

to the Court in jurisdiction.

H. When Leave of Court Required: When leave of Court is required before a pleading can be filed, a proper motion must be filed and served. An original of the pleading should be attached (to be removed and stamped for filing immediately upon granting of the motion). If a pleading is allowed to be amended (upon a motion to amend complaint for example), the amended pleading shall highlight what has been added or deleted (by strike through and underlining).

I. Preparation of Order for Judge's Signature. All Orders (uncontested or not) shall accompany the motion as separate documents.

J. Depositions and Briefs: Trial briefs will not be filed by the clerk as permanent Court records except upon order of the Court, in which event the clerk shall receive such documents, so note in the Register of Actions, and then place them in the Court file. Thirty days after a final judgment has issued, when the time for appeal has expired or the questions on appeal are finally resolved, the clerk will notify counsel that all discovery material and briefs will be removed from the Court files and destroyed unless such materials are retrieved by counsel within thirty days of the date of this notice. Trial briefs must be served upon opposing counsel.

K. Notes of Issue: In any civil, divorce or invalidity actions, when the parties are fully joined, counsel shall prepare and present to the Clerk of Court a Note of Issue.

RULE 4 - COURT RECORDS

A. Withdrawal of Files or Papers. The clerk shall not permit any files or documents to be removed from the office except upon order of the Court for good cause shown. The clerk must obtain a receipt from any party removing any file or Court record.

B. Juvenile (Delinquent Youth and Youths In Need of Care), Adoption and Sealed Matters. The records and files in juvenile and adoption actions and sealed files shall not be withdrawn, examined, or inspected by anyone except upon order of the Court. An exception would be a criminal Defendant may have access to his file that has been dismissed after a deferred imposition of sentence.

C. Withdrawal Prohibited. No will or undertaking shall be taken from the clerk's office, **except upon order of the Court**, no bond until it has been exonerated and no judgment before it is recorded.

D. Exhibits. Exhibits offered during a trial may be withdrawn at any time after trial upon stipulation of counsel. After a judgment has become final and appeal rights no longer exist, any party may withdraw any exhibit which that person has offered into evidence, unless some person has theretofore filed with the clerk notice that said third person is entitled to the exhibit. Withdrawal shall then be permitted only on order of the Court.

If exhibits are not withdrawn within thirty days after the judgment has become final, the clerk shall give ten days notice to the party offering the exhibit of his/her intention to dispose of the same and may do so, if not then withdrawn, after obtaining a Court order to destroy the exhibit.

RULE 5 - LAW AND MOTION

A. Missoula County Law and Motion Days. The law and motion days in each department are as follows:

Department 1 - Wednesday	Exhibit "A"
Department 2 - Tuesday	Exhibit "B"
Department 3 - Thursday	Exhibit "C"
Department 4 - Tuesday	Exhibit "D"

Court shall convene on law and motion days at 8:30 or 9:00 a.m. When law and motion day falls on an official holiday the law and motion calendar shall be continued to the next regular law and motion day of the Judge.

B. What Matters May Be Heard on Law and Motion Days. All uncontested matters, judgments by default, probate proceedings, uncontested ex parte matters, and other matters pertaining to questions of law not involving contested questions of fact shall be heard on law and motion day, except as otherwise ordered by the Court for good cause shown. Contested matters involving questions of fact will not be heard on a law and motion day without express approval of the Court but will be set as to day and time by order of Court as set forth in this rule. Motions for summary judgment may be heard on law and motion days provided

they do not exceed the time limits set forth in paragraph D.

C. Scheduling of Law and Motion Matters. Matters may be placed on the law and motion calendar only upon written request to the scheduling clerk at least 24 hours in advance of the hearing date. The written request shall:

- (1) what issue the requesting party is requesting to be heard;
- (2) include an estimate of the amount of time required by each party; and
- (3) the number of witnesses to be called by each party.

(See **Exhibit "E"** "Request for Hearing.") Any matter anticipated to exceed a TOTAL hearing time of one (1) hour shall not be scheduled on the Law and Motion calendar.

D. Contested Matters Shall Be Postponed. Any matter set for the law and motion calendar which proves to involve contested issues of fact shall be subject to postponement to be set on the contested calendar. Any matter that the parties reasonably anticipate will take more than one hour to complete shall not be scheduled on the law and motion calendar but shall, instead, be scheduled as a contested hearing as set forth in Rule 6.

