by ethical constraints from pursuing legal recourse to collect a debt from a client. Rule 4-1.6(b)(2) permits a lawyer to reveal

Use of confidential information to a former client's disadvantage puts the lawyer in a conflict of interest position with his former client, which is only permissible if the information has become "generally known." Rule 4-1.9(b). Mr. Lim argued to the panel that his former clients' "amoral" became "generally known," through the lawsuit filed by Mr. Lim against them in 2002. This argument simply does not withstand scrutiny. The 2002 collection case was a standard petition on account and unjust enrichment – the sort of revelation of client information permitted by the Rules. There was nothing in the case implicating his former clients' morality. Further, it would render the Rule an absurdity to say the lawyer's revelation causes confidential information to fall within the "generally known" exception to Rule 4-1.9(b) if it was the lawyer who revealed the information in the first place.

Mr. Lim dispelled any doubt as to his intentions in sending the letter by requesting that immigration authorities "place this letter in their file to prevent them [the Krishnamurthys] from obtaining any future immigration benefits." **App. 139**. It is difficult to imagine a scenario more clearly proscribed by Rules 4-1.6(b) and 4-1.9(b) than Mr. Lim's letter to the INS.

confidential information to the extent the lawyer reasonably believes necessary to "establish a claim . . . on behalf of the lawyer." Filing a petition on account to recover fees falls within this exception – reporting a client's alleged amoral, deceitful conduct to the INS does not.

Coercive fee collection practices are properly remedial by lawyer discipline. The lawyer in *In re Boeltner*, 139 Wash.2d 81, 985 P.2d 328 (banc 1999) argued in his disciplinary case that the dispute exception to Rule 4-1.6 should be construed to permit a lawyer to threaten a former client with disclosure of client confidences in order to resolve fee disputes. The Washington Supreme Court called the lawyer's contention "outrageous" in view of the obvious client-directed protections afforded by the Rule. It should be noted that the Washington lawyer, much as Mr. Lim did in the case sub judice, misrepresented the intent of Rule 1.6 in the letter to his client. Mr. Boeltner's letter claimed that if it became necessary to file a collection suit against the client, "I would be forced to reveal that you lied on your statements to the IRS and to the bank as to your financial condition." 985 P.2d at 334. Similarly, Mr. Lim asserted in the letter sent to his former clients that, unless paid all that he said he was owed by a date certain, he "must ... notify INS of your amoral character." Respondent Lim's self-serving mischaracterization of his duties as an "officer of the court" reflects poorly on the integrity of the legal profession.

In *In re Lindenbaum v. State Bar*, 26 Cal.2d 565, 160 P.2d 9 (banc 1945), the California Supreme Court suspended a lawyer for writing a letter to the INS reporting a client's wife's alleged role in the client's divorce from a prior wife.⁸ The lawyer wrote

⁸ There was a level of misrepresentation in Mr. Lindenbaum's letter to the INS inasmuch as the adultery allegations referenced in the letter had actually been eliminated from the divorce case before it went to trial. 160 P.2d at 10-11.

the letter after the client included fees owed the lawyer as debts subject to discharge in his voluntary bankruptcy.

A New York court suspended a lawyer in 1923 after the lawyer wrote a letter to a client with whom he was having a dispute over a fee bill. The lawyer told the client in the letter that although he would regret doing so, if she forced him to initiate proceedings to establish his fee claim, he would reveal the contents of a letter he had written the client regarding her tax derelictions. The court noted that the letter was an “attempt to coerce as much as if he had brandished a club at her,” and that to threaten disclosure of confidential information “for any purpose would be a violation of the attorney’s professional obligations.” *In re Aydelotte*, 206 A.D. 93, 95, 200 N.Y.S. 637 (N.Y. Sup. Ct. 1923).

The Rule 4-7.5(f) violation noted in the panel’s decision stems from Mr. Lim’s use, in 2004, of letterhead prepared in anticipation of entering into a partnership with his daughter, a partnership that Mr. Lim acknowledges was never formalized. In his answer to the information, Mr. Lim admitted that he and his daughter “planned on starting a partnership and purchased stationery for said partnership.” **App. 19.** Due to what Respondent described as his failing health, “he decided to retire instead of dying behind his desk.” **App. 20.** Mr. Lim’s use of the stationery purchased in anticipation of the unrealized partnership was, according to his Answer, inadvertent. **App. 20.** It was also, however, a violation of Rule 4-7.5(f).

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE HE KNOWINGLY VIOLATED DUTIES TO HIS FORMER CLIENTS IN THAT HE SENT A DISPARAGING LETTER ALLEGING CONFIDENTIAL INFORMATION ABOUT THE CLIENTS TO A THIRD PARTY WITH THE INTENT TO HARM THEM.

The disciplinary hearing panel recommended suspension “for a period of six months.” ABA Standard Rule 4.22 provides that “Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.” ABA Standards for Imposing Lawyer Sanctions, Rule 4.22 (1992 amendments). Disciplinary counsel concurs in that recommendation for the following reasons.⁹

⁹ The panel separately recommended an admonition for the Rule 4-7.5(f) violation. Rule 5.16 authorizes panels to recommend “reprimand, suspension or disbarment, or a combination of the above.” Disciplinary counsel concurs with the panel’s conclusion that Rule 4-7.5(f) was violated and deserving of an admonition, but has no opinion whether

First and foremost, Mr. Lim's misconduct was directed against former clients. A lawyer's ethical obligations to clients are the most important of his ethical duties. See ABA Standards at 5. Former clients are afforded continued protection by the Rules in several areas, including the duty to maintain client confidentiality and to avoid conflicts of interest. See Rule 4-1.6 and Comment; Rule 4-1.9 and Comment.

Second, Mr. Lim knowingly, and arguably intentionally, revealed a confidence, i.e., his mental impression and valuation of the Krishnamurthys' character, for the purpose of harming his former clients. Indeed, Mr. Lim requested immigration officials to leave his letter in the former clients' file "to prevent them from obtaining any further immigration benefits." Respondent acknowledged in his hearing testimony that he took it upon himself to judge the Krishnamurthys' character based solely on their failure to remit to him anything beyond the \$1,000.00 they initially paid. He intentionally took steps, some seven years after he terminated his relationship with them, with the express aim of harming the Krishnamurthys. To make matters worse, Mr. Lim implied that he was compelled by some professional duty to report a seven year old fiscal dispute to immigration authorities.

And finally, Mr. Lim has shown no recognition of, nor remorse for, his misconduct. Rather, Mr. Lim told the panel "I took it upon myself to judge his character, but I felt at the time it was my prerogative as a practitioner, as his creditor, as an officer

the violation should be separately sanctioned or, as is more usually the case, included as part of the more serious suspension recommendation.

of the Court, as an immigration practitioner, to notify Immigration of his character. And if I had to do it all over again, I probably would do exactly the same thing.” **App. 129.** The panel described Mr. Lim’s letter to the INS as “deliberate and mean-spirited” and concluded Mr. Lim was motivated to send it by vindictiveness. **App. 71.** Mr. Lim’s patronizing dunning letters and his reduction of the fee disagreement to a morality tale bespeak a failure to grasp core principles integral to a lawyer’s professional relationship with his clients.

CONCLUSION

Respondent Lim's vindictive conduct toward his former clients violated multiple Rules of Professional Conduct relating to maintaining confidentiality, avoiding conflict of interest, and protecting clients' interests. Suspension with no leave to apply for reinstatement for six months is the appropriate sanction.

Respectfully submitted,

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I hereby certify that on this 16th day of August, 2006, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

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CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 3,949 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Sharon K. Weedon

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