KANSAS FAIR COURTS LEGISLATION 2020

The introduction of this legislation to the State of Kansas is to promote Constitutional and fair judicial processes and proceedings in the Kansas courts. That the Constitutional judicial process is the foundation for the protection of the United States citizen's Constitutional Amendments. That law has purpose and value to citizens when administered in a Constitutional judicial process and proceedings of courts.

Failure of either the Constitutional judicial process or proceedings invalidates both the Constitution and the laws of the United States. Judicial proceedings in and of application of law is defined, and any failure in judicial proceedings can be objected, or noted within the proceedings for correction, or in severity, with appeal.

Judicial process has two sources of error. The first is harmless error of the judge in their human imperfection, as all humans. That the facts and truth of the case may not have been discovered for a fair judicial decision, and thus results in injustice in the court's decision. The second error being judicial structural error from non-harmless error of the judge or jury in the decision and or judgment. That error which is not harmless is structural error of the judicial.

Judicial harmless error can be reduced with the appointment and voted retention of qualified and effective judges dedicated to truth, fact, and administration of justice with applicable Constitutional supported law. Community involvement can help. First Amendment Rights of communicating the legal intelligence, fairness, or unfairness of judges could create a judicial information resource for improved nonpartisan selection, informed retention voting, or citizen involvement in removal of a judge.

Constitutional judicial structural error is more difficult to reduce. Judicial structural error is anything that is not harmless error and prevents truth and fact from the process of the court proceedings. Bias, prejudice, and interest of the judge is the most obvious structural error. All efforts must be made by judges to follow the Code of Judicial Conduct Canons that were written to ensure fair Kansas courts. The Code of Judicial Conduct Canons and the Pillars of Professionalism for Bar members is followed by most judges.

The problem is blatant violation of Canons and Kansas statutes, and when all judicial actions that would ensure fair courts and public trust and faith in the Kansas judicial system are rebuked.

Better selection and retention of good judges, or immediate removal of bad judges is the obvious improvement to judicial process. Unfortunately, when you are a litigant in the judicial process with proceedings, and judicial structural error is obvious, immediate remedy is needed.

The Kansas Fair Courts legislation contains changes to current Kansas Statutes and new law. This legislation proposes changing the judicial retention election affirmative vote requirements (K.S.A. 20-2908), and would then allow Kansas voters to remove a judge. A second law is proposed for alcohol, drug, and mental wellness testing of all judges in Kansas. The third legislation will allow a change, or "pure" peremptory judicial challenge, of a domestic family court judge without motion of cause, prima fascia, or motion for recusal. The fourth law is to increase effectiveness of Kansas law enforcement, to help prevent frivolous legal actions and litigation derived from false reporting, and to allow judges an opportunity to decrease perjury in Kansas courts with immediate sanctions, penalties, or fines.

Judicial Retention Election - Modification of Voting Percentage Requirements

Article 29. - NONPARTISAN SELECTION OF JUDGES OF THE DISTRICT COURT

20-2908.Same; retention of incumbent judge; declaration of candidacy; rejection by electors, vacancy; retention, term of office; eligibility for office after rejection; applicability of election laws. Following the approval of nonpartisan selection of judges of the district court in a judicial district as provided in K.S.A. 20-2901 and amendments thereto, there shall not be an election or reelection of a judge of the district court at any succeeding general election, but any judge of the district court in the judicial district whose term of office expires on the second Monday in January next following any such succeeding general election shall be eligible for retention in office as provided in this section..... If a declaration is filed, the judge's name shall be submitted at the next general election to the electors of the judicial district, if the judge is a district judge, or to the electors of the county, if the judge is a district magistrate judge. The name shall be submitted on a separate judicial ballot, without party designation, reading substantially as follows:
"Shall (Here insert name of judge.) (Here insert the title of the court.) be retained in office?"

[Change of election percentage for judicial retention.]

If ~~(*a majority*)~~ ***forty percent***

of those voting on the question vote against retaining the person in office, the position or office which the person holds shall be vacant upon the expiration of the person's term of office; otherwise, unless removed for cause, the person shall remain in office for the regular term of four years from the second Monday in January following the election. At the expiration of each term, unless by law the person is compelled to retire, the person shall be eligible for retention in office by election in the manner prescribed in this section.