E. Limitations. No matter may be set on the law and motion calendar until the motion or other documentation and all relevant supporting documents have been filed with the clerk. A proposed order, decree, or judgment shall be presented to the Clerk in accordance with Rule 3(D) before the time the matter is to be heard.

F. Reminders to the Court. If a Judge has any matter under advisement for more than 30 days, each party affected thereby shall send to the Judge a letter, with copies to all counsel, describing the matter under advisement and stating the date it was taken under advisement.

G. Modifying Law and Motion Schedules. Any department may issue special orders modifying the law and motion schedules as it relates to that department.

RULE 6 - CONTESTED HEARINGS

A. Disposition of Motions. All motions shall be disposed of pursuant to Rule 2 of the Uniform District Court Rules, or as otherwise required by the Montana Rules of Civil Procedure. When all briefs have been filed, or the time for filing of briefs has expired, either party may file a "Notice of Issue" with the Court indicating that the matter is ready for ruling by the Court.

B. Requests for Oral Argument. When counsel desire oral argument on a motion, other than a motion in which oral arguments shall be deemed mandatory unless waived by all parties, counsel shall state with their Notice of Issue or in a separate request for oral argument their reasons in support of oral argument and why the written briefs are inadequate to fully and satisfactorily articulate their position. Oral argument will be set only by Court order, whether upon motion of a party or upon a *sua sponte* determination that oral argument would be beneficial. If a motion for oral argument is not ruled upon within 30 days of its submission, the motion shall be deemed denied.

C. Scheduling Oral Argument. When oral argument is granted, the moving party must prepare a Request for Hearing for the Court's Law and Motion day. The requested hearing shall not be longer than one hour without express permission of the Court. The parties should expect the Court to enforce the time limits stated by the parties at the time of scheduling of the hearing.

In the event any contested matter set for hearing is resolved between the parties, the scheduling clerk shall be immediately advised so that other matters may be scheduled in the time previously allotted for that case. Failure to abide by this provision may result in imposition of sanctions by the Court.

D. Contested Hearings. Any motion requiring presentation of testimony shall be scheduled as a contested matter with the appropriate Request for Hearing pleading being presented to the Court's scheduling clerk.

RULE 7 - TIME LIMITS

In any hearing, contested or uncontested, or in any show cause hearing, injunction hearing or trial of any case, the Court may direct the parties to state the amount of time their case will take to present. The Court may then impose time limits on the presentation by each party, and retains the discretion to allot a lesser time than that requested by each party.

settlement conference. The parties will not subpoena or otherwise require the settlement master to testify regarding the settlement conference or the settlement master's opinions regarding the case.

RULE 10 - TRIALS AND TRIAL SETTINGS

A. Trial Dates. Trial dates shall be set by the scheduling clerk designated by each department upon submission of the report of the settlement master. All trials shall be assigned a date certain but may share that date with up to three other cases, each being assigned a first, second, third or fourth setting on the date certain. When submitting the pretrial order, counsel shall state in a cover letter any special requests regarding the trial setting, including dates that the parties or key witnesses are legitimately unavailable for trial, and the estimated length of trial. In addition, the report of the settlement master will state the estimated length of trial and dates key witnesses and parties are legitimately unavailable for trial.

B. Settlement Conference Mandatory. No case may be tried unless it has been through a lawyer's resolution conference and master-supervised settlement conference as required by these rules. This requirement may be waived only upon motion and order of the Court.

C. Trial Schedules. Jury and non-jury trials shall be scheduled by the Court throughout the year as time is available.

D. Advising the Court of Settlement is Mandatory. When a case set for trial is settled, the parties must immediately advise the Court or scheduling clerk of that fact. Failure to do so may result in imposition of sanctions. In addition, the Court may impose monetary sanctions sufficient to reimburse the Clerk of Court for any expenditures incurred by the Clerk of Court if a jury trial is settled or continued within 72 hours of its scheduled time.

E. Findings of Fact and Conclusions of Law. Proposed findings of fact and conclusions of law shall be submitted, when required, in a format for signature by the Court, together with a copy for the Court. A transmittal sheet shall accompany the findings indicating the party submitting the findings and that the findings were served upon all parties. Where possible, a CD compatible with Microsoft Word shall accompany the findings.

