1. Roll Call
Scott G. Hawkins, President
Gwynne A. Young, President-elect
Stephen H. Echsner, 1st Circuit
William H. “Bill” Davis, 2nd Circuit
Clay A. Schnitker, 3rd Circuit
S. Grier Wells, 4th Circuit
Michael G. Tanner, 4th Circuit
Lawrence Scott Kibler, 5th Circuit
Andrew B. Sasso, 6th Circuit
Sandra Fascell Diamond, 6th Circuit
Sandra C. Upchurch, 7th Circuit
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Paul Louis SanGiovanni, 9th Circuit
Scott R. McMillen, 9th Circuit
C. Richard “Rick” Nail, 10th Circuit
Ramon A. Abadin, 11th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Dennis G. Kainen, 11th Circuit
Juliet M. Roulhac, 11th Circuit
John H. Hickey, 11th Circuit
L. Norman Vaughan-Birch, 12th Circuit
William J. Schifino, Jr., 13th Circuit
Lansing C. Scriven, 13th Circuit
Margaret Diane Mathews, 13th Circuit
Michael S. Hooker, 13th Circuit
John W. Manuel, 14th Circuit
David C. Prather, 15th Circuit
Gregory W. Coleman, 15th Circuit
Michelle R. Suskauer, 15th Circuit
Gary Shepard Lesser, 15th Circuit
Edwin A. Scales III, 16th Circuit
Walter G. Campbell, Jr., 17th Circuit
Adele Ilene Stone, 17th Circuit
Eugene K. Pettis, 17th Circuit
Timothy L. Bailey, 17th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Marcy L. Shaw, 20th Circuit
Richard A. Tanner, Out-of State
Ian M. Comisky, Out-of-State
Brian D. Burgoon, Out-of-State
Sean T. Desmond, YLD President
Paige Adonna Greenlee, YLD President-elect
Winston W. Gardner, Jr., Public Member
Alvin V. Alsobrook, Public Member

Members Absent:
Lawrence E. Sellers, 2nd Circuit
Michael J. Higer, 11th Circuit
Jay Cohen, 17th Circuit
Clifton A. McClelland, Jr., 18th Circuit
Eric L. Meeks, Out-of-State

2. Guests
Vivian de las Cuevas-Diaz, President, Cuban American Bar Association
Susan Healey, President, Florida Association for Women Lawyers
Ward Griffin, Chair, Government Lawyer Section

3. Staff in Attendance
John F. Harkness, Jr., Executive Director
John Berry, Bar Counsel
Ken Marvin, Director, Lawyer Regulation
Allen Martin, Director of Finance and Accounting
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
Elizabeth Clark Tarbert, Ethics and Advertising Counsel
Lori Holcomb, Unlicensed Practice of Law Counsel
Francine Walker, Director, Public Information
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

4. Invocation and Pledge of Allegiance
Bill Kramer, head football coach at Naples High School, delivered the invocation and led the board in the Pledge of Allegiance.

5. Swearing In of New Board Member
President Hawkins swore in Marcy L. Shaw, chosen in a special election to fill an unexpired term on the board representing the 20th Circuit.

6. Minutes Approval
The board approved the minutes from its March 23 meeting in Pensacola. That included ratifying the following Executive Committee actions since the last board meeting:
   * On March 28, the Executive Committee voted 9-0 to allow the Family Law Rules Committee to file an emergency petition with the Supreme Court to seek its adoption of Fla.
Fam. L.R.P. Form 12.996(d), Florida Addendum to Income Withholding Order, and to Amend Rule 12.015, Family Law Forms.

