

Legal Review of Selected General Conference Legislation

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Nashville

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Three Areas of Focus

- Administrative Process for Involuntary Change of Clergy Status
- Judicial Council Petitions
- The Protocol Legislation

**ADMINISTRATIVE PROCESS FOR
INVOLUNTARY CHANGE OF
CLERGY STATUS**

In Decision 1383, the Judicial Council ruled the following administrative processes for the involuntary change of clergy status to be unconstitutional, null and void as of November 1, 2019:

- Involuntary Leave of Absence (¶354)
- Involuntary Retirement (¶357.3)
- Administrative Location (¶359)
- Discontinuance of Provisional Membership (¶327.6)

“**Absent specific provisions barring members of the Cabinet, Board of Ordained Ministry, Conference Relations Committee, and Administrative Review Committee from voting in the clergy session** on recommendations for involuntary change of status, the entire regulatory scheme lacks safeguards to guarantee an impartial process carried out by an independent body. The provisions in *The Book of Discipline of The United Methodist Church, 2016* setting forth the administrative process leading to involuntary leave of absence (§ 354), involuntary retirement (§ 357.3), administrative location (§ 359), and discontinuance from provisional membership (§ 327.6) violate the guarantees of a fair and unbiased process in §§ 20 and 58 and **are unconstitutional, null and void**. The effect of this ruling shall be prospective and shall not affect pending administrative cases that were filed prior to this date.”

Rather than allow annual conferences to adopt their own procedures to address the issue, even temporarily, the Judicial Council said,

“We defer to the General Conference as the legislative branch of the Church to fix these problems.”

It is important that delegates be prepared to adopt legislation to address the problem and to make the legislation effective as of the adjournment of General Conference.

Solutions to Decision 1383 Problem

Option 1: Amend GBHEM's petition number 20490-OM-¶361-G (ADCA, p. 1048) – Add after point 1, a new sub-point 2 that reads –

The Clergy Session votes on the recommendation of the Board of Ordained Ministry after hearing a report from the Administrative Review Committee (¶636). **Members of the Cabinet, Board of Ordained Ministry, Conference Relations Committee, and Administrative Review Committee shall not vote in the Clergy Session on recommendations for involuntary leave of absence (¶ 354), involuntary retirement (¶ 357.3), administrative location (¶ 359), or involuntary discontinuance from provisional membership (¶ 327.6)** (footnote to Judicial Council Decision 1383).

Option 2: Restore the administrative process to the process outlined in the 1992 Book of Discipline, which allowed for a trial on administrative matters, and make other changes to address fair process. It would involve approximately 52 changes to the Book of Discipline.

This option is illustrated by petitions beginning at page 1044 of the ADCA, including Petition 20487 at ADCA 1049.

Petition Number: 20487-OM-¶361.2g; Wilson, John - Pittsburgh, PA, USA for Western Pennsylvania Annual Conference.

Addressing the Principle of Legality—Clergy

Add new paragraph ¶ 361.2.g—Prior to the start of the administrative hearing by the conference relations committee the clergyperson may choose to have a trial. This choice must be made in writing and submitted to the chair of the conference relations committee prior to the start of the administrative hearing. The procedures are provided for in ¶¶ 2707-2713.

Rationale: This legislation addresses the principle of legality raised in JD 1366 by restoring language and procedures used prior to 1996 *Discipline*. This language was found to meet the principle of legality in Judicial Council Decision 351 and the provisions of ¶ 20 of the Constitution.

JUDICIAL COUNCIL PETITIONS

The United Methodist Church is in a time of growing awareness of the roles its institutions play in the life of the Church.

In the past, the role of the Judicial Council was less apparent. In the last 12 years, its profile has risen dramatically.

And with the rise in profile, more attention has been given to its rulings and procedures.

Judicial Council Memorandum 1390

IN RE: Request from the Council of Bishops for a Declaratory Decision on the Constitutionality, Meaning, Application or Effect of Certain Petitions Adopted as the Traditional Plan by the 2019 General Conference.

The Judicial Council issues no opinion in this matter. The votes of the Council Members were insufficient to declare unconstitutional any of the provisions before us. Our rulings on the constitutionality, meaning, application, or effect of the various provisions will await the specific facts of applications of these provisions in cases to come before the Council after January 1, 2020.

