

In the Matter of Amending
Supreme Court Rule 31,
Pertaining to Continuing Legal Education

**Memorandum in
Support of Petition**

Section I

Concise Statement of Requested Relief

Petitioner seeks to amend SCR 31.05(3) to confirm that guest presenters in law school courses earn two hours for each hour of presentation. The Board of Bar Examiners (BBE) currently takes the position that SCR 31.05(3) allows only one credit for each hour of presentation.

Section II

Current Context in Brief

Petitioner is the director of the Lawyering Skills Program at the University of Wisconsin Law School. The impetus for this petition is the recent BBE decision to deny double credits for visiting lawyers who teach modules in the Lawyering Skills Course (formerly General Practice). These guest lawyers do not plan or organize the course but serve individually as visiting teachers for two to four days during the semester. During that time, the guest lawyers teach students the skills of legal practice within the context of particular areas of law. (*Please see below, Section IV, Context for Relief, for more information about the Lawyering Skills Course and its visiting lawyers.*) The BBE has allowed double credits for these teachers since the inception of mandatory CLE in 1977. In 2009, when the mandatory electronic filing made doubling the credits difficult, the BBE instructed us to submit the modules of the course as if they were CLE courses. Upon BBE approval of the modules, our visiting lawyers were then able to take double credits for teaching an approved "course." We have followed that process since 2009. In 2019, for the first time, the BBE informed Petitioner that it would not approve the Skills Intensive Training module for double credits. When Petitioner asked for a review of that decision, the BBE concluded that it actually would not approve any of the modules for double teaching credits. The BBE delayed enforcement of this decision until 2021 to allow Petitioner time to seek relief in the Supreme Court.

Section III

Historical Context

In 1975 and 1976, the Supreme Court adopted rules requiring continuing legal education for lawyers in Wisconsin. Prior to these rules, continuing legal education was not mandatory. The new rules, effective January 1, 1977, created the system that formed the basis for SCR 31. The original rules are published at 83 Wis.2d xxi-xxv. Rule 4(D), the precursor to SCR 31.05(3), provided:

D. Credit may be earned through teaching an approved continuing legal or judicial education activity or teaching a course in a law school approved by the American Bar Association. The Board shall award two hours of credit for each hour

of presentation of the approved continuing legal or judicial education activity and two hours of credit for each hour of student credit awarded by the law school for the course. 83 Wis.2d xxii.

In June, 1977, the State Board of Continuing Legal Education of the State Bar of Wisconsin, the early predecessor to the Board of Bar Examiners, submitted a petition with proposed amendments to the new rules. Wisconsin Bar Bulletin, July-August 1977, pages 36-38. The petition proposed an amendment to Rule 4 (B) and (D), followed by a historically-important embedded note created by the Board:

Amend Rule 4, *Credits*, to read as follows:

B. Hours of attendance in excess of the minimum annual requirement may be carried forward for credit in the succeeding calendar year. Hours to be carried forward must be reported in the year in which they were completed. Hours of teaching credit accumulated pursuant to Rule 4(D) may not be carried forward.

D. Credit may be earned through teaching an approved continuing legal or judicial education activity or teaching a course in a law school approved by the American Bar Association. The Board will award two hours of credit for each hour of presentation.

[Note: The proposed amendments remove what the Board believes to be an unfair distinction between compensation for teaching within the law school setting.

Amendment 4 (D) recognizes one standard for compensating teaching credits. Amendment 4 (B) offsets the enormous number of potential credits available to faculty members by prohibiting the carryover of teaching credits.

The primary reason that the Board endorses this change is that the present Rule is particularly inequitable to part-time teachers at the law schools. For example, if x teaches one 3 credit section of Family Law each year, the present rule permits only 6 hours of CLE credit. The hours of teaching time alone for a 3 credit course equal no less than 45 over the course of a semester.

An individual who participates at a CLEW or ATS-CLE program for three hours on only one occasion is compensated in the same amount (6 hours).

An individual who guest lectures at only three sessions of the Family Law course would receive as much credit for the three appearances as the regular instructor receives for the entire course, because Family Law is an "approved course", pursuant to existing Rule 4 (D), which the Board has interpreted as not to deny guest lecturers credit. [*Emphasis added.*]

The underlined portion of the note confirms that the Board's policy was to allow double credits for guest lecturers in law school courses. The Board did not treat a guest lecturer like the teacher of a law school course. Instead, the Board's policy, as explained in this note, was to allow guest presenters to double their credits for the hours of presentation.