[Change of election percentage for judicial retention.]

Wherever ~~(*a majority*)~~ ***forty percent***

of those voting on the question of retaining any judge in office vote against retention, the secretary of state, following the final canvass of votes on the question, shall certify the results to the chief justice of the supreme court. Any judge who has not been retained in office pursuant to this section shall not be eligible for nomination or appointment to the office of judge of the district court in the judicial district prior to the expiration of four years after the expiration of the judge's term of office.

Election laws applicable to the general elections of other state officers shall apply to elections upon the question of retention of judges of the district court pursuant to this section, to the extent that they are consistent with the provisions of this act.

BENEFITS and DISCUSSION - Judicial Retention Election - Modification of Voting Percentage

Changes to K.S.A. 20-2908

A *judicial retention* election (or *retention* referendum) is a periodic election process in those jurisdictions whereby a judge is subject to a referendum held at the same time as a general election. Currently, a judge is removed from office if a majority (fifty percent) of votes are cast against *retention.*

While very rarely successful, efforts to remove state Supreme Court justices or District justices due to poor and unjust performance or policy disagreements are starting to become more common.

In *retention elections*, a judge stands for a "yes" or "no" *vote*; no challengers may run in the *elections*.

Judges in Kansas may be removed in one of four ways:

Judges may be removed by impeachment and conviction, as prescribed in Article 2 of the Kansas Constitution.

Judges of the court of appeals and district court may be removed by the supreme court on the recommendation of the commission on judicial qualifications. The commission on judicial qualifications is authorized to investigate allegations of misconduct and to recommend a formal hearing. If the charges are proven by clear and convincing evidence, the commission may admonish the judge, issue a cease-and-desist order, or recommend to the supreme court public censure, suspension, removal, or compulsory retirement of the judge.

Supreme court justices are subject to retirement upon certification to the governor (after a hearing by the supreme court nominating commission) that the justice is so incapacitated as to be unable to perform his duties.

Judges must receive a majority affirmative votes in retention elections to remain in service.

An independent judiciary is fundamental to the principle of equal protection under the law. There must not be any substitute for our constitutionally established. separate, independent and co-equal judicial branch of government. Fair, objective, impartial courts are the foundation stones of our form of government and provide checks and balances against the legislative and executive branches.

Many citizens in Kansas want to restore the right to vote for judges in primary elections. There is a rapidly growing Kansas group of supporters in opposition to any legislative system that replaces the voters' ability to elect judges. The current selection and election system (Kansas Constitution Article 3) allows lawmakers, attorneys, and even the current judges to pick the new judges who will tilt the scales of justice in their personal or political favor.

Kansas Constitution Article 3 §6: District courts:

The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be

rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by such nonpartisan method of selection.

Our judges should be fair, independent, and absent of political or personal agendas.

Kansas citizens must hold the judges accountable for their actions, performance, and behaviors. In nonpartisan judicial selection process the retention election voting is the only probable way to remove a judge, and this is VERY UNLIKELY with the current law.

Current statistics of previous judicial retention elections show that the current law K.S.A.20-2908 does NOT allow even a remote chance of removing any VERY BAD judges.

Retention elections combined with the assisted appointment method, are criticized for not giving Kansas voters a more direct voice in choosing the judiciary. Once judges are appointed to the bench, they are essentially being given a life term position, since voters are unlikely to remove a judge by retention election.

Kansas 2018 General Election - District Court Judge Official Vote Percentages

1st Lowest 2018 Retention vote in State of Kansas
First Judicial District Court Judge Michael Gibbens - "YES" 18,444 64.23%
2014 Retention vote - "YES" 13,947 63.6 % 2014 (same judge)

2nd Lowest 2018 Retention vote in State of Kansas
First Judicial District Court Judge Dan K Wiley - "YES" 18,723 65.19%
2014 Retention vote - "YES" 13,874 63.1 % 2014 (same judge)

3rd Lowest 2018 Retention vote in State of Kansas
First Judicial District Court Chief Judge David J King - "YES" 18,680 65.24%
2014 Retention vote - "YES" 13,698 62.5 % 2014 *(same judge)*

In New Mexico two district judges of the 86 judges running for retention in 2014 did not receive the required 57 percent of affirmative votes to be retained.