¶ 56.6 of the Constitution provides that the Judicial Council has this authority:

“To provide its own methods of organization and procedure.”

Yet the General Conference has enacted Chapter 7 (Judicial Administration) setting forth particular duties, responsibilities and authority of the Judicial Council pursuant to this provision in ¶ 56.5:

“To have such other duties and powers as may be conferred upon it by the General Conference.”

Thus, petitions to reform procedures of the Judicial Council are filed from time to time. And such petitions are before you again in 2020.

Petition Number: 20525-JA-¶56.6-C-G; Brooks, Lonnie - Anchorage, AK, USA.

Judicial Council to Open Proceedings and Publish Pleadings

Amend ¶ 56.6 as indicated herein following:

¶ 56. Article II.—The Judicial Council shall have authority: . . .

6. To provide its own methods of organization and procedure provided that as prescribed or limited by the General Conference the Judicial Council will provide for public access to briefs and arguments entered or made in any matter pending before it by ensuring that oral arguments shall be open to the public, including access to the media for audio and video real time distribution and will post all briefs submitted in accordance with the rules of the Judicial Council in electronic form on a site on the internet to which access is readily available to the public, except when confidentiality is required because of the nature of the matter at hand. The filing of briefs in electronic form as prescribed by the Judicial Council will be permitted in lieu of the submission of printed copies.

Rationale: In the spirit of openness, arguments presented to the Judicial Council should be made available to all United Methodists, regardless of their ability to get to the sessions, taking full advantage of current methods of communication. As is common in secular judicial processes, briefs and pleadings should be public documents.

Petition Number: 20355-JA-¶2608-G; Brooks, Lonnie - Anchorage, AK, USA.

Judicial Council to Open Proceedings and Publish Pleadings—Implementation

Following existing ¶ 2608.2 insert a new ¶ 2608.3 as follows:

¶ 2608.3 Sessions of the Judicial Council held for the purpose of receiving oral argument on any matter pending before it shall be open to the public, including access to the media for audio and video real time distribution, except when such matter requires confidentiality, as indicated in ¶¶ 2706.7 and 2713.5 as determined by the president of the Judicial Council. A session that might be closed in accordance with this provision may be open with the consent of all parties to the proceeding. In addition, all briefs submitted in proper order as determined by the rules of practice and procedure of the Judicial Council will be posted on the internet for public access except when such matter requires confidentiality, as indicated in ¶¶ 2706.7 and 2713.5 as determined by the president of the Judicial Council..

New ¶ 2608.3 shall be effective if and when the con constitutional amendment proposed herein to ¶ 56.6 is certified by the Council of Bishops.

Rationale: In the spirit of openness, arguments presented to the Judicial Council should be made available to all United Methodists, regardless of their ability to get to the sessions, taking full advantage of current methods of communication. As is common in secular judicial processes, briefs and pleadings should be public documents.

THE PROTOCOL LEGISLATION

In order for the General Conference to consider the Protocol Legislation, it has been forwarded to the Commission the General Conference pursuant to ¶ 507.6.

The protocol legislation is “originating from an annual conference session held between 230 and 45 days prior to the opening session of the General Conference. ...”

It has been adopted and/or otherwise “originated” by the Philippines Annual Conference Cavite, the Sierra Leone Annual Conference, and the Michigan Annual Conference.

The Council of Bishops is submitting a request for declaratory decision as to the constitutionality of the Protocol Legislation.

The COB hopes the Judicial Council will hear the request for declaratory decision during its April session.



The preamble to the legislation addresses legal issues likely to be raised:

b) Authority

Under ¶ 16 of the Constitution, the General Conference has “full legislative power over all matters distinctively connectional.” The impasse over the nature and condition of the inclusion of LGBTQ persons arises from deep theological disagreements and is impeding the work of the Church. An impasse that has impeded the work of the Church for so long resulting in an agreement to separate qualifies as a distinctively connectional issue.

The General Conference's legislative power extends not only to the subject matters listed in ¶¶ 16.1-15 of the Constitution, but **to “such other legislation as may be necessary, subject to the limitations and restrictions of the Constitution of the Church.” (¶ 16.16)**. This legislative power includes formalizing all ecumenical relationships, and providing for the organization, promotion, and administrative work of the Church outside the United States (¶ 16.4).