- On April 17, the Executive Committee acted on the following five issues:
  - The committee approved increasing Budget Amendment 9 from $4,000 to $12,000 to allow a consultant to review literature on the public response to authority figures in advertising.
  - The committee approved the Board of Legal Specialization and Education’s request to file for a rehearing with the Supreme Court in case no. SC10-1967 where the court rejected the recommendation to create Board Certified Judicial Fellows as part of the certification program.
  - The committee rejected the request of the Special Committee on Lien Resolution concerning the Supreme Court’s rejection of a proposed amendment to Rule 4-1.5 in case no. 10-1967 on lien resolutions in personal injury cases. The Executive Committee said instead that could be addressed through the ethics opinion process or in a future rule amendment.
  - The committee approved having the director of the Bar’s Unlicensed Practice of Law Department file a request for clarification with the Supreme Court on its deletion of language from Rule 10-2.2 in case no. 10-1967 and whether or not that means the sale of legal forms and kits by nonlawyers is the unlicensed practice of law.
  - The committee approved recommendations to honor the late Marshall R. Cassedy, Jr., former executive director of the Bar. One would be an annual presentation of $500 to $1,000 to a local bar, Bar executive, or staff who have provided extraordinary service to the Bar or a local bar. The second would be a plaque, bowl, or other commemorative object to be placed in the lobby of the Bar’s headquarters recognizing Cassedy’s role in raising funds and managing construction of the headquarters building.
- On May 1, the committee reviewed the recommendations from six judicial nominating screening committees of nominees for upcoming vacancies on the 26 JNCs and recommended a final slate of nominees for Board of Governors action.

7. Consent Calendar Approval

After hearing that item 5b(1) had been withdrawn from the consent agenda and would be discussed during the Board Review Committee on Professional Ethics report, the board approved the consent agenda. That included:

- Approving the appointment Amy Dawn Envall, Joel D. Fritton, Saidin Marcus Hernandez, David B. Norris, and Kellie D. Scott as attorney members and Shirley Gooding-Butler as a public member, and reappointing C.C. Abbott, Samantha Schosberg Feuer, and Martin Jay Sperry as attorney members and Stephen J. Potter and Herbert Milstein as public members for the Standing Committee on the Unlicensed Practice of Law.
- Approving the appointment of Anita Devi Persaud Misir as an attorney member of UPL Circuit Committee 13B and Ian Ferguson Mann, William Whiton Sunter, and Shannon Lyndell Doolity as attorney members and Martin Blaustein as a public member for the Standing Committee on the Unlicensed Practice of Law.
- Appointing Karen George and La’Tasha L. Hugans as paralegal members, Michele Bruner and Linda Sims as public members, and reappointed Carolyn D. Poteet as a paralegal member of the Florida Registered Paralegal District Committee.

The vote also approved the following amendments and policies on second reading:
• Rule 4-1.6 Confidentiality of Information: Within subdivision (c)(5), changes "Rules of Professional Conduct" to "Rules Regulating The Florida Bar."
• Rule 4-1.7 Conflict of Interest; Current Clients (informed consent): Adds the title "informed consent" to subdivision (b) to conform with the style guide. Within subdivision (d), changes "upon consent by the client after consultation regarding the relationship" to "with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing." Within the first paragraph of the comment under "Conflict in Litigation," adds "(b) and" before "subdivision (c)."
• Rule 4-1.9 Conflict of Interest; Former Client: Within the 4th paragraph of the comment, deletes the sentence, "For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce."
• Rule 4-1.10 Imputation of Conflicts of Interest; General Rule: Within the third paragraph under "Confidentiality" in the comment to the rule, adds the word "relevant" before "protected by rules 4-1.6 and 4-1.9(b)."
• Rule 4-2.4 Lawyer Serving as Third-Party Neutral: Within the second paragraph of the comment, changes "Society of Professionals in Dispute Resolution" to "Association for Conflict Resolution."
• Rule 4-4.2 Communication With Person Represented by Counsel: Within subdivision (a), changes "adverse party" to "person."
• Rule 4-8.6 Authorized Business Entities: Within subdivision (c), clarifies that a nonlawyer may not serve as officer with policy-making function, regardless of whether the nonlawyer is engaged in the practice of law.
• CSF Regulations (A2): Within (A)(2) Claims Processing, deletes obsolete language and clarifies the recommendations that may be made on claims.

8. Trial Lawyers Section Report
Chair Craig Gibbs outlined the section’s legislative activities, including supporting funding for the Florida court system and access to the courts for all Floridians. The section is concerned a 7 percent budget cut for court clerks will cause backlogs for many non-criminal cases. The section recently donated $75,000 to The Florida Bar Foundation to help with its funding crunch.

