

1 otherwise appear, and default was accordingly entered against her on June 18,
2 2008 The State Bar filed an Aggravation/Mitigation brief on July 30, 2008.
3 An Aggravation/Mitigation Hearing was held on August 28, 2008. At the
4 hearing, telephonic testimony was taken from one witness, Karina Bustamonte
5 Respondent did not participate in the hearing, file any pleadings, or otherwise
6 participate in these proceedings
7

8 FACTS

9
10 The facts listed below are those set forth in the State Bar's complaint,
11 and were deemed admitted by Respondent as a result of her default
12

13 GENERAL ALLEGATIONS

14 1 At all times relevant, Respondent was an attorney licensed to
15 practice law in the State of Arizona, having been admitted to practice in this
16 State on May 21, 1988. Complaint, ¶ 1.
17

18 COUNT ONE (07-0499)

19
20 2 On March 24, 2006, Sally Cruz paid Respondent five hundred
21 dollars (\$500 00) in cash to investigate potential claims against a third party.
22 Complaint, ¶ 2.
23
24
25

1 3. After March 24, 2006, Ms Cruz made several attempts to reach
2 Respondent by phone, and two attempts to contact Respondent personally at
3 Respondent's office. Complaint, ¶ 3
4

5 4 Respondent failed to communicate with Ms Cruz. Complaint, ¶
6 4

7 5 On March 21, 2007, Ms Cruz filed a bar charge against
8 Respondent with the State Bar of Arizona Complaint, ¶ 5.
9

10 6 On April 24, 2007, the State Bar sent a written request to
11 Respondent, at her address on record with the State Bar's Membership
12 Records, for Respondent to contact Ms. Cruz within fifteen (15) days to try and
13 resolve the matter informally Complaint, ¶ 6.
14

15 7 On May 10, 2007, Respondent sent to the State Bar a copy of a
16 letter from Respondent to Ms Cruz, dated May 8, 2007, in which Respondent
17 stated that she had already advised Ms. Cruz that "Mr. Navarro" did not
18 respond to any of Respondent's letters. Complaint, ¶ 7
19

20 8 According to the May 8, 2007, letter, Respondent enclosed a
21 check for a full refund of \$500.00. Complaint, ¶ 8
22

23 9 On May 14, 2007, Ms. Cruz verified to the State Bar that
24 Respondent had in fact refunded the full \$500.00 Complaint, ¶ 9
25

1 10 Ms. Cruz also notified the State Bar that Respondent never
2 informed Ms Cruz of “Mr. Navarro’s” non-response to any letters. Ms Cruz
3 re-iterated her claim that Respondent never contacted her Complaint, ¶ 10
4

5 11 On June 1, 2007, the State Bar sent the initial screening letter to
6 Respondent at her address of record, requesting a written response to the bar
7 charge Respondent was given twenty (20) days, until June 21, 2007, to
8 respond Complaint, ¶ 11.
9

10 12 Respondent failed to respond. Complaint, ¶ 12

11 13. In a second letter sent to her address of record and dated June 28,
12 2007, Respondent was reminded of her ethical duty to respond, was advised
13 that failure to respond to the State Bar could be, in itself, grounds for
14 discipline, and was given until July 9, 2007, to respond Complaint, ¶ 13.
15

16 14 Respondent failed to respond. Complaint, ¶ 14

17 15. In a third letter sent to her address of record and dated July 12,
18 2007, Respondent was again reminded of her ethical duty to respond, was
19 advised that failure to respond to the State Bar could be, in itself, grounds for
20 discipline, and was given until July 23, 2007, to respond. Complaint, ¶ 15.
21

22 16 Respondent failed to respond Complaint, ¶ 16

23 17 On July 25, 2007, Staff Bar Counsel Matthew McGregor (“Bar
24 Counsel”) called Respondent’s phone number on record with the State Bar’s
25

1 Membership Records Bar Counsel left a message on Respondent's voicemail,
2 requesting a return phone call. Complaint, ¶ 17

3
4 18. Respondent failed to return Bar Counsel's phone call and
5 voicemail Complaint, ¶ 18