F. Trial Briefs. Trial briefs must be served upon opposing counsel no less than five days before commencement of trial. Trial briefs will not be filed as permanent Court records except by order of the Court, in which event the clerk shall file and docket the trial briefs as with any other pleading and then place them in the Court file. Thirty days after a final judgment has been issued, where the time for appeal has expired or the questions on appeal are finally resolved, the clerk will notify counsel that all discovery materials and trial briefs will be removed from the Court files and destroyed unless retrieved by counsel within thirty days of the date of the notice.

G. Electronic Courtroom. To facilitate greater efficiency and enhance the jury's ability to view exhibits contemporaneously, the Court has implemented an electronic trial system. The Court may require parties to use the electronic courtroom for a trial, particularly where a large number of exhibits will be presented, or where audiovisual exhibits or demonstrations are to be shown. Counsel may also request trial in the electronic courtroom. Counsel shall contact the Clerk of Court for a demonstration to familiarize themselves with the electronic courtroom's operation well in advance of trial.

H. Video Conferencing. All courtrooms are video-conferencing capable. We are able to connect with many district courts across the state. Additionally, we are often able to video conference with other sites within Montana and out of state. A scheduled hearing in which video conferencing is employed is generally at no cost to the parties if it is from courthouse to courthouse. This includes hearings in other venues where counsel have been given prior leave to appear via the video system. The system may also be reserved for depositions or other matters at a reasonable cost. For all matters in which a Judge of the Fourth Judicial District is not presiding, parties must contact the Clerk of Court to check for courtroom and video system availability.

I. Jury Panels. The District Judges shall, at least thirty days prior to the commencement of the jury term, draw a panel of jurors to be used by all Judges. The clerk shall inform the Judges when a panel is required. The normal jury term is September through August. The clerk shall, upon a juror's service on a trial, remove that juror's name from the panel (unless requested by the juror to serve on more panels). Any juror

who comes in for selection of a case and who is not called to serve on the trial, shall have their name put back into the panel for further selection. FullCourt Jury is approved as the District Court's computerized random selection process and satisfactorily fulfills the requirements for drawing trial jurors

J. Jury Instructions. Proposed jury instructions in a civil case shall be presented to the Court and served upon each adverse party within five days prior to the trial set by the Court. The original and one copy of each instruction proposed must be furnished to the Court, along with a CD of the instructions in Word. The copies submitted to the Court shall be numbered consecutively, specify the party on whose behalf they are requested, and include a citation of authority supporting the statement of law therein. The original shall be "clean," i.e., bear no citation. The Court may receive additional proposed instructions relating to questions arising during the trial at any time prior to completion of settlement of jury instructions. Proposed forms of verdict must be submitted by each party at the same time and in the same manner as jury instructions.

K. Six Person Juries. Pursuant to §3-15-106, M.C.A., in all civil actions where the relief sought in the Complaint is under the sum of \$10,000.00, the trial jury shall consist of six persons. The parties may stipulate to six-person juries in other civil cases.

L. Voir Dire Examination. Voir dire examination in civil cases shall be limited to one hour on each side unless additional time is requested before trial. Only one attorney for each party shall be allowed to question the prospective jurors on voir dire.

The only proper purpose of voir dire of jurors is to select a panel who will fairly and impartially hear the evidence presented and render a just verdict and to determine the grounds for any challenge for cause therefore:

Counsel will not:

- (1) Ask any questions of an individual juror that could be asked collectively.
- (2) Ask questions covered by and answered in the juror questionnaire, except to explore some questionnaire answer in greater depth.
- (3) Repeat questions asked and answered, even though asked by opposing counsel.
- (4) Use voir dire for the purpose of attempting to instruct the jury on the law. That is the Court's function.
- (5) Use voir dire for the purpose of arguing the case.
- (6) Ask a juror what his or her verdict might be under any hypothetical situation based on any expected evidence or otherwise.

Upon failure of counsel to abide by this rule, the Court may assume voir dire of the jury. In such case, the Court may require counsel to submit in writing specific questions to be asked by the Court.