In addition, the Judicial Council has already held that annual conferences have the **right under ¶ 33 of the Constitution to vote to withdraw** from The United Methodist Church, but **this right is subject to the General Conference's authority under ¶ 16.3 and ¶ 33 to regulate the process and set conditions for an annual conference to separate** from The United Methodist Church (Judicial Council Decision 1366). **A decision** by a central conference or annual conference **to separate** from The United Methodist Church to form or join a **New Methodist Denomination shall include all its local churches unless a local church** (or an annual conference within a central conference) **affirmatively votes to stay.**

When an Annual Conference is remaining in The United Methodist Church, **allowing local churches to separate on essentially the same terms and conditions is a distinctly connectional issue**, and is consistent with the General Conference's authority to identify the circumstances in which the denomination's beneficial interest in local church property may be relinquished **without necessarily requiring a majority vote of the annual conference members** (e.g. ¶ 2540, ¶ 2541 and ¶ 2548).

Any **certification** required in this paragraph is provided for in ¶¶ 45-49 and 403*f* and is **ministerial and administrative only**; it **does not delegate any power** to the Council of Bishops, a College of Bishops, or a resident bishop.

New Methodist Denomination shall mean any entity that meets the criteria in ¶ 2556.2.

a) Conditional Qualification

The United Methodist Council of Bishops **shall conditionally recognize** as a **New Methodist Denomination**, with which local churches and annual conferences may opt (by vote or default) to align, any proposed association of local churches, annual conferences, or central conferences **that meets all of the following criteria:**

1. The leadership group forming the new denomination must **register their intent to form** a **New Methodist Denomination** with the Secretary of the Council of Bishops **by May 15, 2021**.

2. The New Methodist Denomination **must propose a distinct legal existence**, reflecting its polity, **through incorporation of the New Methodist Denomination** or incorporation of an administrative entity that is recognized under the applicable laws where it is organized.

3. The **New Methodist Denomination must propose to follow doctrinal standards** consistent with the Articles of Religion of The Methodist Church, the Confession of Faith of the Evangelical United Brethren Church, and the General Rules of the Methodist Church, as set out in ¶ 104 of the *Book of Discipline*.

4. The **New Methodist Denomination must propose** a definite and distinct **ecclesiastical governance structure**.

5. The **New Methodist Denomination** must have **written expressions of intent to align from a minimum of 100 United Methodist local churches**, regardless of jurisdiction or geography, inside or outside the United States, **that have voted** under this paragraph or otherwise declared their intent to end their connectional relationship with The United Methodist Church to form or join together with others to form a New Methodist Denomination. It **may also include new local churches formed by members who have left United Methodist local churches**.

4. Process of alignment in the United States

a) Annual Conferences

An annual conference may, **by a vote of 57 percent of the lay and clergy members present and voting at a regular or called session**, choose to separate from The United Methodist Church to form or join a New Methodist Denomination. The annual conference shall consider this decision **upon motion from the floor that is supported by one-fifth of its lay and clergy members present and voting or may do so through its normal processes**. The annual conference may also call a special session for this purpose upon motion from the floor or through its normal processes. **If the annual conference does not vote to separate by July 1, 2021, it shall by default remain part of The United Methodist Church.**

c) Local Churches

1. Local churches in the United States that **disagree with their annual conference's decision to separate** from The United Methodist Church **or that wish to make an earlier decision to separate** from The United Methodist Church may, by vote of those professing members present and voting at a regular or called church conference, choose, as applicable, to remain in The United Methodist Church or to separate and form or join a New Methodist Denomination. **The church council or equivalent body of each congregation shall determine in advance whether to require a simple majority or two-thirds vote for such a decision.** A vote on a motion to opt for a different affiliation from that of the annual conference shall occur in a church conference held not more than 60 days after the request for such a vote is made by the church council or the pastor to the district superintendent. Notwithstanding other provisions in the *Book of Discipline*, such church conferences shall be held in consultation with the district superintendent, who shall without exercising discretion authorize such church conferences according to the process laid out in ¶ 246. **Local churches not taking a vote by December 31, 2024, shall by default remain in the denomination of their annual conference.** If a church votes to affiliate with a New Methodist Denomination that fails to be certified according to the provisions of ¶ 2556.3c, then the local church will remain part of the post separation United Methodist Church.