6 19 On September 13, 2007, State Bar Staff Investigator Kevin
7 McBay ("Staff Investigator") called Respondent's phone number on record
8 with the State Bar's Membership Records. The number returned as
9 disconnected Complaint, ¶ 19

11 20 The Staff Investigator made efforts to contact Respondent, but
12 Respondent failed to respond to all voicemails and other messages Complaint,
13 ¶ 20

15 21. The State Bar's complaint asserted that Respondent violated one
16 of more of the following Rules of Professional Conduct: Respondent failed to
17 act with reasonable diligence and promptness in representing a client,
18 Respondent failed to keep her client reasonably informed about the status of
19 the client's matter; Respondent failed to respond to a lawful demand for
20 information from the State Bar of Arizona, Respondent refused to cooperate
21 with the disciplinary investigation of the State Bar of Arizona; Respondent
22 failed to furnish information and failed to respond to an inquiry from Bar
23 Counsel Complaint, ¶ 21.
24
25

COUNT TWO (07-1562)

1
2 22. On March 13, 2007, Respondent was appointed to represent
3 Alfonso G. Ordaz-Rojas, Defendant, in CR 2006-00553 in the Oro Valley
4 Magistrate Court (“the Court”). Complaint, ¶ 23.

5
6 23 A telephonic trial review conference was scheduled for May 16,
7 2007 Complaint, ¶ 24

8
9 24 On May 16, 2007, Respondent failed to call in to the Court.
10 Complaint, ¶ 25.

11 25 On May 24, 2007, the Court re-scheduled the telephonic trial
12 review conference to June 12, 2007 Complaint, ¶ 26

13
14 26 On June 9, 2007, Respondent filed a written Motion to Continue
15 the jury trial date, which was granted The Court scheduled a pre-trial
16 conference for July 17, 2007 Complaint, ¶ 27

17 27 On July 17, 2007, Respondent failed to appear. Complaint, ¶ 28.

18
19 28 On Motion of the State, the pre-trial conference was re-scheduled
20 to August 14, 2007. Complaint, ¶ 29

21 29 On August 14, 2007, Respondent again failed to appear
22 Complaint, ¶ 30
23
24
25

1 30 On August 14, 2007, the Court issued an Order for Respondent to
2 appear on September 5 2007, and to show cause why Respondent should not
3 be held in contempt of court. Complaint, ¶ 31
4

5 31. On September 5, 2007, Respondent again failed to appear
6 Complaint, ¶ 32.
7

8 32 On September 12, 2007, the Court made a legal finding that
9 Respondent was in criminal contempt of court for failing to appear on three
10 separate occasions The Court also found that Respondent had abandoned her
11 client Complaint, ¶ 33
12

13 33. On September 12, 2007, the Court issued a bench warrant for
14 Respondent's arrest. Complaint, ¶ 34
15

16 34 On September 17, 2007, the Honorable George A. Dunscomb,
17 Town Magistrate for the Oro Valley Magistrate Court, filed a bar charge
18 against Respondent with the State Bar of Arizona. Complaint, ¶ 35
19

20 35. On September 26, 2007, the State Bar sent the initial screening
21 letter to Respondent at her address of record, requesting a response to the
22 written bar charge. Respondent was given twenty (20) days, until October 16,
23 2007, to respond. Complaint, ¶ 36
24

25 36. Respondent failed to respond Complaint, ¶ 37

1 37. In a second letter sent to her address of record and dated October
2 23, 2007, Respondent was reminded of her ethical duty to respond, was
3 advised that failure to respond to the State Bar could be, in itself, grounds for
4 discipline, and was given until November 2, 2007, to respond. Complaint, ¶ 38.
5

6 38 Respondent failed to respond. Complaint, ¶ 39
7

8 39 In a third letter sent to her address of record and dated November
9 5, 2007, Respondent was again reminded of her ethical duty to respond, was
10 advised that failure to respond to the State Bar could be, in itself, grounds for
11 discipline, and was given until November 15, 2007, to respond. Complaint, ¶
12 40.
13

14 40 Respondent failed to respond. Complaint, ¶ 41.
15

16 41 The State Bar's complaint alleged that Respondent violated one or
17 more of the following Rules of Professional Conduct Respondent failed to act
18 with reasonable diligence and promptness in representing a client; Respondent
19 knowingly disobeyed an obligation under the rules of a tribunal; Respondent
20 failed to respond to a lawful demand for information from the State Bar of
21 Arizona, Respondent refused to cooperate with the disciplinary investigation of
22 the State Bar of Arizona, Respondent failed to furnish information and failed to
23 respond to an inquiry from Bar Counsel, Respondent engaged in conduct
24 prejudicial to the administration of justice. Complaint, ¶ 42
25

1 transferring the case from one attorney to another, all without success
2 Complaint, ¶ 48.