Colorado Revised Statutes requires 55 percent of affirmative votes for judicial retention.

Illinois has the highest retention threshold in the nation of 60 percent affirmative votes. Still no Cook County judge has been voted out of office in 28 years. Once in those years a judge on the ballot was awaiting sentencing after being convicted of mortgage fraud, yet they refused to abandon the election or their judicial seat.

There is broader effort by groups of voters campaigning to bring attention on judicial retention elections, which typically get little attention. The three lowest election percentage retention judges did not even get near removal in the State of Kansas. Yet, one of the judges is the source of outrage by the controversial comments he made which led to the imminent removal by his retirement.

All efforts in Kansas to remove any judge for nearly any reason cannot be achieved with the current K.S.A. 20-2908 statues. The judicial retention election non-affirmative vote percentage must be DECREASED to 40 percent, or Kansas voters will never remove ANY judge.

End of Discussion of Judicial Retention - Modification of Affirmative Vote Percentage

Judicial Alcohol, Drug, and Mental Competency Testing

This legislation will require the regular and random alcohol, drug, and mental competency testing of Kansas judges and magistrates in control of Kansas Constitutional judicial processes and proceedings.

Judicial physical, mental, and psychological competency requirements; duties of judge.

(a) In any court that a judge or magistrate being in control of any processes or proceedings of a case, shall have completed a State approved alcohol and drug test. The test results for alcohol and drugs will be evaluated within the Kansas legal limits as defined for Kansas driving impairment and Kansas drug rehabilitation levels.

(b) In any court that a judge or magistrate being in control of any processes or proceedings of a case, shall have completed a State approved screening for mental dementia, memory loss, and psychological competency. The psychological evaluation screening must be performed by a Kansas certified psychologist.

(c) Dementia and memory screening, and psychological competence of the judge will be evaluated and approved with a pass or fail rating by a Kansas certified psychologist. Psychological test used are defined in Kansas mental competency evaluation civil law.

(d) Failure to complete or receive satisfactory evaluation as defined in (a) (b) (c), results in immediate loss of judicial privileges.

1. Failure to comply and complete, or to meet requirements of physical alcohol and drug testing, and mental performance evaluation tests, results in immediate suspension of judicial duties of court processes and proceedings.

2. Duties of judicial position, responsibilities, and privileges resume after testing and or results are within requirements, and approved by chief judge or supervisory judge.

3. Within guidelines established by statute, and rule of the supreme court or the district court, the chief judge of each district court, or supervisory judge of subordinate courts, shall be responsible for and have general authority to resolve or discipline to effect compliance of judges.

4. Designated district chief judge shall have general control over the assignment of cases within the district, subject to the loss of privileges of any subordinate judges, due to physical or mental deficiencies, competencies, or noncompliance.

BENEFITS and DISCUSSION - Judicial Alcohol, Drug, and Mental Competency Testing

The failure of either the Constitutional judicial process or proceedings violate the Constitution and invalidates the laws of the United States. Errors are structural when they defy harmless error analysis because they affect the framework within which the trial proceeds. In *State v. Womelsdorf*, 47 Kan. App. 2d 307, 323, 274 P.3d 662 (2012), the court ruled that the lack of an impartial judge is a structural error.

Bias, prejudice, and interest of judges is the greatest concern for judicial structural error. Canons and other law afford the possibility of diminishing this source of judicial process error. Physical, mental, and substance issues can not be overlooked to ensure fair Constitutional judicial process and proceedings in Kansas.

A litigant is entitled to have their case decided by a judge who can distinguish and approach the facts in a detached and objective manner for the protection of the integrity and dignity of the judicial process; free from judicial bias, prejudice, interest, and any structural error.

The relinquishing control or leaving the court proceedings, physically or mentally, are judicial structural error.

