

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding Pursuant
To Section 44, subdivision 4, of the
Judiciary Law in Relation to

LINDA S. JAMIESON,

a Justice of the Supreme Court,
9th Judicial District, Westchester County

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RESPONDENT'S REPLY MEMORANDUM OF LAW

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I. Preliminary Statement

This reply memorandum is submitted in response to the post-hearing memorandum submitted by Commission Counsel (“Counsel”) with respect to the Charges filed against Justice Linda S. Jamieson. Justice Jamieson suggests that beyond disagreements as to certain critical facts, Counsel’s post-hearing memorandum (“Counsel’s Brief”) relies upon many speculative interpretations of the facts that are not supported by the credible evidence, logic and common sense and, thereby, lead to erroneous and misleading conclusions. Justice Jamieson’s reputation after 41 years of an unblemished record and her significant commitment to the legal community should not be tainted by speculation, conjecture and distorted conclusions.

With respect to Charge One, there is no dispute that Justice Jamieson did not include in her Ethics Commission Financial Disclosure Form (“Disclosure Form”) her loan to her friend, Nicholas Natrella (“Mr. Natrella”). Justice Jamieson contends, as corroborated by Mr. Natrella’s testimony, that this was a “very friendly loan.” Justice Jamieson has explained that it was the friendly nature of the loan that resulted in her carelessly not reporting it. This mistake was carried over for the next ten years without any thought. In other words, it was not ten independent intentional acts but one mistake that she did not focus upon over the years. As discussed below and as discussed in Justice Jamieson’s Post-Hearing Memorandum (“Respondent’s Brief”), the Court of Appeals has acknowledged that it is reasonable under certain circumstances to conclude that such an omission in a disclosure form may be unintentional and this must be considered in reviewing a judge’s conduct.

Counsel has offered a speculative theory for Charge One that attempts to negate the testimony of Justice Jamieson, Mr. Natrella and Mr. Rende regarding the purpose and circumstances surrounding the loan to Mr. Natrella (“Natrella loan”). Specifically, Counsel’s

theory is that Justice Jamieson loaned her friend money as a political favor to his father, Vincent Natrella (“Vincent Natrella”), and that is the reason she did not report the loan. However, Counsel did not offer any testimony or direct evidence to establish this theory. The theory is solely founded upon speculation that cannot support the proposed conclusions suggested in Counsel’s Brief. In light of the lack of evidence and the terribly offensive nature of the allegation, Justice Jamieson is seeking to have this Tribunal refuse to give validity and legitimacy to this argument. Therefore, Justice Jamieson is respectfully requesting that this Tribunal recommend to the Commission that this baseless allegation not be publicly disseminated.

This reply memorandum will also address factual disputes proposed by Counsel’s Brief with respect to Charge Two. In addition, it will again clarify there is an absence of any legal precedent to support the allegation that Justice Jamieson lent the prestige of her office to advance her own private interests, in violation of Section 100.2(c), when she requested, from counsel, that her friend pay her back for an undisputed debt. There is not one Commission Decision or Court of Appeals case that found a violation of this rule based upon facts that even vaguely resemble Justice Jamieson’s conduct.

II. There is No Direct or Circumstantial Evidence that Supports the Allegation that Justice Jamieson Did Not Report the Natrella Loan on her Financial Disclosure Form to Hide a Favor to Natrella’s Father; Therefore, There is No Evidence that Respondent Intentionally Omitted the Loan From Her Disclosure Forms

Mr. Natrella, Justice Jamieson and Mr. Rende all testified that there was one overriding reason for the Natrella loan – a friend helping another friend. Justice Jamieson also indicated that she felt it could also potentially help Mr. Rende and it could be a good investment. (Tr. 398) The facts and evidence fully support this conclusion as fully described in the Respondent’s Brief. In

contrast, Counsel attempts to create an inference that the Natrella loan was a favor to a politician, Vincent Natrella, who was Mr. Natrella's father, by contorting the facts to fit this "political favor" theory. This theory relies on speculation and hypotheses that are based upon facts that cannot support the ultimate conclusion they suggest.