The ¶ 41 Issue

¶ 41 provides as follows:

“1. A local church may be transferred from one annual conference to another in which it is geographically located upon approval by a two-thirds vote of those present and voting in each of the following:

- a) The charge conference;
- b) The congregational meeting of the local church;
- c) Each of the two annual conferences involved.

...

When an Annual Conference is remaining in The United Methodist Church, **allowing local churches to separate on essentially the same terms and conditions is a distinctly connectional issue**, and is consistent with the General Conference's authority to identify the circumstances in which the denomination's beneficial interest in local church property may be relinquished **without necessarily requiring a majority vote of the annual conference members** (e.g. ¶ 2540, ¶ 2541 and ¶ 2548).

The issue of whether ¶ 41 requires a vote of the annual conference for a local church to separate or whether ¶¶ 16 and 33 allow the General Conference to permit separation without a vote of the annual conference will be one focus of the Judicial Council when it considers the COB's request for declaratory decision.

Judicial Council Decisions on Construction & Interpretation of Book of Discipline

“It is the **duty** of judicial bodies in determining rights under constitutions **to determine the intention of the makers** or framers of the Constitution. If there are apparent conflicts, it is the **duty** of judicial bodies **to harmonize them if this can reasonably be done without distorting the meaning of any provision so as to give effect to every portion of the instrument under consideration.** A judicial body may not override a plain constitutional provision however objectionable it may seem to the parties interested. Where the language is plain and ambiguous, no room is left for construction.”
Judicial Council Decision No. 132 (1956).

‘Certain basic rules of statutory interpretation guide our reasoning of the question posed to arrive at the intention of the General Conference. The guideline rules we follow in this matter are: a) **Acts in relation to the same subject or objection should be construed together.** b) **Construction or interpretation should be avoided which would render part of a law inoperative, or purposeless, unless manifestly required.** c) Judicial construction or interpretation of a law should be prospective for application, but not retroactive.” **Judicial Council Decision No. 331 (1970).**

c) Local Churches

...

3. Local churches are **permitted to take such votes prior to their annual conference's vote at any time following the adjournment of the 2020 General Conference**, after appropriate notice (see ¶ 246) to all members.

4. Local churches **disaffiliating** from The United Methodist Church **and not becoming part of a New Methodist Denomination** shall not be covered by this ¶ 2556.4 and **shall instead use the process established by ¶ 2556.12**.

d) Approval

Regardless of other provisions of the *Book of Discipline* **that are not in the Constitution**, a local church's decision to separate from The United Methodist Church to form or join a New Methodist Denomination formed under this ¶ 2556.4 **does not require approval by a vote of the annual conference members**, and the **annual conference** or its leaders **shall not hinder** churches from taking all steps necessary to effectuate that decision as long as the conditions for separation specified in this ¶ 2556 are fulfilled.

Other Provisions Generally

5. *Transitional Operation*

a) Central conferences, annual conferences, and local churches that vote to separate from The United Methodist Church in order to form or join a New Methodist Denomination **shall continue to function under The United Methodist Church until January 1, 2021, or the Separation Date, whichever is later.** Apportionments owed by virtue of their affiliation with The United Methodist Church shall be expected to continue to be paid to The United Methodist Church through December 31, 2020, or the Separation Date, whichever is later. As of January 1, 2021, or the Separation Date, whichever is later, they shall cease to be under the authority of The United Methodist Church, and the New Methodist Denomination shall assume responsibility for any connectional expenses within its denomination.

6. Clergy

... b) *Clergy Wishing to Join a New Methodist Denomination*—Clergy wishing to cease their membership in The United Methodist Church to join a New Methodist Denomination shall notify their current district superintendent, their bishop, and the leadership of the New Methodist Denomination they wish to join. **Clergy in the United States must make such notification prior to July 1, 2021.** Clergy in the central conferences must make such notification prior to July 1, 2022. **Clergy in local churches that vote to separate following these deadlines may notify their district superintendent of their desire to join the New Methodist Denomination within 60 days after such vote.** Clergy persons shall not be required to withdraw from The United Methodist Church pursuant to ¶ 360.1. The initial transfer can be enacted by transferring to an annual conference, if any, that has joined a New Methodist Denomination or by transfer directly to a New Methodist Denomination. A transfer notation shall be made on the credentials of any clergy person who decides to transfer from The United Methodist Church to join a New Methodist Denomination formed under this paragraph with an effective date of transfer clearly noted on the credentials. Transfer to a New Methodist Denomination shall be effective upon written notice from the credentialing body in the New Methodist Denomination that the clergy person has met the standards for ministry in that denomination and has been received as ordained clergy. **After the initial deadlines, clergy may transfer to New Methodist Denominations if provided under an ecumenical agreement and the processes of the New Methodist Denomination they wish to join.**