Relinquishing control can occur with the mental and physical condition of a judge during proceedings. The physical and mental state of a judge will effect the fairness, integrity, and dignity of the judicial system. Legislation must be considered for detecting and addressing physical and mental impairment of judges, and possibly for jury selection.

In Kansas Supreme Court case, *State v. Beuerman*, 59 Kan. 586, 53 P. 874 (1898), during argument, the presiding judge of a jury trial left the bench, went into an adjoining room, closed the door behind him, and remained there for about 10 minutes. The Supreme Court admonished that a judge cannot relinquish control of the trial.

In a civil case, the presiding judge of a jury trial called the clerk to preside over arguments, saying he had other matters to attend to. The Kansas Supreme Court stated "it ought not to require very much of a showing of prejudice to authorize a new trial" and the judgment was reversed. *Fiechter v. Fiechter*, 97 Kan. 166, 167, 155 P. 42 (1916).

Any judicial process or proceeding with a judge that is absent, asleep, intoxicated, impaired by drugs, or with dementia is an abomination to the United States Constitution and the values represented by our laws in the courts.

In about 1988, the Director of Airports Division of the Federal Aviation Administration (FAA) of the Central Region was considering drug testing all air traffic controllers working under his authority. The FAA director at that time was told that drug testing would be a violation of the controller's rights. That drug testing could be considered a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures.

Shortly after, on a Monday morning, without any prior notification, all air traffic controllers in the seven States the director had responsibility were tested. The FAA director would not allow the safety of anyone using the airports of his responsibility to be at risk of impaired air traffic controllers.

The benefits of aviation safety was gigantic compared to the very small cost of alcohol and drug testing of the air traffic controllers. Even the best pilots can not overcome the potential dangers of an impaired air traffic controller.

One might wonder how many lives did this FAA Airports director save. The United States citizens know that they are safer because of this man's resolve to do what he could for aviation safety.

Commercial pilots are not typically tested before each flight but they are tested at least once every six months during their physical evaluation. Every airline is also required to have a random drug testing program in place, so there's another layer of protection for aviation safety.

An amendment that would have required drug tests for legislators and judges was rejected by a Kansas House of Representatives committee on March 27, 2012. The House Federal and State Affairs Committee was looking at an amendment to House Bill 2686. The amendment would have tested all of the state's legislators, as well as the Supreme Court justices and Court of Appeals judges.

Currently, only the Governor, Lieutenant Governor and Attorney General are subjected to drug testing. Kansas representatives who recommended the amendment change, wanted to level the playing field, stating "The basic purpose of this (amendment) is just equality."

In the current drug addition epidemic in the United States it would be reassuring that the Kansas judicial courts are testing judges to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary.

The dignity of the court, the judge’s respect for fulfillment of judicial duties, for a proper concern for the burdens that may be imposed upon the judge, and for public confidence, all require that a judge not be impaired and subjugate to testing.

Any impaired pilot, air traffic controller, football referee, school bus driver, or judge is not acceptable if in service of others. The cost of testing is low and benefits are tremendous.

End of discussion of Judicial Alcohol, Drug, and Mental Competency Testing

Judicial Peremptory Challenge for Domestic Family Court

Judge removal without prima facie cause; right to fair family court judicial process.

(a) Each litigant in a domestic family court cases has the right to exercise one motion of judicial peremptory challenge to disqualify the judge without stating cause or filing an affidavit of cause. Prima fascia is not required and further motion or affidavit of cause is not required.

(b) The State Judiciary will assign a new judge without input from the parties. The litigant whose right was not exercised, may challenge the next assigned judge.

(c) One judicial peremptory challenge may be made by each party per two calendar years from date of case origination or date of exercising the right.

BENEFITS and DISCUSSION - Judicial Peremptory Challenge for Domestic Family Court

Motion to Recues verses Judicial "pure" Peremptory Challenge

The purpose of this discussion is consider the right of a litigant in domestic family court cases to disqualify judges without filing an affidavit stating cause, compared to current Canons and statutes for recusal.

Litigant's rights to change of judge in court processes and proceeding is currently by motion to recues. This is to "challenge a judge as unqualified to perform legal duties because of a possible conflict of interest or lack of impartiality." Cause must be stated then an affidavit filed within time specifications.