The court archives, accessed through the Supreme Court Clerk's office, include a number of responses to the filed petition, all but two of which do not apply to the Rule 4 (D) proposal. One of the applicable responses sought expansion of Rule 4 (D) to courses taught in schools other than law schools. The other response to the Rule 4 (D) proposal was included in an explanatory

memorandum to the justices from Robert Martineau, executive officer of the Supreme Court. [Memorandum, October 24, 1977] In that memorandum, Mr. Martineau stated:

Rule 4. The board proposes to credit all teachers whether at a law school or at a CLE activity on the same basis, i.e. two hours of credit for each hour of presentation. It then attempts to recognize the problems created by this for law school professors by prohibiting the carrying forward of teaching credits. The present rule distinguishes between teaching at a CLE activity and teaching at a law school, giving two hours of credit for each hour of presentation at a CLE activity and two hours of credit for each hour of student credit given by the law school. The board states that the present rule is inequitable with regard to part-time law school teachers because the teacher of a three credit course at a law school will receive only six CLE credits while a person who teaches for three hours at a CLE activity is also given six credit hours.

The reason for making this distinction originally was that it was felt that persons who teach CLE courses do so on a one-time basis and have to devote substantial amounts of preparation for that one teaching experience, whereas faculty members tended to teach the same course year after year and thus should not receive the same amount of credit for teaching the same course.

I believe the original distinction made by the court in Rule 4 is justifiable and that the proposal of the CLE board for amendment of Rule 4 should not be adopted.

Mr. Martineau did not comment on the statement in the Board's explanatory note that guest lecturers in a law school course did not have the same credit limitation as teachers of a law school course. Given the wording of the rule and the specificity of his memorandum, one would assume that Mr. Martineau would have noted any disagreement with the Board's statement that guest lecturers were already entitled to double credits under the existing rule. That statement, made by the very board charged with enforcement of the rule, remained unchallenged and was presumably known by, and agreed to, by the court.

We do not have a transcript of the public hearing, but we do know that the court did more than what Mr. Martineau wanted but less than requested in the petition. The court entered an order (81 Wis.2d ix (1977)) that reads in part:

2. Section D of Rule 4 of the Rules of Continuing Legal Education is amended to read as follows:

Credit may be earned through teaching an approved continuing legal or judicial education activity or teaching a course in a law school approved by the American Bar Association. The Board shall award two hours of credit for each hour of presentation of the approved continuing legal or judicial education activity ~~and two hours of credit for each hour of student credit awarded by the law school for the course and one hour of credit for each hour of presentation for teaching a course in a law school.~~ *Credits for teaching a course in a law school can be carried*

forward under section B but can be claimed only once. 81 Wis.2d ix-x
[Underlining and italics as in original]

Since the amendment above, the court changed, and then deleted, the carryover policy in the final sentence. Today, Section D of Rule 4 is now SCR 31.05(3):

(3) Teaching an approved continuing legal or judicial education activity or teaching a course in a law school approved by the American bar association may be used to satisfy the requirement of SCR 31.02. The board shall award 2 hours for each hour of presentation of the approved continuing legal or judicial education activity and one hour for each hour of presentation for teaching a course in a law school.

Section IV Context for Relief

The Lawyering Skills Course (formerly General Practice) is an eight-credit, upper-level, spring-semester elective at the University of Wisconsin Law School. The Course, in its current configuration, has been part of the curriculum since 1968. Each week, four (or more) practicing lawyers, using Lawyering Skills-created texts and teaching plans, instruct students in the skills used in each of ten substantive areas of practice: local government proceedings, criminal proceedings, residential real estate transactions, divorce, small business counseling, landlord-tenant proceedings, estate planning & probate, civil trial preparation, managing the early years of practice, and family law guardian ad litem practice. We also have a Skills Intensive Training Weekend during which students engage in a preliminary injunction hearing, a client counseling session, and a negotiation, all under the critiquing eyes of visiting lawyers. I have attached a copy of our 2020 schedule and an accompanying information sheet.