As a starting point, there is only one passing reference to Vincent Natrella in the Charges as relates to Charge One. The Charges state in paragraph 6:

6. On or about August 11, 2005, Respondent loaned \$50,000 to Nicholas Natrella to start a business. Mr. Natrella is the son of Vincent Natrella, **then** the Chairman of the Westchester County Conservative Party. (emphasis added.)

At the outset, there is one important correction to this allegation that must be made clear and which is not disputed by Counsel. Vincent Natrella was not the Chairman of his party at the time of the loan. Mr. Natrella testified that Vincent Natrella had not been Chairman since 2002, three years before the loan. (Tr. 51, 94-5) This fact, alone, undermines the purported political favor theory.

At the hearing held before this Tribunal ("hearing") there is a glaring omission of any testimony that supports a political favor theory. This is most evident from the testimony of Mr. Natrella, Commission Counsel's only witness who interacted with Vincent Natrella. Notwithstanding this relationship, Mr. Natrella did not testify that: Justice Jamieson's loan was a political favor to his father; his father mentioned to him that the 2005 loan was for his support of Justice Jamieson in 2002; he had a discussion with Justice Jamieson about the loan being a favor to his father; Justice Jamieson asked him to hide the fact that a loan was given; or, he attempted to hide the loan because he believed the optics of Justice Jamieson loaning him money, would suggest it was done as a political favor to his father. In other words, **Counsel elicited no**

testimony from the only witness who spoke to Vincent Natrella that would establish that the loan was a political favor.

In support of Counsel's theory, Counsel's Brief states that Vincent Natrella helped Justice Jamieson "secure" the nomination in 2002. This was not Mr. Natrella's testimony. Mr. Natrella testified that Vincent Natrella was involved in Justice Jamieson's campaign, but he did not testify that his father "secured" the nomination. There was absolutely no evidence that Vincent Natrella helped to "secure" the nomination or that he had the power to do so.

In contrast to this lack of evidence, Mr. Natrella testified repeatedly that the loan was given because he was extremely close to Justice Jamieson and Joseph Rende and they were like family.¹ Thus, the reasons given by Mr. Natrella, Mr. Rende and Justice Jamieson for the loan are simple and logical. No speculation or guessing is necessary; they were friends and they were both in the oil business. Mr. Rende, who was very experienced in the oil business, thought it made sense. (Tr. 277, 278) Mr. Natrella further explained that Mr. Rende and Justice Jamieson were concerned, because he was their friend, and they did not want him to borrow money from someone who was "shotty [sic]." (Tr. 61, 102) In fact, Mr. Natrella undermined Counsel's theory when he testified that his father helped Justice Jamieson because he had great affection for her over many years and he thought she was a good judge. (Tr. 55-56) This does not describe a political favor.

Parenthetically, Counsel never asked Justice Jamieson at the hearing whether the Natrella loan was given as a favor to Vincent Natrella. Counsel also never asked Justice Jamieson any details about her relationship, or lack thereof, with Vincent Natrella in 2005. In fact, Counsel did

¹ Counsel argues that Nicholas Natrella "knew respondent through his father." (Counsel Brief, p. 5) Counsel cites to the hearing transcript at pages 49- 50. That was not Mr. Natrella's testimony. Vincent Natrella knew and liked Justice Jamieson, but Mr. Natrella knew her through Mr. Rende, his co-worker.

not directly expose their theory that the loan was a political favor either in the Charges or at the Hearing, except by innuendo. The first time that they labeled their theory underlying Count One as a “political favor” was in Counsel’s Brief. It must also be noted, that Justice Jamieson’s counsel did not ask these questions because the explicit “political favor” theory had not been described as such.

Respondent’s Brief provides a full context for the Natrella loan. This included the undisputed fact that the loan was given three years after she had been elected to the Supreme Court and three years after Vincent Natrella lost his Chairmanship of the Westchester Conservative Party as a result of a Conservative Party election. (Tr. 51, 94- 96) Moreover, her term was for fourteen years so she was not beholden to anyone. It is also a matter of public record that at that time, Justice Jamieson was a Republican and was also nominated by the Republican and Independence parties. However, since we have already thoroughly covered these subjects in the earlier brief, this reply will only address Counsel’s new factual arguments that purportedly support the argument that Justice Jamieson tried to hide the loan.