RULE 11 - CRIMINAL ACTIONS

A. Use of Forms. An Acknowledgment of Rights form shall be presented to the Court by defense counsel at the time of arraignment. A Plea of Guilty and Waiver of Rights form shall be presented to the Court by defense counsel at the time of a guilty plea. The Court shall prepare and make available through the Clerk of Court the approved forms. Forms for Plea Agreements may also be prepared and made available.

B. Omnibus Hearings; Use of Stipulations. Omnibus hearings or a case schedule submitted on an Omnibus form shall be ordered by the Court after entry of a not guilty plea. Prior to the time set for omnibus hearings, counsel for the prosecution and defense shall meet privately and attempt to stipulate to a Court-approved omnibus form which shall be submitted for final approval by the Court prior to the date of the omnibus hearing. Upon approval of the omnibus form, that hearing shall be vacated and trial date set by the Court together with any appropriate deadlines.

C. Plea Bargain Negotiations.

- (1) Before the date of the omnibus hearing or other joint conference with the Court, the prosecutor and defense counsel must enter into plea negotiations. The Omnibus check sheet shall include a declaration that the parties have discussed a possible plea agreement.
- (2) Each department shall schedule pre-trial/status conference and trial date in an effort to avoid conflict, showing preference for incarcerated Defendants.
- (3) Each department may prepare a trial calendar before the first trial date. Within ten days of publication of the trial calendar in any

guardianships be consolidated so that one Judge be in jurisdiction of all related civil and criminal proceedings. Some examples of cases which would be consolidated pursuant to this Rule are:

- (1) conservatorship civil proceeding
- (2) civil commitment proceeding
- (3) juvenile proceeding
- (4) criminal cases involving domestic violence or other violence which affects or impacts the child directly, or violation of an Order of Protection affecting a child or spouse
- (5) abuse/neglect cases and adoptions
- (6) dissolutions

In those instances where related cases have been filed in different departments, the cases shall be assumed by the Court in jurisdiction which has the lowest number, but remain separate causes for filing of the pleadings. Such assumption by one department will ensure consistent and fully informed decisions concerning families.

G. Child Visitation Guidelines. The District Court has adopted Montana Fourth Judicial District Child Visitation Guidelines, attached hereto as **Exhibit "L"**.

H. State Case Registry and Vital Statistics Reporting Form. No domestic relations case shall proceed to final hearing until the current Montana State Case Registry and Vital Statistics Reporting Form has been filled out by both parties and submitted to the Clerk of Court for filing.

RULE 13 - PROBATE AND ADOPTION MATTERS

A. Adoption Investigation. In all adoption matters the pre-placement evaluation required by §42-3-201, M.C.A. will be ordered by the Court. It is the obligation of counsel to present to the Court an order for such evaluation. The evaluation will then be considered for waiver by the Court or the Department of Public Health and Human Services (DPHHS) if the petitioner is a step-parent or a member of the child's extended family. Whenever the Court signs an order for such an evaluation by DPHHS, it shall be the duty of counsel to mail or deliver a conformed copy of the Petition for Adoption and the Order for evaluation to:

Montana Department of Public Health and Human Services
Child & Family Services Division
2677 Palmer Street, Suite 300
Missoula, Montana 59802

B. Payment of Fees. The amount and payment of administrator, personal representative, conservator, guardian and attorneys' fees shall be governed by the Montana Uniform Probate Code, as amended from time to time.

C. Petition for Probate of Will. Whenever a petition for the probate of a Will is filed, a copy of the Will shall be attached. The original must be filed with the clerk. The Personal Representative shall either file the certificate required by §72 3 1006 MCA, or file a declaration, either separately or in the Petition for Distribution, stating that the filing of a federal estate tax return was not required in the estate.

D. Access to Sanity Files. The Respondent, the Respondent's attorney, the County Attorney and all court personnel are allowed access to the DI files without specific authorization from the Court. Any other access to DI files will only be permitted with the specific authorization from the Court.

RULE 14 - WITNESSES

A. Examination Limited. On the examination of witnesses, only one attorney upon each side will be permitted to examine or cross examine the same witness, except by permission of the Court first asked and obtained.

If the attorney of either party offers himself as a witness in behalf of his client, and gives evidence on the merits of the trial, he shall not argue the case to the jury, except by permission of the Court.