Our visiting lawyers spend many hours preparing to teach in Lawyering Skills and then give up two to four days of their valuable time to share their legal expertise with our students here in the law school. These are not professors or even adjuncts; they are volunteer practicing lawyers who participate in the education of our students. For their time, we provide either lodging in Madison or a parking pass, a small (\$100) per diem payment for expenses, and a promise of teaching CLE credits.

For as long as we can remember, the Board of Bar Examiners has allowed our teaching lawyers to receive double credits under SCR 31.05(3). Prior to mandatory electronic reporting of CLE credits, our visiting lawyers would simply identify on the required paper form the course module that they had taught at the law school, the number of hours taught, and the number of credits receive by doubling those hours. The paper form allowed doubling and the BBE approved those credits. This was consistent with the policy expressed in the Board's explanatory note that accompanied the 1977 petition.

When CLE reporting moved away from paper to an on-line system, the automated program did not have the capacity to allow the credit-doubling because it was set up to award only one credit per presentation hour for an instructor in a law school course. Therefore, the BBE and

Lawyering Skills entered into an agreement to accommodate the electronic system while retaining the policy that had been in place since the beginning of mandatory CLE. Under the agreement, the BBE required Lawyering Skills to submit each module of the course for separate approval for CLE credits so that the visiting lawyers could, within the new system, continue to double the credits for teaching. A copy of the correspondence exchange between Professor Ralph Cagle (then-director of Lawyering Skills) and John Kosobucki (then-director of the BBE) is attached, confirming that all modules of the Course are eligible for doubling for our teaching lawyers. Since then, we have submitted the Course modules for separately-approved CLE credits, these credits show up as CLE courses in the automated system, and visiting lawyers then list the appropriate module as one in which they taught so that the system doubles the credits.

In September, 2019, the BBE determined that lawyers who teach in the Lawyering Skills Course should not be permitted to double the credits under SCR 31.05(3). Indeed, Petitioner was advised orally that doubling the teaching credits was a “flagrant violation” of the rule and never should have been permitted. However, the BBE also recognized that removing the double-credit grant would be a significant change in policy toward the Lawyering Skills Course and would present a problem for faculty already recruited for Spring, 2020, with the assurance of double credits. With that in mind, the BBE delayed enforcement of the new policy until 2021 to allow Petitioner time to request relief in the Supreme Court, if Petitioner chose to do so.

Guest presentations are generally a small component of law school education. Guest presentations add a touch of spice to law school classes but they are rarely indispensable. Thus, a rule about whether to award one credit or two for guest presenters probably does not significantly affect most law school courses or lawyers. The consequences either way are relatively minor for most lawyers and may not seem like a matter of any urgency whatsoever.

However, the court’s decision is urgently important to Lawyering Skills. Our course depends on lawyers from throughout the state who are willing to give up three or four solid days of legal practice to share their expertise with our students. We recruit these lawyers approximately nine months in advance. (We will begin recruiting our 2021 faculty in May, 2020.) In 2020, our weekly lawyers-in-residence--who were recruited in May, 2019--will come from nineteen different communities, from Baldwin to Manitowoc to Milwaukee to Ripon to Madison to La Crosse and many places in between. Each visiting lawyer makes a significant professional commitment to the course. About six weeks ahead of time, the lawyer receives the materials that form a foundation for the module. The lawyer must then spend many hours preparing to teach our intensive “learn by doing” curriculum. Once in Madison, a typical 4-day week finds our lawyers-in-residence being trained by Professor Viney on Monday morning, teaching class every afternoon from 1:10-4:00, and grading student written assignments two mornings per week so that the students receive specific, written feedback on their work. These lawyers are not paid teachers, they are volunteers who share their legal skills with our students in a structured, pedagogically-sound course that is planned and administered by the director. Awarding only single teaching credits to these lawyers would send the message that their efforts are somehow less than the efforts of a CLE presenter. This outcome is not supported by facts, history, or equity.

Section V
Relief Requested

Petitioner would first point out that Lawyering Skills is not in “flagrant violation” of SCR 31.05(3). Petitioner is, and always has been, a diligent rule-follower. The BBE policy from the time of inception of mandatory CLE was to double credits for our visiting lawyers. We have always cooperated with the BBE and have been transparent and compliant. The BBE told us exactly what to do and we followed those directions.