Counsel alleges that Justice Jamieson intentionally avoided creating a “paper trail” for the loan in order to hide the loan. In the first instance, this is not accurate because Justice Jamieson gave a Note to Mr. & Mrs. Natrella. Although Mr. Natrella claims he does not remember receiving a copy of the Note, Mr. Rende distinctly remembers copying the Note and giving a copy to Maureen Natrella, Mr. Natrella’s wife at the time. (Tr. 285-6) Mr. Rende also remembers Ms. Natrella putting the money and Note in her purse. (Tr. 286) Although Mr. Natrella claimed that he could not get a copy of the Note from Mr. Rende, Mr. Natrella did not testify that he ever sought to get a copy of the Note from his former wife. If Justice Jamieson wanted to hide any paper trail it is doubtful that Mr. Rende would have had a lawyer draft a Note. (Tr. 283) Further,

Justice Jamieson would not have provided a copy of the Note to the Natrellas if she wanted no paper trail. In fact, Mr. Natrella confirmed there was a Note, he just did not have a copy.

Counsel also argues that as part of a scheme to hide the loan that Justice Jamieson did not request “collateral.” It cannot be said enough that this was, in Mr. Natrella’s view, a “very friendly loan.” (Tr. 105) Consequently, Counsel is attempting to distort a good-hearted gesture to a friend into a clandestine act. This Tribunal must look at the loan in context and from the perspective of everyone at the time. One friend was attempting to help another. The whole point was to avoid rigid requirements that would have been burdensome and that might have been more appropriate with a full arms-length transaction. Justice Jamieson not asking for collateral was a favor to her friend. Arguably, if Justice Jamieson wanted collateral without a “public” paper trail, she could have asked Mr. Natrella to agree in writing to collateral and keep the document secret.

Counsel points to the fact that Justice Jamieson sought a “confession of judgment” that would permit her to collect the debt without filing a lawsuit and this also was to hide the loan. This argument is hard to understand. This Tribunal must acknowledge that no creditor would ever seek to litigate a debt if the debtor would provide a Confession of Judgment to avoid litigation. Litigation is expensive, slow and would ultimately end up in the exact same place-- with a judgment that had to be enforced. Moreover, as Justice Jamieson testified, she did not think she could get “blood from a stone” (Tr. 411) She figured if somehow Mr. Natrella came into some money in the future she could easily proceed with the judgment. (Tr. 408) Justice Jamieson also testified that she would not want to sue a former friend and that is understandable. (Tr. 411 -412)

Counsel further suggests that Justice Jamieson never wrote any letter demanding payment or filed a lien. Again, this misses the big picture. With the type of relationship the parties had, even after Mr. Natrella was not paying the Judge back, writing a formal demand letter in this context is unrealistic. On the other hand, calling the friend and asking about it, like Mr. Rende and the Judge did, is consistent with this friendly arrangement.

The idea that a lien could have been filed is so vague, it is hard to address. As stated many times above, when the loan was entered into in 2005, it was friendly, not the type of transaction that called for a lien. If Counsel is referring to the time period after 2014, there is no proof there was any asset, property or basis to file a lien. It is sheer conjecture that a lien would be useful or even possible.

Counsel also makes a point to mention that Mr. Natrella was never asked for a “written business plan” for the loan. (Counsel Brief p. 8) This again attempts to characterize the loan in a unrealistic way. Mr. Natrella testified he was an oil burner technician and electrician. (Tr. 48) He was setting up a “little service business.” (Tr. 48) He was not a sophisticated business man who would be accustomed to presenting a formal business plan. Justice Jamieson would not, and did not, ask for a formal proposal because she was relying on Mr. Rende’s advice, since he had been in the oil delivery and service business for many years. (Tr. 277, 282, 397) Mr. Rende understood exactly what type of business Mr. Natrella intended to set up and how and why it was feasible. (Tr. 277) Consequently, the Judge did not need anything in writing. Again, this was not a formal arms-length business transaction between strangers involving huge amounts of money that would have warranted the formality of a written business plan. This clearly was discussed among everyone. Mr. Rende and Justice Jamieson, through Mr. Rende, knew exactly what the “plan” was.