Chair-elect Brian Gart reported the section is finishing up a multi-year rewrite of limited liability company statutes and will submit that to the Legislature next year. Working with the Real Property, Probate and Trust Law Section, the Business Law Section has written new opinion standards, which are available online. The section was active legislatively, including opposing bills allowing non-judicial foreclosures. Gart said the section has an active pro bono program and is working to get 100 percent member participation, and is working to reach out to younger lawyers.

10. Public Reprimands
President Scott Hawkins administered one public reprimand.
11. Budget Committee Report
Chair Bill Schifino presented one amendment for the 2011-12 budget for a $5,000 expenditure for a software license to allow the Bar to comply with public records laws when it sets up a Facebook page. The board approved the amendment. Schifino announced that the Bar was within $100,000 of its projected budget with less than two months remaining in the fiscal year. Chair-elect Lanse Scriven reported that there were no member objections to the Bar’s 2012-13 budget, which the board approved in March.

12. Investment Committee Report
Chair Ian Comisky reported the Bar had a 6.45 percent return on its long-term portfolio for the first quarter of 2012. He reported that the committee recommended selling the Bar’s approximate $900,000 investment to the T. Rowe Price New Era commodities fund and split the money between R.S. Global Natural Resources and Highbridge Dynamic Commodities Strategy Fund. The board approved that recommendation.

13. Communications Committee Report
Chair Greg Coleman presented and the board approved policies for the Bar and its sections/divisions to use Facebook and Twitter. Coleman said the approval will allow the Bar to set up its first Facebook page, likely in June. Except for the sections/divisions that already have a Facebook presence, the policy prohibits allowing comments on postings. The committee will revisit that decision in November, Coleman said, and any page that currently or eventually allows comments must include a warning that all such postings, even if removed from the site, will be retained by the Bar and be subject to public records laws. The Bar has also selected a service that will archive all Facebook posts to meet its public records retention schedule. In the coming year, the committee will continue to work on the social media policies and use by Bar entities and on a recommended education campaign for Bar members and the public on the Bar’s grievance system.

14. Executive Session
The board went into executive session to discuss disciplinary and other confidential matters.

15. Legislation Committee Report
Co-chair Ed Scales reported despite continuing state budget shortfalls, for the second year in a row the budget for the court system was not cut, although clerks of court saw their court-related budget reduced 7 percent. He noted the Legislature approved $2 million for the Florida Civil Legal Assistance Act, but it was vetoed by the governor.

16. Program Evaluation Committee Report
Vice Chair John Stewart presented on first reading amendments to the Elder Law Section bylaws. He presented two recommendations on the Lawyer Referral Service Committee, which were approved by the board. The first recommendation was to amend the main charge of the committee from overseeing referral services operated by voluntary bar associations to monitoring lawyers who join private, for-profit referral services. The second was to assign assistance in marketing for voluntary bar referral services from the LRS Committee to the Local Bar Liaison Committee. The committee also recommended and the board approved six recommendations to guide board members in their function as liaison to Bar sections and
committees. The committee, Stewart reported, is continuing with its review of the Young Lawyer Division’s SCOPE program. He also said the proposed Random Acts of Professionalism program was referred to the Standing Committee on Professionalism, and its report was accepted by the PEC, and no further action is required on that.

17. Board Review Committee on Professional Ethics Report
Concerning advertising appeal for ad file numbers 11-02641 & 11-02642 (agenda item 5b(1) which was removed from the consent agenda), the BRCPE voted 4-4 on the issue of whether the lawyer referral service LawButler.com fee arrangement with the lawyer is an improper division of fees in violation of Rules 4-7.10(a)(2) and 4-5.4(a). LawButler proposed that the participating lawyer make a payment of $300 to the lawyer referral service per accepted case referred by the service and the fee is paid by the lawyer from fees paid to the lawyer by the client. The BRCPE then voted to inform the board that the BRCPE is split evenly on the issue of whether the arrangement constitutes fee splitting and recommend referring the issue to the Special Committee on Lawyer Referral Services for its input into this issue. The board approved the recommendation on voice vote and deferred the item to receive input from the Special Committee on Lawyer Referral Services.