B. Discharge of a Witness. A party having a witness subpoenaed in a civil cause may discharge the witness by motion made in open Court. If an adverse party desires such witness to remain, the adverse party must procure the witness's further attendance by subpoena or order of the Court, and shall thereafter be responsible to the witness for the fees.

RULE 15 - STIPULATIONS

No agreement or consent between the parties, or their attorneys, shall be accepted by the Court unless made in open Court, and taken down by the Court reporter or entered in the minutes by the clerk, or unless the same shall be in writing, signed by the party against whom the same may be urged, or by that party's attorney. It shall be the duty of the party relying upon such minute entry to see that the same is duly entered.

RULE 16 - CASH BAIL AND BAIL BONDS

A. Whenever cash bail is delivered to any Clerk of Court, justice of the peace, or municipal Judge, the cash must, as soon as possible, be deposited in a special account with some financial institution where checks, warrants, or drafts can be drawn on the account for the transfer of funds.

B. Whenever bail has been set by and furnished to a justice of the peace or municipal Judge and the cause in which the bail was furnished is being transferred to the District Court, the following is required:

At the time the papers transferring the case to the District Court are filed with the clerk of the court, the bail must also be delivered to the clerk. The amount and nature of the bail furnished must be endorsed upon the order whereby the justice or Judge transfers the cause to the District Court.

(1) If the bail furnished was cash bail, the justice or municipal Judge must deposit a proper check, warrant or draft for the full amount of the bail. Upon receipt of the check, warrant or draft, the clerk of the Court must issue a trust fund receipt and deliver it to the justice of the peace or municipal Judge.

(2) If the bail furnished was a bail bond or other bail as permitted by § 46-9-401, M.C.A., the justice of the peace or municipal Judge must deliver the actual documents furnished as bail to the clerk of the district Court. Upon deposit of such bail, the clerk must issue a receipt specifying the documents received.

C. Whenever bail has been set by and furnished to a justice of the peace in an action wherein the district Court has original trial jurisdiction, and the County Attorney elects to proceed in district Court by filing a Motion for Leave to File an Information directly to the District Court, the following procedure must be complied with:

(1) The County Attorney must, contemporaneously with the filing of the motion in District Court, file a written request with Justice Court asking that the bail be transferred to the District Court;

(2) The County Attorney must deliver to Justice Court duplicate copy of such request;

(3) The justice of the peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bail, and must forthwith transfer the bail to the district Court as provided in (1) or (2) above. The duplicate copy of the request must be filed with the clerk of district Court.

(4) Prior to release of any bail or bond, the original receipt must be presented with appropriate identification. The funds will then be released to the posting party only, unless otherwise directed by the Court. Cash bonds posted by a Defendant may be applied (or at least a portion) to restitution, fines and fees prior to release.

RULE 17 - PRIORITY RANKING OF PAYMENT FINES & FEES

Unless otherwise specifically ordered by a Judge in a judgment regarding punishments imposed on a convicted criminal Defendant, the Clerk of Court in each county in the Fourth Judicial District shall establish separate accounts for all categories of payment ordered by the Judge and distribute payments received from the Defendant to these accounts in the following priority order:

- (1) Restitution (if ordered)
- (2) County Attorney Longevity Pay Surcharge
- (3) Recoupment - Including:
 - a) Repayment of Cost of Prosecution
 - b) Repayment of Cost of Public Defense Attorney
 - c) Repayment of Cost of Calling a Jury
 - d) Repayment of Pre-Trial Supervision Costs
 - e) Repayment of Extradition Charges

RULE 27 - FAMILY VIOLENCE COUNCIL

A. There will be a Family Violence Council whose purposes shall be:

(1) To coordinate the efforts of government agencies, the Courts, victim services, advocacy groups, and others involved in family violence issues.

(2) To promote effective prevention, intervention and treatment techniques for persons involved in family violence.

B. The District Judges of the Fourth Judicial District shall issue appropriate orders to establish and carry out the purposes of the Family Violence Council.

RULE 28 - LOCAL CITIZEN REVIEW BOARD

Pursuant to §41-3-1001, et. seq., M.C.A., the Youth Court Judges of the Fourth Judicial District established a Local Citizen Review Board Program to review the case of each child assigned to foster care by the Youth Court of this District.