Current Kansas law is ineffective in cases where the judge's interest in the case prevents proper following of processes of Canon law and statues. The judge does not want to leave the case, due to their interest, bias, or prejudice in the case, and therefore interest in staying on the case.

The difficulty of exercising a motion of the right to disqualify or change a judge is in making the request within the strict statutory time limit. The time limits depend on various things including assignment rule or judicial system. The bias, prejudice, or interest may not be obvious in early trial proceedings.

A "pure" judicial peremptory challenge would give each party of a domestic case the right to exercise one judicial peremptory challenge in a single action case, and invoke the right to disqualify the assigned judge without specifying or providing any particular grounds or reasons. The current prima fascia requirements should be removed, and without further motion of cause within preemptive law time requirements.

If a judicial peremptory challenge is excercised, the State Judiciary assigns a new judge without input from the parties. The litigant whose right was not exercised may challenge the next assigned judge. One challenge may be made per two calendar years, due to some domestic cases lasting over eight years.

The difference between domestic family law courts and criminal courts is the main reason for a

judicial peremptory challenge. Family law court proceedings are not the same as criminal courts, and due process and the litigant's Constitutional rights are violated in domestic family courts. Family law judges generally and routinely practice civil rights abuses and cause due process to be violated. Unequal protection by the law is prevalent in domestic courts, and "Best interest of child" is not the outcome.

Judges complain they don't have enough time to handle the numerous family court cases, complain about budget cuts, and complain about needless litigation. Yet, the fault is largely the judges themselves who have created the problems that have lead to the family law courts being overwhelmed with destructive and useless litigation. Family law courts for the litigants and families are a disastrous and abusive environment with unbelievable violation of the Constitution and laws.

The judges are ultimately responsible for most of the problems. Many problems are caused by lying litigants. The judges should be upholding the law, ensuring that people's rights are not violated, and requiring reasonable proof of testimonies and allegations before they are acted upon. But in the United States today, that does not appear to be the function of family law judges.

Some judges really care about children and families, and others do not. Some judges decide that they have a certain result that they want, and then find and apply the facts or perjury for the applicable law to support a decision. A good judge will follow the facts, discover perjury (and prosecute perjury), and accurately apply facts to the relevant law, not the other way around.

Being a family law judge is difficult. Family law can be one of the most complicated legal areas. It is made much more difficult because of the strong emotions of many litigants in divorce or custody dispute.

Judges should be more litigant friendly and work to understand what is going on in their domestic family cases and why. If children are involved, discover what is in their best interest.

Good attorneys and good judges should be problem solvers. A good judge will meet with the attorneys and sometimes even talk to the litigants about an issue. Judges will usually do this in particular situations, or to resolve problems, unless the facts in a hearing or trial point to a different solution. Attorneys could then resolve an issue or a case after they have a meeting with the judge.

Judges who refuse to meet with attorneys or to discuss the case other than formally on the record in open court may be less effective. This is not a good thing. Sometimes an informal meeting in the judge's chambers can clear the air and work wonders in resolving a domestic family case.

When any judicial bias, interest, or prejudice is contaminating the court processes or proceedings, the litigious party that is damaged by the judge will continue court action if they can afford to pursue and secure their Constitutional rights. In a civil case, the Kansas Supreme Court stated "it ought not to require very much of a showing of prejudice to authorize a new trial" and the judgment was reversed. *Fiechter v. Fiechter*, 97 Kan. 166, 167, 155 P. 42 (1916).

In domestic family court, when a party files a motion to modify, the case stays with the same judge that ruled on the original dissolution and or custody. Family cases use a "one judge" rule. The theory behind the rule is that a judge that has familiarity with a case would be in the best position to consider modifications. But litigant parties may feel differently, especially those who feel they received less than fair consideration in the previous judgment. Consequently, the

modifications may proceed in a similar manner, and then again return at a later date to the court for continued litigation and costs to the State of Kansas.

Some judges, litigants, and legislators could postulate that abuse of judicial peremptory challenge would allow "judge shopping". The corollary is that the benefits are greater than the costs, and the specifics of the Statue or amendment would allow for the reduction of abuses by attorneys or litigants.