The board heard an informational report from BRCPE Chair Scott McMillen that the committee voted 8-0 to defer action on consideration of whether the Board of Governors should request that the Professional Ethics Committee issue a formal opinion regarding lawyers permitting non-lawyers under their supervision (staff) to use the lawyer’s access credentials (log-in name and password) for filing documents with a court using the E-Portal because the E-Portal authority has not changed its certification requirement and the Florida Court Technology Commission had not met to discuss this issue as of the date of the BRCPE conference call. Subsequent to the BRCPE meeting, the Florida Court Technology Commission did meet and voted to change the wording of the certification requirement to “The attorney filing, or directing and authorizing this filing (including all attachments), certifies that it contains no confidential or sensitive information, or that any such confidential or sensitive information has been properly protected by complying with the provisions of Rules 2.420 and 2.425, Florida Rules of Judicial Administration.”

18. Young Lawyers Division Report
YLD President Sean Desmond presented one of the improved, updated video vignettes that the division plays at the end of its Practicing with Professionalism seminars to present new Bar members with realistic situations they could face as they begin their legal careers.

Co-chair Gene Pettis presented the commission’s final report. The board voted to accept the report and refer its recommendations to the appropriate committee for drawing up necessary rule and policy changes. The recommendations include: expanding the use of the grievance diversion program by increasing the frequency a lawyer can be referred to a diversion course; allowing lawyers with longer suspensions to begin the reinstatement process before their suspension is up; establishing communications procedures for dealing with high profile grievance cases; having an education program to better inform Bar members and the public about the grievance program; creating programs for the specific problems lawyers face as they age; developing a checklist to help Bar members recognize when an elderly lawyer is becoming incapacitated; finding ways to
keep vigorous older lawyers engaged in Bar activities; allowing older lawyers facing their first grievance to permanently retire in lieu of discipline; examining the monitoring of conditionally admitted lawyers to see if it is too strict; and amending the grievance complaint form to better track frivolous complaints. Pettis said the commission also recommended providing better feedback to judges who refer lawyers to the grievance system and Bar staff has already begun implementing that as a procedural matter.

20. Rules of Evidence Committee Report
Chair Thomas Schults presented three amendments drafted by the committee to conform with recent statutory changes from the Legislature. One expands the attorney-client privilege to communications when the lawyer is acting as a fiduciary for the client. The second creates an exception to the hearsay rule when a party has wrongfully prevented a witness from appearing, similar to the provision in the Federal Rules of Evidence. The third requires out-of-state experts in medical and dental malpractice cases to get a certificate from the Florida Department of Health before they can give an expert opinion. Although the Legislature is in charge of the evidence code under the Florida Constitution, some board members expressed concern that the last amendment might intrude on court procedural prerogatives. The board voted to table the proposed amendments until its July meeting.

21. Small Claims Rules Committee Report
Board member Gary Lesser, liaison to the committee, presented the three-year cycle rule amendments, which included five rule and one form amendment. Those include clarifying who has the authority to bind a business entity in court, clarifying that a witness may not use a phone appearance to testify in order to avoid perjury penalties or to introduce inadmissible evidence, and creating a brochure to help holders of a final judgment. The board voted 35-0 to recommended approval of the rule package, which now goes to the Supreme Court.