In sum, the credible evidence fully supports Justice Jamieson's contention that the Natrella loan was not given as a political favor and there is not a shred of evidence that supports this theory. What the credible evidence clearly demonstrates is that Justice Jamieson had no motive to intentionally hide the loan and Counsel did not establish by a preponderance of the evidence that Justice Jamieson's failure to report was intentional.²

III. Justice Jamieson Did Not Lend the Prestige of Her Office to Advance her Own Personal Interest by Attempting to Collect a Valid Debt from a Former Friend

It is indisputable that Charge Two does not allege that it was improper for Justice Jamieson to lend money to a family friend. Charge Two also does not allege that Justice Jamieson was not permitted to attempt to collect the undisputed debt from that friend. In consideration of these two facts, it is unclear what conduct violated Charge Two. As a reflection of this problem, Charge Two fails to specify precisely what was improper about Justice Jamieson's conduct.

Although Respondent's Brief fully addresses the lack of evidence supporting Charge Two, a number of issues raised by Counsel must be addressed. To begin with, Charge Two must be broken into two separate telephone calls. The first telephone call was a call from Philip Shelly, Esq. to Mr. Natrella. He volunteered to call Mr. Natrella as a favor to his friend, Justice Jamieson. Justice Jamieson only asked him to see if he could obtain a judgment and nothing more. (Tr. 139, 412) He called Mr. Natrella, but never spoke to him. He eventually spoke to Anne Penachio, Esq., Mr. Natrella's attorney, by telephone. They had a conversation in which

² Counsel argues that Justice Jamieson filed her Disclosure Forms on October 22, 2019 because she was "caught." (Counsel Brief, p. 22) This is misleading. Justice Jamieson had been informed that the Commission was investigating her failure to disclose in 2017. (Tr. 407) She testified that she discussed amending her disclosure forms with counsel and it was decided it did not matter because it was now known to the court system. (Tr. 406) In the end, she decided she just wanted to correct the "record" and it was made clear it was not filed as a defense or even mitigation. (Tr. 457) Consequently, the negative characterization that she only filed because she was "caught" is misleading.

he asked Ms. Penachio for a judgment from Mr. Natrella. According to Ms. Penachio, he also asked that Mr. Natrella not list Justice Jamieson on his bankruptcy petition.

As stated above, Counsel has not presented any legal basis to suggest that a judge may not ask counsel to pursue an undisputed debt. Thus, there was nothing wrong with Mr. Shelly reaching out to Mr. Natrella and speaking to Ms. Penachio. At worst, Ms. Penachio claimed Mr. Shelly pressed her for a judgment. At the same time, Ms. Penachio claimed he acted “professionally” and was only advocating for a client. (Ex. 43 ¶ 28, footnote 3) Moreover, she did not testify that he did anything unethical. With respect to Charge Two, Justice Jamieson cannot be held responsible for the precise manner in which Mr. Shelly conducted himself during the conversation after she simply told him to see if he can get a judgment. Therefore, Mr. Shelly’s call is not significant with respect to Charge Two. As a result, Charge Two can only conceivably be based on one subsequent call between Justice Jamieson and Ms. Penachio in September 2014 (“Penachio Call”).

There is no dispute between the testimony of Justice Jamieson and Ms. Penachio that when Justice Jamieson called Ms. Penachio that the Judge first raised the issue of their deceased friend. (Stipulation, dated June 15, 2021, ¶ 21; Tr. 124, 226 ; Ex. 43, ¶ 29) Nonetheless, Counsel’s Brief for the first time alleges that Justice Jamieson’s call to Ms. Penachio about their friend was a “guise” to talk about Mr. Natrella’s debt. (Counsel Brief, p. 27) This contention does not comport with the evidence and partially contradicts Ms. Penachio’s own memory of the call.

To begin with, Ms. Penachio in the affirmation she filed with her recusal motion on January 22, 2015 (“Affirmation”), a few months after the call, did not argue that Justice

Jamieson's call was a "guise" to talk about Mr. Natrella. (Ex. 43) This is telling because Ms. Penachio included anything she could in the motion to denigrate Justice Jamieson.