3
4 47 On September 26, 2007, Mr Murray submitted a written bar
5 charge against Respondent Complaint, ¶ 49.

6 48 On October 12, 2007, the State Bar sent the initial screening letter
7 to Respondent at her address of record, requesting a response to the written bar
8 charge. Respondent was given twenty (20) days, until November 1, 2007, to
9 respond Complaint, ¶ 50

10
11 49 Respondent failed to respond Complaint, ¶ 51

12 50 In a second letter sent to her address of record and dated
13 November 5, 2007, Respondent was reminded of her ethical duty to respond,
14 was advised that failure to respond to the State Bar could be, in itself, grounds
15 for discipline, and was given until November 15, 2007, to respond Complaint,
16 ¶ 52

17
18
19 51 Respondent failed to respond Complaint, ¶ 53

20 52 In a third letter sent to her address of record and dated November
21 30, 2007, Respondent was again reminded of her ethical duty to respond, was
22 advised that failure to respond to the State Bar could be, in itself, grounds for
23 discipline, and was given until December 14, 2007, to respond. Complaint, ¶

24
25 54

1 53. Respondent failed to respond. Complaint, ¶ 55.

2 54 The State Bar's complaint alleged that Respondent violated one or
3 more of the following Rules of Professional Conduct Respondent failed to
4 communicate, in writing and to the client, the scope of representation and the
5 basis or rate of the fee and expenses for which the client would be responsible,
6 Respondent communicated about the subject of the representation with a party
7 Respondent knew to be represented by another lawyer in the matter without the
8 consent of the other lawyer and without any authorization provided under the
9 law, Respondent failed to respond to a lawful demand for information from the
10 State Bar of Arizona; Respondent refused to cooperate with the disciplinary
11 investigation of the State Bar of Arizona; Respondent failed to furnish
12 information and failed to respond to an inquiry from Bar Counsel, Respondent
13 engaged in conduct prejudicial to the administration of justice Complaint, ¶
14 56

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19 **CONCLUSIONS OF LAW**

20 The facts as deemed admitted above, and supported by the documentary
21 record and hearing testimony, establish that Respondent committed multiple
22 violations of Rule 42, Ariz R S Ct , specifically, ERs 1 3, 1 4(a)(3), 1.5(b),
23 3.4(c), 4 2, 8 1(b), 8 4(d), and Rules 53(d) and (f), Ariz.R.Sup.Ct.

24
25 **SANCTION**

1 The State Bar argues that the facts of this case, the *ABA Standards for*
2 *Imposing Lawyer Sanctions*, and Arizona case law support either disbarment
3 from the practice of law in the State of Arizona, or a long-term suspension
4 accompanied by a term of probation upon reinstatement. As further discussed
5 below, the hearing officer finds that disbarment is the appropriate sanction.
6

7 I. ABA Standards

8 The Supreme Court and the Disciplinary Commission consistently use the
9 *Standards* to determine appropriate sanctions for attorney discipline. See *In re*
10 *Clark*, 207 Ariz 414, 87 P 3d 827 (2004). The *Standards* are designed to
11 promote consistency in sanctions by identifying relevant factors the court
12 should consider and then applying those factors to situations in which lawyers
13 have engaged in various types of misconduct. *Standard 1 3, Commentary*.
14
15

16 The ultimate purpose of discipline is not to punish the lawyer, but to set
17 a standard by which other lawyers may be deterred from such conduct while
18 protecting the interests of the public and the profession. *In re Kerstung*, 151
19 Ariz 171, 726 P 2d 587 (1986). The *Standards* are a “useful tool in
20 determining the proper sanction.” *In re Cardenas*, 164 Ariz. 149, 791 P 2d 95
21 (1990)
22
23