22. Judicial Nominating Commission Nominations
The board reviewed nominees recommended by screening committees and the Executive Committee and voted to forward the following slates of candidates to the governor, who will appoint one from each slate to each JNC:
• Supreme Court JNC, Cynthia A. Everett of Miami, Sheila M. McDevitt of St. Petersburg, and Israel Umberto Reyes of Miami.
• First District Court of Appeal JNC, Michael J. Glazer of Tallahassee, Michael J. Korn of Jacksonville, and George T. Reeves of Madison.
• Second DCA JNC, Thomas H. Dart of Sarasota, Henry C. Gyden of St. Petersburg, and Celene H. Humphries of Riverview.
• Third DCA JNC, Timothy J. Koenig of Key West, Elliot H. Scherker of Miami, and Gilbert K. Squires of Miami Beach.
• Fourth DCA JNC, Debra A. Jenks of Palm Beach Gardens, Shelley H. Leinicke of Ft. Lauderdale, and Gerald F. Richman of Palm Beach Gardens.
• Fifth DCA JNC, R. Lee Bennett of Orlando, David A. Paul of Orlando, and Michael C. Sasso of Oviedo.
• First Circuit JNC, Nathan C. Bess of Pensacola, Lennard B. Register III of Pace, and William R. Wade of Pensacola.
• Second Circuit JNC, Elizabeth L. Bevington of Lamont, Robert N. Clark, Jr., of Tallahassee, and Kimberly A. Driggers of Tallahassee.
• Third Circuit JNC, Conrad C. Bishop, Jr., of Perry, Marlin M. Feagle of Lake City, and Jerry D. Marsee of Lake City.
• Fourth Circuit JNC, Courtney K. Grimm of Green Cove Springs, Robert E. O’Quinn, Jr., of Jacksonville, and Cherry Alice Shaw of Jacksonville.
• Sixth Circuit JNC, Donald S. Crowell of Largo, Kimberly J. Gustafson of St. Pete Beach, and Scott F. Schiltz of Clearwater.
• Seventh Circuit JNC, Steven N. Gosney, Ormond Beach, Katherine H. Miller, Daytona Beach, and Theodore W. Small, Jr., of Deland.
• Tenth Circuit JNC, James Russell Franklin of Lakeland, Matthew E. Kaylor of Winter Haven, and Richard E. Straughn of Winter Haven.
• Eleventh Circuit JNC, Melanie E. Damian of Miami Beach, Corali Lopez-Castro of Coral Gables, and Jeffrey Rynor of Miami Beach.
• Twelfth Circuit JNC, Bonnie Lee A. Polk of Sarasota, Marjorie A. Schmoyer of Sarasota, and Varinia Van Ness of Sarasota.
• Thirteenth Circuit JNC, Alexander Caballero of Tampa, Kamilah L. Perry of Tampa, and Amanda A. Sansone of Tampa.
• Fourteenth Circuit JNC, Todd Clifford Brister of Panama City, Clifford Carlton Higby of Panama City, and William A. Lewis of Panama City.
• Fifteenth Circuit JNC, Richard M. Benrubi of Boca Raton, Sarah Cortvriend of North Palm Beach, and Anna Morales-Christiansen of Lake Worth.
• Sixteenth Circuit JNC, Natileene Cassel of Ramrod Key, Christine Limbert-Barrows of Little Torch Key, and Robert B. Schillinger of Key West.
• Seventeenth Circuit JNC, Terrence P. O’Connor of Lighthouse Point, Ian S. Seitel of Ft. Lauderdale, and Linda S. White of Ft. Lauderdale.
• Eighteenth Circuit JNC, Erin L. Greene of Longwood, Steven D. Kramer of Altamonte Springs, and Mark S. Peters of Rockledge.
• Nineteenth Circuit JNC, Alan Orantes Forst of Palm City, Robert J. Gorman of Ft. Pierce, and Harold G. Melville of Ft. Pierce.
• Twentieth Circuit JNC, Kathleen M. Fitzgeorge of Ft. Myers, Jeffrey D. Fridkin of Naples, and Alison C. Hussey of Ft. Myers.

23. Special Appointments
The board elected Min K. Cho of Orlando as the under-35 delegate, and Jesse H. Diner of Ft. Lauderdale to two-year terms in the ABA House of Delegates. They will join Scott Hawkins who will serve a two-year term as past Bar president and Eugene Pettis who will serve a two-year term as president-elect. The board appointed A. Hamilton Cooke of Jacksonville, Leslie A. Goller of Jacksonville, Cleveland Ferguson III of Jacksonville, Diana L. Martin of Palm Beach Gardens, and Charles R. Stepter, Jr., of Winter Park to two-year terms on the Florida Legal
The board picked William Banks of St. Petersburg, Matthew Gissen of Miami, William F. Sansone of Tampa, Allen von Spiegelfeld of Tampa, and Barbara J. Williams of Ft. Lauderdale for three-year terms on the Florida Lawyers Assistance, Inc., Board of Directors. The board elected Debra Henley of Tallahassee for a two-year term on the Florida Medical Malpractice Joint Underwriting Association. The board chose Dean Bunch of Tallahassee for a four-year term on the Supreme Court’s Judicial Ethics Advisory Committee. The board appointed Mary E. Borja of Clearwater, Rafael E. Martinez of Orlando, Henry Lee Paul of Tampa, Teresa J. Reid Rambo of Gainesville, and L. Norman Vaughn-Birch of Sarasota to four-year terms on the Supreme Court’s Commission on Professionalism. The board nominated Nancy McClain Alfonso of Zephyrhills, Thomas A. Cloud of Orlando, Richard B. Collins of Tallahassee, Barbara J. Pittman of Tampa, Scott N. Richardson of West Palm Beach, and Alan S. Wachs of Jacksonville to the Supreme Court for two five-year vacancies on the Florida Board of Bar Examiners.