In a family custody case, if a father was giving testimony on the stand next to a judge and the father smelled alcohol, a judicial peremptory challenge would be the only possibility of restoring the judicial structural integrity of the court. No other possibility would probably remove the judicial structural error. Appeal of decision on judicial structural error due to the smell of alcohol of the judge would not happen.

At any point in a family court case, a litigant should be able to refresh the judicial oversight of the proceedings. Maybe the judge developed a bias, prejudice, or interest that can only be removed from the court process by a "pure" judicial peremptory challenge.

End of discussion of Judicial Peremptory Challenge for Domestic Family Court.

Lying to law enforcement.

(a) No person shall knowingly give verbal false information to law enforcement during legal verbal questioning, or to any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty of law enforcement.

(b) "Lying" is:

(1) False verbal statements intentionally spoken or verbally transmitted, to be used in making formal written statements and entered as legal reports;

(A) intentional false verbal reporting to a law enforcement officer, law enforcement agency, or state investigative agency;

(B) verbal communications to law enforcement that a particular person or persons committed a crime or committed misconduct, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information;

(C) speaking information of personal knowledge that knowing such information is false, and intending that the officer or agency shall act in reliance upon such information;

(D) any information spoken during the discharge of any official duty of law or law enforcement, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty.

(2) Provisions of this section do not supersede any law of false reporting, interference with law enforcement, perjury, obstruction, or criminal false communication.

(c) Lying to law enforcement as defined is:

(1) An unclassified misdemeanor;

(A) persons violating this section and amendments thereto, shall be fined not less than $30 and no court costs for the first offense within 12 months;

(B) persons violating this section and amendments thereto, shall be fined not less than $80 and no court costs for the second offense within 12 months;

(C) third and subsequent offense of persons violating this section and amendments thereto within 12 months, shall be fined not less than $150 and not more than $500 and no court costs;

(2) A citation for violation of this section shall be issued without citing the violation that initially caused the officer to effect the enforcement.

(d) No court shall report violation of this section to the department of revenue.

(e) In all prosecutions under this section the truth of the information allegedly falsely communicated shall be admitted as evidence. It shall be a defense to a charge of lying to law enforcement if it is found that such statements verbally spoken were true.

BENEFITS and DISCUSSION - Lying to law enforcement.

This discussion is to consider benefits to the State of Kansas for a law to give citation and punishment by fines for lying to law enforcement or agencies thereof. The cost to the State of Kansas for false statements made to law enforcement is tremendous. The verbal lies are reported, and then litigious actions or prosecution may be pursued, thus creating perjury in the court. The falsely accused respondent litigant must defend against lies. The falsely accused must hope to convince the court of innocence and overcome the perjury allowed from the original lying to law enforcement.

Many pathological liars are so convincing that law enforcement and even judges do not stop and evaluate the reality and truth. Many persecuted innocent litigants have battled to protect themselves from insane allegations that the court believes without evidence, just the lies and perjury are held as truth.

Without TRUTH there is NO LAW. Without truth there is no justice.

Any law that can in any way promote truth in the justice system and in courts is essential. Stopping any lies before they become documents that are entered as evidence in the court creating perjury is beneficial to justice, decreasing the frivolous and unjust litigious court proceedings.

If Kansas citizens experienced the injustice from lying that some litigants have lived and known, there would be fear of the Kansas judicial court system. Defendants or respondents are guilty until proven innocent of crimes created by pathological lying reported to law enforcement.

This simple law could decrease some of the false accusations that create abusive litigious court proceedings against the innocent, that have a high cost to the State of Kansas.

The benefits of monetary fines charged for violation of this law will set a precedence for Kansas citizen to value truth, and allow them to have more trust and faith in the Kansas judicial system. Truth is necessary for the application of Kansas law and to allow justice.

Law enforcement officers will have this law as a tool to investigate and more truthfully report incidents and crimes.

The monetary fines can be used to financially assist law enforcement, and to promote truth from citizens in all interactions with law enforcement and in court proceedings in the State of Kansas.

End of discussion of Lying to law enforcement.

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