This petition now seeks to resolve this situation for all guest presenters in all law school classes. To that end, the court must decide whether guest presenters are entitled to teaching credits and, if they are, then the court must decide if the presenters should be limited to one credit for “teaching a course in a law school” or if they should be able to receive two credits, as if they are “teaching an approved continuing legal . . . activity.”

That guest presenters in law school classes should be entitled to teaching credits seems apparent. Guest presenters are brought in to share their practical expertise as lawyers with law students in an effort to prepare students to be capable and ethical lawyers. The role of a guest presenter is equivalent to that of an instructor at a continuing legal education event. The preparation time and teaching content is comparable across both venues.

The next issue is whether a guest presenter is “teaching a course in a law school” and therefore entitled to only one credit for each hour of presentation. BBE’s current position slots guest presenters into this category even though a guest presenter is not actually “teaching a course.” The guest presenter teaches *in* the course, as an invited guest, but does not teach the course itself. The plan, structure, and content of a law school course depends on the person assigned as the official instructor of the course. That person is paid to create and to oversee the course and makes the pedagogic and curricular choices for the course. The guest presenter is certainly not analogous to the individual paid to organize the overall course and take responsibility for structure and content of that course.

If the guest presenter is not “teaching a course in a law school,” then the only remaining avenue for a presenter to receive any teaching credits would be as a teacher of “an approved continuing legal or judicial education activity.” A guest presentation in a law school course certainly bears strong resemblance to a CLE or judicial education presentation. The presenter is giving up valuable practice time to share legal expertise with the audience. The presentation is based on the presenter’s experience and legal ability. The presenter is not an employee of the law school and does not have the benefits of an employee. The BBE historically treated guest presenters in Lawyering Skills as if they were teaching an approved continuing legal education activity because the BBE recognized the situations as analogous. Beginning in 2009, the BBE specifically adopted this equivalency when it began approving the Lawyering Skills modules as CLE courses to preserve the double credits. The BBE now disclaims this policy as violating the rule.

Petitioner sees three pathways to achieving the goal of allowing guest presenters in law school classes to receive double teaching credits. The Court could amend SCR 31.05(3) in either

of two straightforward ways, or the Court could direct the BBE to adopt a policy of interpretation of the rule. Under any of the three, the guest presenter would be able to receive double credits.

Petitioner's requested relief would amend SCR 31.05(3) to specifically allow guest presenters in law school courses to receive two credits for each hour of presentation. This might be the narrowest way to solve the current problem. Under this scenario, the Court would amend SCR 31.05(3) to read as follows:

Proposed Rule:

(3) Teaching an approved continuing legal or judicial education activity or teaching a course, or teaching as guest presenter in a course, in a law school approved by the American bar association may be used to satisfy the requirement of SCR 31.02. The board shall award 2 hours for each hour of presentation for teaching an approved continuing legal or judicial education activity and for teaching as a guest presenter in a law school course. The board shall award one hour for each hour of presentation for teaching a course in a law school.

Redlined Version:

(3) Teaching an approved continuing legal or judicial education activity or teaching a course, or teaching as guest presenter in a course, in a law school approved by the American bar association may be used to satisfy the requirement of SCR 31.02. The board shall award 2 hours for each hour of presentation of the for teaching an approved continuing legal or judicial education activity and for teaching as a guest presenter in a law school course. The board shall award one hour for each hour of presentation for teaching a course in a law school.

Alternatively, the court could decide to do what it decided not to do in 1977: treat CLE teachers and law school teachers, including guest presenters, the same, allowing both categories to receive two hours for each hour of presentation. Under this scenario, the Court would amend SCR 31.05(3) to read as follows:

(3) Teaching an approved continuing legal or judicial education activity or teaching a course, or teaching as guest presenter in a course, in a law school approved by the American bar association may be used to satisfy the requirement of SCR 31.02. The board shall award 2 hours for each hour of presentation.

Redlined Version:

(3) Teaching an approved continuing legal or judicial education activity or teaching a course, or teaching as guest presenter in a course, in a law school approved by the American bar association may be used to satisfy the requirement of SCR 31.02. The board shall award 2 hours for each hour of presentation of the approved continuing legal or judicial education activity and one hour for each hour of presentation for teaching a course in a law school.