24 In determining an appropriate sanction, the Supreme Court and the
25 Disciplinary Commission consider the duty violated, the lawyer’s mental state,

1 the presence or absence of actual or potential injury, and the existence of
2 aggravating and mitigating factors *In re Tarletz*, 163 Ariz. 548, 554, 789 P 2d
3 1049, 1055 (1990), *Standard 3.0*
4

5 **II. The Lawyer's Mental State and Applicable Standards**

6 The facts deemed admitted and the record establish that Respondent's
7 misconduct was knowing, if not intentional. With respect to Count One,
8 Respondent failed to perform the agreed-upon services for Ms Cruz, and failed
9 to communicate with Ms. Cruz Because Respondent knew she had failed to
10 provide the services owed to Ms. Cruz, Respondent subsequently fully refunded
11 Ms Cruz's money Likewise, during the State Bar's screening investigation,
12 Respondent knowingly failed to respond
13
14

15 With regard to Count Two, Respondent knowingly failed to appear for a
16 court hearing. The Court issued an Order to Show Cause, which Respondent also
17 knowingly failed to address, prompting issuance of a bench arrest Again,
18 Respondent knowingly failed to respond to the State Bar's screening
19 investigation
20

21 With regard to Count Three, Respondent failed to communicate the scope
22 of representation and the basis of the fee in writing Respondent was notified that
23 her client had hired a substitute attorney Respondent knowingly met with her
24 former client and intentionally tried to get him to sign a written fee agreement
25

1 Respondent then knowingly failed to communicate with the substitute attorney,
2 and then again failed to respond to the State Bar in its screening investigation

3
4 The *Standard* that is most applicable to violations of ERs 1.3, 1.4, and
5 1.5 is *Standard* 4.0, dealing with Violations of Duties Owed to Clients
6 *Standard* 4.41 states, “disbarment is generally appropriate when (a) a lawyer
7 abandons the practice and causes serious or potentially serious injury to a
8 client, or (b) a lawyer knowingly fails to perform services for a client and
9 causes serious or potentially serious injury to a client, or (c) a lawyer engages
10 in a pattern of neglect with respect to client matters and causes serious or
11 potentially serious injury to a client.” Some lawyers simply abandon their
12 practices, leaving clients completely unaware that they have no legal
13 representation and often leaving their clients without any legal remedy. Other
14 lawyers knowingly fail to perform services for a client, or engage in a pattern
15 of misconduct, demonstrating by their behavior that they either cannot or will
16 not conform to the required ethical standards. Disbarment is appropriate in
17 each of these situations. *Standards* at 33.

18
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20
21 The *Standard* most applicable to violations of ERs 3.4, 4.2, and 8.4(c) is
22 *Standard* 6.0, dealing with Violations of Duties Owed to the Legal System
23 *Standard* 6.22 states, “suspension is appropriate when a lawyer knowingly
24 violates a court order or rule, and there is potential injury to a client or a party,
25

1 or interference or potential interference with a legal proceeding.” Such
2 knowing violations can occur when a lawyer fails to comply with a court order
3 that applies directly to him or her *Standards* at 43.
4

5 *Standard 6.32* states, “suspension is generally appropriate when a lawyer
6 engages in communication with an individual in the legal system when the
7 lawyer knows that such communication is improper, and causes injury or
8 potential injury to a party or causes interference or potential interference with
9 the outcome of a legal proceeding ” In Count 3, Respondent contacted a former
10 client when she knew another attorney represented the former client.
11

12 The Standard most applicable to violations of 8 1(b)¹ is *Standard 7.0*,
13 dealing with Violations of Other Duties Owed as a Professional *Standard 7.2*
14 states, “suspension is generally appropriate when a lawyer knowingly engages
15 in conduct that is a violation of a duty owed as a professional, and causes
16 injury or potential injury to a client, the public, or the legal system ” In this
17 case, Respondent failed to respond to inquiries from the State Bar on all three
18 counts This misconduct was knowing because Respondent initially responded
19 to the State Bar and provided her informal response. All further attempts to
20 contact her, even those made by State Bar investigators, were ignored.
21
22
23
24

25 ¹ ER 8 1 (b) is most similar to violations of Rules 53 (d) and (f)