24. Rules Committee Report
Committee Chair Steve Echsner presented five items on first reading:

- Rule 4-1.7 Conflict of Interest; Current Clients; (relationship): Within subdivision (d), clarifies that family relationship is by blood or marriage.
- Rule 7-1.4 Definitions: Clarifies that when the lawyer is acting as a fiduciary it must be in connection with a lawyer-client relationship for the misappropriation to be considered a reimbursable loss. Adds comment language.
- Rule 7-2.2 Investigations: Gives the Clients' Security Fund Committee the authority to request a subpoena when necessary to investigate a claim and sets forth the procedure for the issuance of the subpoena.
- CSF Regulation B 1 Claim Prerequisites: Amends time period in which a claim must be filed to within 2 years after the date the discipline becomes final or 2 years after the date of the lawyer's death, allows claims filed outside of the time period to be considered for good cause shown, adds the claimant attempting to exhaust remedies as good cause, deletes language that is no longer relevant with the change.
- CSF Regulation C 3: Clarifies that if the lawyer is not acting in a lawyer-client relationship, the claim will ordinarily be denied. Deletes unnecessary language.

Echsner said the committee is considering an amendment to Rule 4-1.5(d) on nonrefundable fees in light of receiving input questioning whether fees should be called nonrefundable when they are still subject to excessive fee rules. The committee has had extensive input from Bar members, particularly criminal defense lawyers, and Echsner said he hopes the committee has a recommendation by the board’s July meeting.

25. Executive Committee Appointments
The board elected board members Ray Abadin, David Prather, and Ed Scales to the Executive Committee for the 2012-13 fiscal year.

26. Disciplinary Procedure Committee Report
Chair-elect Dennis Kainen presented one item on first reading – Rule 3-4.1 Notice and Knowledge of Rules; Jurisdiction over lawyers of other states and foreign countries: The proposed amendment would require Florida to notify European Union countries of Florida
discipline of attorneys licensed in their jurisdiction(s), where such information regarding foreign licensing is made known to Florida Bar staff before or at the time of such discipline.

On another issue, Kainen said the Supreme Court has asked the Bar to come up with a straightforward procedure to give clients access to their monies that are frozen in trust accounts when the court places an attorney on emergency suspension. The committee, he said, is working on that issue.

27. Special Committee on Lawyer Referral Services
Chair Grier Wells reported that the committee is working on its final report and hopes to have its last meeting at the June Annual Convention.

28. President-elect’s Report
President-elect Gwynne Young requested and the board approved the list of standing committee chair and vice chair appointments for the 2012-13 Bar year. She also encouraged board members to take their liaison duties to Bar sections and committees seriously saying it facilitates communications between the board and various Bar entities. Young praised President Hawkins’ leadership for the past year, noting the Bar’s success in the Legislature, in improving communications with members and the public, working to improve the Bar’s grievance system, and in working closely with the Supreme Court.

29. Comments for the Good of the Order
Retiring board members Alvin Alsobrook, Sean Desmond, and Susan Healey talked of their friendships and experiences on the board.

30. President’s Report
President Hawkins reminded the board of the importance of its duties, and expressed appreciation for his opportunity to lead the Bar. He praised the leadership abilities of President-elect Young and President-elect Designate Pettis.

31. Time and Place of Next Meeting
There being no further business, President Hawkins adjourned the meeting at 4:23 p.m. The next board meeting will be July 27 at the Renaissance Eden Roc Hotel in Miami Beach.
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