7. Financial Issues Related to Entities Separating from The United Methodist Church to Form or Join a New Methodist Denomination.

... b) Property, Assets, and Liabilities of Annual and Central Conferences that Separate

(1) *General*—Annual conferences or central conferences that vote to separate from The United Methodist Church under the provisions of ¶ 2556, and thereafter form and/or join a New Methodist Denomination, **shall retain all of their property, assets, and liabilities, subject to the procedures in this subparagraph.** In addition, all **local churches** within any such annual or central conference that opt (by default or vote) to remain associated with that conference (as opposed to voting to remain within The United Methodist Church) **shall likewise retain all of their assets and liabilities, subject to the procedures in this subparagraph.** The assets and liabilities covered include, but are not limited to, those held directly by the relevant central conferences, annual conferences, and local churches, as well as all assets and liabilities held by their districts and any of their Controlled Entities.

(2) *Separation Agreements*—An annual conference or central conference separating from The United Methodist Church under ¶ 2556 **must enter into a Separation Agreement with the General Council on Finance and Administration that does whatever is necessary to legally effectuate the separation** in accordance with this ¶ 2556, including (without limitation) acknowledging that the separating annual conference or central conference, along with all local churches that have opted (by vote or default) to remain aligned with any such conference, are retaining both legal title to their respective property and assets and full responsibility for all of their liabilities. **The New Methodist Denomination the annual conference or central conference is forming or joining shall be an additional party to this agreement.** Working with the New Methodist Denomination, the General Council on Finance and Administration shall develop a standard form for such Separation Agreements, in consultation with Wespath regarding pension and benefit matters. The purpose of these agreements is to ensure the full and complete retention of all assets and liabilities by the separating entities, or in circumstances in which a new legal entity is being established, transfer (by valid assignment and assumption agreements or others) to an entity that is capable of assuming and satisfying all such liability, and by providing appropriate protections for units of The United Methodist Church from any claims relating to those assets or liabilities. The standard form and individual Separation Agreements shall be consistent with ¶ 2556.7 and cannot impose any financial obligations or restrictions that are not contemplated by this subparagraph but may include terms and conditions necessary to effectuate the intent of this subparagraph.

c. *Indemnification; Insurance*—The **separating annual or central conference** and the New Methodist Denomination **shall indemnify and hold harmless, and it has a duty to defend, all units of The United Methodist Church and their Affiliated Institutions as well as their officers, directors, agents, and employees from any liability or costs (including reasonable attorney fees) resulting from any claim, action, or cause of action that may exist, or that may arise in the future.** Without limiting the authority of the General Council on Finance and Administration under ¶ 2556.7b(3), the indemnification shall include, but not be limited to (i) the acts or omissions of any clergy or other employees, volunteers, or others acting on behalf of the annual conference or central conferences and their respective entities or local churches (except for clergy who choose to remain with The United Methodist Church), based upon acts or omissions that occurred prior to the Separation Date; (ii) any other liabilities assumed under the Separation Agreement, including but not limited to claims by third-party creditors; and (iii) liability or cost incurred as a result of any claim, action, or cause of action for damages to persons or property resulting from the annual or central conference's failure to take all necessary steps as required by this ¶ 2556.7. **The annual or central conference, and the New Methodist Denomination, shall maintain insurance coverage with The United Methodist Church entities as identified in the Separation Agreement as additional named insured, against all covered claims described in this paragraph.**

e. *GCFA Approval*—**All provisions in the Separation Agreement relating to the retention or assumption of liabilities, including the amount and type of insurance, shall be to the satisfaction of the General Council on Finance and Administration**, which satisfaction shall not be unreasonably withheld. Notwithstanding the foregoing, provisions of the Separation Agreement regarding the assumption or plan sponsorship and pension liabilities shall be to the satisfaction of Wespath, and Wespath may require separate execution by the annual conference, New Methodist Denomination, or both, of new pension plan adoption agreements incorporating new plan documents, and other benefit plan adoption agreements.