1 **III. The Aggravating and/or Mitigating Factors**

2 As set forth above, the presumptive sanction in this matter is disbarment
3 at a maximum and suspension at a minimum
4

5 The State Bar argues, and the hearing officer finds, that that there are six
6 aggravating factors.

7 *Standard 9 22(b)* – Dishonest or selfish motive Respondent
8 demonstrated dishonest or selfish motive with regard to Count Three Despite
9 being terminated for failing to provide an adequate representation of Mr
10 Bustamonte, Respondent declined to return any of the \$25,000 in cash paid by
11 the Bustamonte, which amount was intended to cover the entirety of the
12 engagement.
13
14

15 Also with regard to Count Three, Respondent made contact with her
16 former client in an attempt to remedy her prior failure to communicate her fee
17 in writing and, apparently, provide a basis for refusing to return the unearned
18 portion of the fee With respect to Count One, Respondent refunded Ms Cruz's
19 money, but only after the State Bar inquiry.
20

21 *Standard 9 22(c)* – A pattern of misconduct. The State Bar properly
22 notes that each of the three counts involves a separate client matter, ethical
23 misconduct by Respondent in the area of communication, and failure to comply
24 with her duties owed as a professional. Two of the three counts involve money
25

1 paid to Respondent for future services, with some unearned fees not yet
2 returned Respondent's essential abandonment of her practice has produced a
3 pattern of misconduct.
4

5 *Standard 9.22(d) – Multiple offenses.* The facts deemed admitted and
6 supported by the record support findings of multiple violations of Rule 42,
7 Ariz R Sup.Ct , specifically, ERs 1 3, 1 4(a)(3), 1 5(b), 3 4(c), 4 2, 8.1(b), and
8 8 4(d), and Rules 53(d) and (f), Ariz R Sup Ct
9

10 *Standard 9.22(e) – Bad faith obstruction of the disciplinary proceeding*
11 *by intentionally failing to comply with rules or orders of the disciplinary*
12 *agency* As noted above, Respondent failed to comply with her ethical
13 obligation to respond to the State Bar in each of the three counts All efforts by
14 the State Bar to communicate with Respondent during the formal proceedings
15 were unsuccessful
16

17 *Standard 9.22(g) – Refusal to acknowledge wrongful nature of conduct*
18 Respondent has never acknowledged the wrongful nature of her conduct
19

20 *Standard 9.22(i) – Substantial experience in the practice of law.*
21 Respondent was admitted to the practice of law in the State of Arizona on May
22 21, 1988
23

24 *Standard 9.22(j) – Indifference to making restitution* Although
25 Respondent returned Ms. Cruz's money in full with regard to Count Two,

1 Respondent has not resolved the restitution dispute pertaining to Count Three
2 Respondent's failure to participate in these proceedings also suggests
3 indifference to ascertaining and making appropriate restitution
4

5 There is one factor in mitigation

6 *Standard 9 32(a)* – Absence of a prior disciplinary record. Respondent
7 has no prior disciplinary record
8

9 **IV. Proportionality Analysis**

10 To have an effective system of professional sanctions, there must be
11 internal consistency, and it is appropriate to examine sanctions imposed in
12 cases that are factually similar *In re Peasley*, 208 Ariz. 27, 35, ¶ 33, 90 P 3d
13 764, 772 (App 2004) However, the discipline in each case must be tailored to
14 the individual case, as neither perfection nor absolute uniformity can be
15 achieved *Id* at 41, ¶ 61, 90 P 3d at 778 (citing *In re Alcorn*, 202 Ariz 62, 76,
16 41 P 3d 600, 614 (2002) and *In re Wines*, 135 Ariz 203, 207, 660 P 2d 454,
17 458 (1983))
18
19

20 With regard to Count One, Respondent failed to perform the services for
21 which she was hired and failed to communicate with her client. With regard to
22 Count Two, Respondent failed to comply with her obligations to her client and
23 the Court With regard to Count Three, Respondent failed to prepare a written
24 fee agreement, failed to resolve a restitution dispute, and attempted to persuade
25