Logic would suggest that if Justice Jamieson's call was a guise, the Judge would have raised the Natrella issue. In Ms. Penachio's testimony before this Tribunal she said she did not recall who raised the issue, but logic would dictate that if Justice Jamieson raised the issue in order to pressure her it would be something that Ms. Penachio would remember. In fact, when Ms. Penachio was interviewed by a Commission investigator substantially before charges were filed, her first reaction was that she, Ms. Penachio, raised the issue but then changed her story and decided that she could not recall. (Tr. 227-8) Respondent's Brief fully explores this issue and Justice Jamieson contends that the credible evidence establishes that Ms. Penachio raised the subject of Mr. Natrella in the call.

Counsel argues that Justice Jamieson's call was not genuinely in response to Ms. Stratis's death because the Judge called Ms. Penachio a few weeks after the death. However, both Mr. Rende and Justice Jamieson explained that they were on vacation and they learned of the death when they returned. (e.g., Tr. 293) It makes sense that Justice Jamieson would call a colleague who was both close to, and represented, Ms. Stratis, in order to find out the details of her death. Indeed, Ms. Stratis called them both her "guardian angels" and this linked Ms. Penachio to Ms. Stratis in the Judge's mind. In short, there was no evidence that Justice Jamieson called Ms. Penachio as a guise, and Ms. Penachio's testimony and Affirmation do not support such a claim.

In determining what was said in the Penachio Call, and assessing the witnesses' credibility, Counsel argues that Ms. Penachio is a disinterested witness. On the surface, it might appear that Ms. Penachio has no interest in this proceeding, but that is not true. Ms. Penachio submitted in a public record an affirmation that committed to a "story" under the penalties of

perjury. She could not change that story under oath before this Tribunal. This created a personal stake in this proceeding that was heightened when she was presented with contradictions, exaggerations and lies in her Affirmation.

One example is when she stated in her Affirmation that after the appeal of two motions decided by Justice Jamieson in the Neilson Litigation that the case was remanded to the court and it was reassigned to Justice Jamieson. (Ex. 43 ¶ 9) That was a lie and she was forced to admit at the hearing that the Affirmation was wrong because she and her adversary requested Justice Jamieson's intervention and the action was never assigned to Justice Jamieson after she decided the two motions in 2013. (Tr. 181-186) Another example of a lie is when Ms. Penachio affirmed that she was surprised that "a sitting Judge would extend a loan of this nature." (Ex. 43 ¶ 21) She was forced to admit at the hearing she did not ask her client about the loan and she knew nothing about it. This lack of knowledge contradicted her Affirmation that suggested otherwise. (Tr. 215-218)

In a broader sense, Ms. Penachio had to justify at the hearing the reason she even filed a recusal motion. She was confronted at the hearing with the reality that she made a motion to recuse Justice Jamieson, that included nasty personal remarks, when there was no procedural basis for the motion. It was not disputed and was indisputable that there was no matter involving the Neilson Litigation before Justice Jamieson after January 9, 2015 because the case was never assigned to the Judge after the motions were decided in 2013. The recusal motion can only be viewed as a strategic motion for potentially setting aside the Judge's prior decision. (See, Respondent's Brief, p. 25) In other words, Ms. Penachio had an interest in the consistency, or lack thereof, of her testimony under oath before this Tribunal and her statements under the penalty of perjury in her Affirmation.

Justice Jamieson adamantly contends that her version of the Penachio Call was accurate. Yet, even if this Tribunal determines that Ms. Penachio's version is true, this does not constitute a violation of Justice Jamieson's duty not to lend the prestige of her office to advance her personal gain. Counsel seems to argue that the mere fact that Ms. Penachio knew that Linda Jamieson was a judge is sufficient to argue that Justice Jamieson used the prestige of her office. Obviously, Justice Jamieson could not change the fact that she is a judge and that the public, including Ms. Penachio, knew she was a judge. However, this Tribunal cannot find that a sitting judge cannot enforce a claim or debt by the mere fact that the adversary knows the creditor or that the claimant is a judge. Otherwise, applying this theory to its logical conclusion, a judge could not adamantly demand reimbursement for a damaged suit from a dry cleaner if the store owner knows the customer is a judge. Stated another way, this would mean a judge could never enforce a civil claim merely because the person is known to be a judge. There is no law or precedent supporting such an argument and Counsel does not cite to any such authority.