c) Local Church Property, Assets, and Liabilities

...(2) *Retention of Assets and Liabilities*—A **local church** that separates under the provisions of ¶ 2556.3d or ¶ 2556.4c to form or join a New Methodist Denomination **shall retain all of its property, assets, and liabilities, subject to the procedures in this subparagraph**. Where real property is owned and titled by an annual conference or another entity than the local church, such real property shall remain in possession of the annual conference or other entity that owns it, unless the local church and the annual conference or other entity negotiate a change in ownership.

(3) *Pre-Separation Obligations*—The local church, prior to its separation, shall be expected to **maintain its connectional responsibilities**, including, but not limited to paying apportionments and direct billed benefit costs from the annual conference, **through the Separation Date**.

(5) *Role of the Annual Conference*—The approval by vote of the annual conference members shall not be required for a local church to separate under this subparagraph in order to form or join a New Methodist Denomination. **The board of trustees of the applicable annual conference, with the advice of the bishop and the annual conference chancellor, annual conference treasurer, and annual conference benefits officer, shall have the responsibility to negotiate the terms of the separation agreements with local churches.** The annual conference shall ensure that the separation agreements address any issues unique to an annual conference or a particular local church or applicable laws. In such negotiations, the annual conference trustees, in consultation with the bishop and above-mentioned annual conference officers, may develop additional standard terms or conditions so long as they are consistent with the standard terms required in this paragraph and the form developed by the General Council on Finance and Administration, and do not impose financial or other burdens, conditions, or obstacles to separation other than those in this ¶ 2556.7.

h. *Indemnification; Insurance*—In further consideration for the transfer of property, **the local church and the New Methodist Denomination shall indemnify and hold harmless, and have a duty to defend the annual conference, its Affiliated Institutions, and units of The United Methodist Church, as well as their officers, directors, agents, and employees from any liability or costs (including reasonable attorney fees) resulting from any claim, action, or cause of action that may exist, or that may arise in the future.** Without limiting the authority of the General Council on Finance and Administration under ¶ 2556.7c(4) regarding the standard form, the indemnification shall include, but not be limited to (i) the acts or omissions of any clergy or other employees, volunteers, or others acting on behalf of the local church (except for clergy who choose to remain with The United Methodist Church), based upon acts or omissions that occurred prior to the Separation Date; (ii) any other liabilities assumed under the Separation Agreement, including but not limited to claims by third-party creditors; and (iii) liability or cost incurred as a result of any claim, action, or cause of action for damages to persons or property resulting from local church's failure to take all necessary steps as required by this subparagraph. **The local church and/or the New Methodist Denomination shall maintain insurance coverage, with the annual conference and The United Methodist Church entities identified in the Separation Agreement as an additional named insured, against all covered claims in this paragraph.** Such insurance shall include the amount and type of insurance which shall be to the satisfaction of the annual conference, which satisfaction shall not be unreasonably withheld.

12. Local Churches Disaffiliating and not Joining a New Methodist Denomination.

a) Application—The terms of this ¶ 2556.12 shall **supersede those of ¶ 2553**, effective as of the close of the 2020 General Conference. If a local church votes under this ¶ 2556.12 **to separate from and end its connectional relationship with The United Methodist Church, and to not form or join a New Methodist Denomination** (a “Disaffiliation”), the following provisions shall apply.

b) Time Limits—The **deadline for a local church to vote to end its connectional relationship under ¶ 2556.12 and disaffiliate is December 31, 2024.**

t) Annual Conference Approval—Upon the recommendation of the annual conference board of trustees to approve a Disaffiliation Agreement, **the annual conference may, but is not required to, permit a local church to separate under the terms of that Disaffiliation Agreement, upon approval by a simple majority of annual conference members present and voting.**

¶ 2556.1

f) Severability

If any provision in ¶ 2556 is determined to be invalid or unconstitutional, that decision shall not affect the remainder of the provisions.

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