1 her incarcerated former client to execute a belated fee agreement. With regard
2 to all three counts, Respondent failed to respond to the State Bar's
3 investigation. The Arizona Supreme Court has stated that a lawyer's failure to
4 respond to the disciplinary process borders on contempt for the legal system
5 *In re Galusha*, 164 Ariz. 503, 794 P 2d 136 (1990). Failure to participate in the
6 disciplinary process delays the process, increases costs, and undermines the
7 public's confidence in the disciplinary system. *In re Miles*, 324 Or 218, 923
8 P 2d 1219, 1221

11 Prior disciplinary proceedings involving similar facts have resulted in
12 disbarment

14 In *In Re Son*, SB-05-0173-D (2006), the respondent was disbarred for,
15 like Respondent herein, knowingly abandoning his law practice and knowingly
16 failing to perform services for which his clients had paid. Mr. Son was charged
17 with a six-count complaint and, like Respondent here, failed to participate in
18 the disciplinary process. There were three aggravating factors and one
19 mitigating factor.

21 Similarly, disbarment was determined to be the appropriate sanction in
22 *In Re Beskind*, SB-07-0155-D (2007), Mr. Beskind was charged in a three-
23 count complaint. Mr. Beskind violated ERs 1.2, 1.3, 1.4, 1.5, 3.4(c), 8.4(d), and
24 Rule 53(d), (e), and (f). Mr. Beskind failed to perform work for which he had
25

1 been paid, failed to provide a written fee agreement, failed to communicate
2 with his clients, failed to comply with orders and requests from the State Bar,
3 and essentially abandoned his clients. Eight aggravating factors were
4 considered in contrast to one mitigating factor. The Court disbarred Mr.
5 Beskind
6

7 Another similar matter is *In re Brady*, in which the respondent attorney
8 was disbarred after abandoning several clients. Brady's ethical violations
9 included violations of ER 1.3, 1.4, 1.5, and 1.15. After participating in a
10 portion of the disciplinary proceedings, Brady failed to answer the complaint,
11 was defaulted, and failed to appear at the aggravation/mitigation hearing.
12
13

14 In light of the foregoing cases and the aggravating factors present herein,
15 the hearing officer finds that disbarment is appropriate in this matter.

16 That leaves the matter of restitution. The State Bar argues, with regard
17 to Count Three, that restitution of \$25,000 to the Bustamonte family is
18 appropriate. The admitted facts and un rebutted testimony with regard to Count
19 Three demonstrate that Respondent was provided a fee in that amount to
20 represent Mr. Bustamonte, thereafter failed to provide an adequate
21 representation, and was replaced as counsel. The underlying record in the
22 Bustamonte matter suggests that Respondent did, prior to her termination,
23 provide some modest services including appearing at a handful of meetings or
24
25

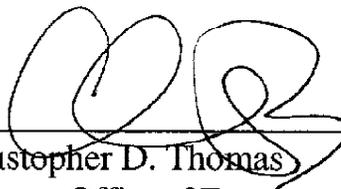
1 hearings and moving unsuccessfully to modify the terms of Mr. Bustamonte's
2 release. It is also clear from the record, however, that the Bustamonte family
3 was obliged to incur additional legal expenses because of the need to replace
4 counsel. In the absence of any evidence or argument by Respondent, there is
5 no basis for the hearing officer to conclude that the amount of restitution to the
6 Bustamonte family should be anything less than the original \$25,000 fee.
7

8 CONCLUSION

9
10 The Supreme Court "has long held that 'the objective of disciplinary
11 proceedings is to protect the public, the profession and the administration of
12 justice and not to punish the offender.'" *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d
13 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78
14 (1966))
15

16 The hearing officer believes that protection of public and the profession and
17 the administration of justice require that Respondent be disbarred. Accordingly,
18 the hearing officer recommends that Respondent be disbarred; that Respondent be
19 required to make restitution in the amount of \$25,000 to Karina Bustamonte; and
20 that Respondent be assessed the costs and expenses incurred in these disciplinary
21 proceedings.
22

23 DATED this 23rd day of September, 2008
24
25


Christopher D. Thomas
Hearing Officer 8Z

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3
4
5 Original filed with the Disciplinary Clerk of the
6 Supreme Court this 23rd day of September, 2008

7 Copies mailed and e-mailed this 23rd day of
8 September, 2008, to.

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