Finally, the court could decide not to amend SCR 31.05(3) at all, but to direct the BBE to interpret the rule to allow guest presenters in law school classes to receive two credits for each hour of presentation. This would be consistent with the policy that was in place at the time mandatory continuing legal education was enacted and that has been applied to Lawyering Skills visiting lawyers since that time.

Section VI Fiscal & Administrative Impacts

Petitioner believes that the fiscal and administrative impacts of the proposal depend, in part, on how the court approaches the rule. If the court amends the rule to allow guest presenters in law school courses to receive double credit, then the current electronic entry system would need to be adapted to allow double credits for those lawyers. The BBE and Lawyering Skills have followed a routine for years that allows double credits but the practice of submitting the modules as CLE courses is time-consuming for all parties. Less time would be required if the electronic portal allowed double credits automatically for hours of presentation as a guest presenter without having to go through a CLE approval process.

If the court amends the rule to eliminate the 1 credit/2 credit teaching distinction so that all teaching, including that by guest presenters, earns two teaching credits, then the system can be set up to automatically double all teaching that occurs in a law school, just as it does for teaching at a CLE event. The fiscal and administrative impacts of any of the options would most likely be straightforward and relatively minor.

Section VII Other Matters Required in the Memorandum

How does the proposed amendment affect any person's procedural or substantive rights?

This proposal does not directly affect any person's procedural or substantive rights as those concepts are traditionally understood.

Identify experience of other state or federal courts, if applicable.

This category does not apply to the current proposal.

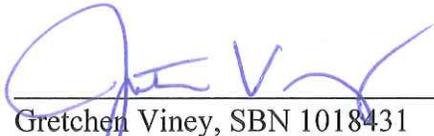
List any related petitions pending before the court.

To Petitioner's knowledge through the date of the petition, no related petitions are pending before the court.

List the committees, agencies, and individuals that the petitioner has consulted about the proposal.

Petitioner has not formally consulted with any committees or agencies about the proposal.

Respectfully submitted,



Gretchen Viney, SBN 1018431
Distinguished Clinical Professor
University of Wisconsin Law School
975 Bascom Mall, 5228 Law Building
Madison, WI 53706
608-262-8048

Attachment:

Lawyering Skills Course Daily Schedule 2020

Classes meet on designated days from 1:10 to 4:00 P.M.

Class does not meet on "shaded" days.

Week	Monday	Tuesday	Wednesday	Thursday	Friday	S/S
One Jan 13-19	Introduction	Listening & Interviewing	Counseling	Writing & Drafting MBTI		
Two Jan 20-26	MLK, Jr. Day	Local Government Proceedings				
Three Jan 27-Feb 2	Criminal Proceedings					
Four Feb 3-9	Legal Research on a Budget	State Bar Resources [State Bar Center]	Negotiations			
Five Feb 10-16	Residential Real Estate Transactions					
Six Feb 17-23	Divorce Proceedings					
Seven Feb 24-Mar 1	Selected Topics in Family Law	Guardian ad Litem	Small Business: Intro to IP			
Eight Mar 2-8	Representing the Small Business Client					
Nine Mar 9-15	Landlord-Tenant Proceedings			Intro to Skills		
				Writing Letters		
Ten Mar 16-22	Spring Break					
Eleven Mar 23-29	Estate Planning & Probate					
Twelve Mar 30-Apr 5	Preparing a Case for Civil Trial					
Thirteen Apr 6-12	Managing the Early Years of Practice					Easter
Fourteen Apr 13-19	No class: Skills Prep	Skills: Making a Case Plan	No Class: Skills Prep	No Class: Skills Prep	Skills Intensive Weekend [Friday PM/Saturday]	
Fifteen Apr 20-26		One Last Class				

Attachment:
The Lawyering Skills Course
See detailed semester schedule, attached or on reverse.

The **Lawyering Skills Course** teaches law practice through simulations in which each student has ample opportunity to practice fundamental lawyering skills including negotiations, oral advocacy and communications, interviewing and counseling, drafting, and problem solving. Students also examine how practicing lawyers address difficult ethical and professional problems, manage their practices, and balance their professional and personal lives. A unique feature of the **Lawyering Skills Course** is that it is taught by a faculty of approximately 60 practicing lawyers and other professionals. In both large and small group settings, teams of practitioners, during each of nine substantive weekly segments:

- Instruct students and lead class discussions;
- Demonstrate practice situations;
- Share experiences and perspectives;
- Evaluate student work; and
- Serve as a resource for students.