The members of the Local Citizen Review Board shall have all powers set forth in the Local Citizen Review Board Pilot Act (§41-3-1001, et. seq., M.C.A.) and specifically have the power to inspect and/or copy any records relating to the children and parents who are placed in foster care by the Youth Court of this District.

The members of the Local Citizen Review Board and their staff shall retain any information received from any source as confidential and will not disclose same except in reports to the Local Citizen Review Board, the Youth Court Judge and the parties in each foster care case.

Any Youth Court Judge of this District may refer a specific foster care placement to the Local Citizen Review Board for its review.

Members of the local Citizen Review Board shall serve at the pleasure of the Youth Court Judges of the Fourth Judicial District and are granted judicial immunity as agents of the Youth Court of the Fourth Judicial District.

RULE 29 - MEDIA GUIDELINES

Within the spirit of the First Amendment, media coverage of trials shall be permitted under the following guidelines:

CELL PHONES must be on silent or vibrate so that they do not disturb court proceedings. Cell phones may be used for internet use in the courtroom by counsel or spectators as long as they are on silent. During jury trials jurors are permitted to keep their cell phones for use when court is not in session to make contact with family or work, but are told/ instructed not to use them to research matters concerning the trial issues on the Internet, and the Bailiff will take their cell phones from them when they go into deliberations.

TELEVISION & RADIO: Cameras are limited to local broadcast networks. They shall be located in a preselected position and operated by one camera person per camera. It will be the responsibility of each local broadcast network to pool their coverage with any affiliate. The television camera shall give no indication as to whether it is or is not operating. Sufficient film and/or tape capacities shall be available to alleviate film or tape changes except during Court recess.

MICROPHONES: Microphones shall be used in a way to minimize distraction to the proceedings. Placement of pooled microphones will be determined by the Media Coordinator. All equipment shall be in place at least 15 minutes before the start of the day's proceedings. Members of the press, including still photographers, will be accommodated on a first-come basis, and should position themselves in the designated media sections. Members of the press are permitted, when necessary, to move in a non-disruptive manner in the Courtroom. Broadcast coverage outside of the Courtroom shall be handled with care and discretion.

PRINT MEDIA: Photographers are permitted to move in a non-disruptive manner in the Courtroom. No flash cameras will be permitted and the cameras used shall operate with no distracting noise.

JURY: The jury voir dire process shall not be televised. Jurors' faces shall not be filmed, photographed or drawn.

ALLEGED VICTIM: No film, photographs or drawings shall be taken of the alleged victim or the alleged victim's family.

INTERVIEWS: Until the conclusion of the trial, there will be absolutely no interviews of the jurors or prospective jurors. At the conclusion of the trial, if, and only if, a juror wishes to speak with a member of the press, that is permitted. With respect to witnesses, parties or officers of the Court

(including attorneys), members of the press shall respect the wishes of the individual about his or her willingness to be interviewed.

DRESS CODE: Representatives of the media shall not be dressed in a manner which would set them apart from other spectators.

MEDIA COORDINATOR: The Court will designate a Media Representative Coordinator in all media matters. Any questions and problems shall be presented to the Coordinator. All media representatives should register with the Coordinator prior to the trial.

These guidelines are subject to such amendments as the Media Representative Coordinator and the Court may from time to time deem necessary

RULE 30 - ELECTRONIC CERTIFICATION

Court documents, including signatures, which relate to child support issues may be certified, compiled and copied onto a CD-ROM or laser disc. Each electronic entry bearing the notation "Fourth Judicial District Imaging Project" is a public record of the Fourth Judicial District and self-authenticated under Rule 902(4), Montana Rules of Evidence. The data is presumed to be correct. A hard copy of the original document will remain in the clerk's office in order to verify authentication.

RULE 31 - MISCELLANEOUS FILINGS

The Clerk of Court shall file each miscellaneous filing in its own separate cause of action and, pursuant to §25-1-201(1)(a) M.C.A., shall charge the \$120 commencement of action filing fee. This includes but is not limited to Bond to Release a Construction Lien, Petition For Release of Excess Proceeds From a Trustee's Sale, Issuance of Out of State Subpoena and Petition For Release of Certified Copy of Original Birth Certificate.

Revised 10/2015

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District Judges



Fourth Judicial District
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