Yet, even if Ms. Penachio's version of the facts is accepted, Justice Jamieson simply attempted to collect the debt she was owed. Ms. Penachio indicated that Justice Jamieson sounded angry, hurt and disappointed that her friend did not pay her back. (Ex. 43, ¶ 29) Assuming this is true, which is a natural response to this type of situation, this does not establish that Justice Jamieson flaunted her position as a judge. Ms. Penachio undercut her own version of the facts when she testified that Justice Jamieson acted professionally, did not threaten her and did not raise her voice. (Tr. 228)

In short, the evidence simply does not support the contention that Justice Jamieson improperly flaunted her position. In light of this fact, Counsel argues that Ms. Penachio's

subjective state of mind that she felt “pressured” should be the standard for determining whether Justice Jamieson misused her position as a judge and should be disciplined.

Needless to say, Ms. Penachio’s subjective state of mind cannot be the basis for finding misconduct. Certainly, the standard applied by this Tribunal must be an objective standard and not determined by the whims of any individual’s personal perspective, particularly when that purported perspective is undermined by common sense and reason. For instance, Ms. Penachio testified that she felt pressured because Mr. Shelly was incessant and inflexible. On one hand, she claimed that Mr. Shelly acted professionally and, on the other, she felt pressured anyway. She stated, “although my discussions with Mr. Shelly were professional, I felt extreme undue pressured [sic] . . .” (Ex. 43 ¶ 28) This is inconsistent and undermines Ms. Penachio’s credibility since she was an experienced bankruptcy litigator who argues about settlements for a living.

The real basis for Ms. Penachio’s pressure is fully discussed in the Respondent’s Brief. (Respondent’s Brief pp. 20-1) Ms. Penachio’s struggle was caused because: Mr. Natrella insisted that she represent him; she was concerned about a potential issue between helping Mr. Natrella versus Mr. Carr; and, she did not want to come between a professional colleague who she had known for twenty years and a client who she had represented in the past. If she was pressured as she claimed, it is telling that she never at any time filed a complaint with the Commission. It would appear that the strong beliefs she included in her Affirmation were not as genuine or as disturbing as she claimed. In short, this Tribunal cannot accept Ms. Penachio’s perspective as credible or determinative.

A lot of time was spent during Justice Jamieson’s presentation at the hearing that definitively established that nothing regarding the Neilson Litigation was pending before Justice

Jamieson when the Penachio Call took place. Moreover, Ms. Penachio also testified that she did not believe the Neilson Litigation would come before Justice Jamieson after the Penachio Call. (Stipulation, ¶ 20) Thus, Ms. Penachio could not have felt pressured that Justice Jamieson would prejudice her in the Neilson Litigation for not complying with the Judge's request. Moreover, she knew that if such a conflict arose, a simple motion to recuse (without personal attacks and hyperbole) could be made. In fact, Mr. Penachio filed a motion and it was granted. No pressure.

Notwithstanding the factual infirmities with Charge Two, the law, or lack thereof, likewise undermines the validity of the Charge. All the authorities cited by Counsel to support these allegations have been addressed in the Respondent's Brief. In short, it is well established that the prohibition of a judge lending the prestige of the office for personal gain is reserved for situations when a judge proactively asserts, implicitly or explicitly, their judicial position to influence a government official or employee or other person in power (e.g., a police officer, another judge, a school official) to take action or not take action based upon the judge's position. As the Commission stated in *Matter of Ramirez*, 2017 WL 2630071, 7 (N.Y. Com. Jud. Cond. May 4, 2017):

Violations of Rules 100.2(C) have been found in a broad spectrum of cases, including where judges have contacted other judges, law enforcement officials or other persons in a position of authority in order to advance private interests. . . . While respondent's judgment may have been clouded . . . her communications could be perceived as backed by her judicial power and prestige.

In contrast, nothing Justice Jamieson said or did could have reasonably and objectively be perceived as "backed by her judicial power." Therefore, Charge Two was not proven by a preponderance of the evidence factually or as a matter of law.

For the reasons stated above, and in the Respondent's Brief, Justice Jamieson respectfully requests that this Tribunal find that she did not file her Disclosure Forms but that it was due to a

careless mistake and not to hide the loan. Justice Jamieson further requests that Charge Two be dismissed in its entirety.

Dated: July 1, 2021
New York NY

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