In addition to nine substantive segments and a variety of workshops, the Course includes a **Skills Intensive Training Weekend**. More than 20 lawyers participate as faculty in a two-day exercise in which students represent clients in a comprehensive, simulated, legal transaction. Students practice skills learned during the semester, receiving individualized feedback on their performances.

The Course is led by Clinical Professor Gretchen Viney. She has extensive law practice experience, is active in State Bar activities, and frequently teaches continuing education programs beyond the law school. Here is the basic information about the Course:

- Open to 2Ls and 3Ls.
- Pass-fail, 8-credits, offered only during the spring semester.
- Fulfills all ABA requirements for experiential learning in one semester.
- 5 of the 8 credits apply to the 60-credit rule; all credits apply to 64-credit and 90-credit rules.
- Meets from 1:10-4:00 P.M. on designated days. Class does not meet on Friday except during Skills Weekend.
- No final exam.
- Class credit requires class attendance, completion of two or three weekly written assignments, and class participation in assigned role simulations.

***For more information: Stop by the Lawyering Skills Offices
or contact Professor Viney directly.***



January 27, 2009

Mr. John Kosobucki
Board of Bar Examiners
110 East Main Street, Suite 715
Madison, WI 53701-2748

**Re: Credit for practitioners teaching a part of the Lawyering Skills Course
- UW Law School**

Dear John:

Thank you for taking my call yesterday in what I know is an extremely busy time for you and your staff.

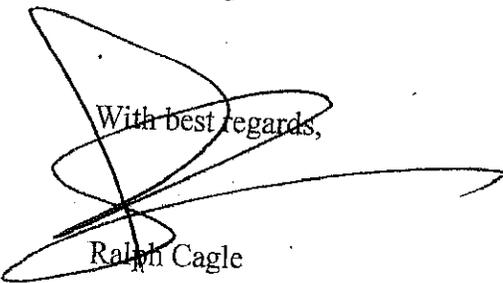
I appreciate you reaffirming the policy that has been in place for well over 20 years that lawyers teaching a unit of the Lawyering Skills Course receive 2 hours of teaching credit for each hour of the course. When this policy was first adopted by the BBE, a distinction was made between lawyers who teach a unit of a course and adjuncts or resident faculty who teach a law school course under SCR 31.05(3).

As I indicated, two lawyers have had their 2 hour/per hour of teaching credit rejected in recent weeks. Both, William F. White and Catherine M. Priebe, filed electronically. I am not aware of any lawyers who made paper filings that were rejected. It appears that this is something coded into the electronic reporting software.

As you suggested, I will inform any lawyer who has a similar problem to report this to you directly, with reference to this letter.

Again, I greatly appreciate you taking a personal stake in resolving this matter at such an otherwise demanding time.

With best regards,


Ralph Cagle

cc: Atty. William F. White
Atty. Catherine M. Priebe



JOHN KOSOBUCKI
DIRECTOR

Supreme Court of Wisconsin

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February 2, 2009

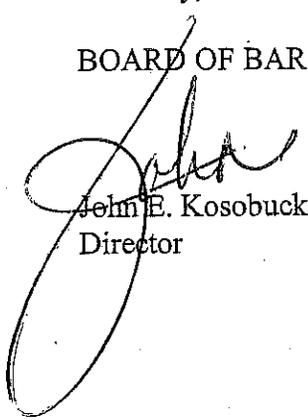
Atty. Ralph Cagle
Director
Lawyering Skills Program
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399

Dear Ralph:

Thank you for your letter of January 27 regarding teaching credit for those practitioners teaching a part of the Lawyering Skills Course. I agree that those who teach a portion or unit of a course should have received two (2) hours of teaching credit for each hour of the course they teach. This is a problem with the new electronic reporting program. I will contact our IT people to rectify the problem. I will also find the forms submitted by Attys. White and Priebe and have the appropriate corrections made.

Sincerely,

BOARD OF BAR EXAMINERS


John E. Kosobucki
Director

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