

Commencing an Action: Kentucky

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A Q&A guide to commencing an action in Kentucky. This Q&A addresses the requirements for drafting and filing initiating papers, serving process and amending the complaint.

OVERVIEW OF COMMENCING AN ACTION

1. What are the applicable rules for commencing an action?

KENTUCKY RULES OF CIVIL PROCEDURE

The Kentucky Rules of Civil Procedure is the main body of law governing Kentucky civil procedure. The key provisions related to commencing an action are found in:

- Section 3.01 to 3.03 (commencing an action).
- Sections 5.01 to 5.06 (filing of papers, summons and service of summons).
- Sections 7.01 to 16 (pleadings and motions).
- Sections 17.01 to 25.04 (parties).

KENTUCKY REVISED STATUTES

The key provisions related to commencing an action in the Kentucky Revised Statutes are found in:

- Sections 411.010 to 415.080 (statutory actions).
- Sections 452.010 to 452.180 and 452.400 to 452.505 (venue in civil cases).

OTHER SOURCES

Other sources of applicable procedural law include:

- The Kentucky State Constitution.
- The respective courts' rules and individual judges' practices.

2. Generally, in which trial level court must an action be commenced? Please address:

- Monetary thresholds for trial level courts.
- Territorial limits for trial level courts.

An action must be commenced in:

- For a civil action, a district or circuit court (*Ky. Rev. Stat. Ann. § 24A.120*).
- For a probate action:
 - a district court if matters are not contested; and
 - a circuit court if matters are contested. (*Ky. Rev. Stat. Ann. § 24A.120*.)
- For a divorce, a family court (which is a division of Circuit Court and follows the Kentucky Rules of Civil Procedure) (*Ky. Rev. Stat. Ann. § 23A.100*; *Ky. Fam. Ct. R. Prac. P. 1(4)*).
- For small claims, a district court (*Ky. Rev. Stat. Ann. § 24A.230*).

MONETARY THRESHOLDS

The monetary limits for the following courts, exclusive of interest and costs, are up to:

- \$2,500 for a small claims court (*Ky. Rev. Stat. Ann. § 24A.230*).
- \$5,000 for a district court, except for cases involving matters of equity and title to real estate (*Ky. Rev. Stat. Ann. § 24A.120*).
- \$5,000 for a circuit court (*Ky. Rev. Stat. Ann. § 24A.120*).

There are no monetary thresholds for a case in the Kentucky Family Court.

TERRITORIAL LIMITS

Kentucky has a unified court system. Therefore, all courts have state-wide jurisdiction (*Winstead v. Commonwealth, 327 S.W.3d 386, 410 (Ky. 2010)*; *Richmond v. Commonwealth, 637 S.W.2d 642, 646 (Ky. 1982)*). A judge is expected to serve within the district or circuit where the judge is elected and may be restricted from acting outside of the judge's home circuit or district by procedure and venue. However, even with these limitations, a judge has the basic authority to adjudicate matters that fall within the court's subject matter jurisdiction. (*Winstead, 327 S.W.3d at 410*; *Richmond, 637 S.W.2d at 646*.)

3. What documents must be prepared to commence an action? Are there official forms for the initiating papers?

DOCUMENTS

The documents required for commencing an action depend on the type of action. For a:

- Civil action, a party must file:
 - a complaint; and
 - either a summons or a warning order.
 (Ky. Rs. Civ. P. 3.01, 4.01, 4.02; Ky. Rev. Stat. Ann. § 413.250.)
- Divorce, a party must file a verified petition and proof of service (Ky. Fam. Ct. R. Prac. P. 2(1)(a), (b)).
- Small claims claim, a party must:
 - file a small claims complaint; and
 - issue a summons.
 (Ky. R. Civ. P. 3.01; Ky. Rev. Stat. Ann. § 24A.260.)

For a civil action, a party sends a warning order if the defendant is:

- Not a Kentucky resident and does not have a service agent in the state.
- A Kentucky resident who has not been in Kentucky for at least four months.
- A Kentucky resident that is attempting to avoid process.
- An unknown person.

A party must include with the warning order an affidavit that explains the reasons why it is needed. (Ky. Rs. Civ. P. 4.05, 4.06.)

OFFICIAL FORMS

Official forms are available from the Kentucky Administrative Office of the Courts for many civil cases, including:

- Form AOC-105, which is a model summons form to commence a civil action.
- Form AOC-175, which is a model complaint form to commence a small claim.
- Form AOC-180, which is a model summons form to commence a small claim.

4. Is an action commenced by serving or filing the initiating papers? If an action is commenced by service, by when must the complaint or other pleading be filed?

A party commences a civil action in Kentucky by both:

- Filing a complaint with the court.
- Issuing a summons or warning order in good faith.

(Ky. R. Civ. P. 3.01; Ky. Rev. Stat. Ann. § 413.250.)

In a civil action, a party's issuance of a summons creates a rebuttable presumption that the party intends to serve the summons in due course (*Allen v. O.K. Mobile Home Sales, Inc.*, 570 S.W.2d 660, 661 (Ky. Ct. App. 1978)).

A plaintiff demonstrates good faith when by exercising due diligence when issuing the summons or warning order. For example, a plaintiff

does not demonstrate good faith if he causes delay of the summons without a valid excuse (*Wooton v. Begley*, 305 S.W.2d 270, 271-272 (Ky. 1957)). However, a plaintiff is not prevented from seeking relief if the court clerk delays issuing the summons after the statute of limitations has passed (*Nanny v. Smith*, 260 S.W.3d 815, 817 (Ky. 2008); *Hill v. State Farm Ins. Co.*, 390 S.W.3d 153, 157 (Ky. Ct. App. 2012)).

A party commences a small claim by filing a claim on a form complaint (Ky. Rev. Stat. Ann. § 24A.260).

A party commences divorce proceedings by filing a verified petition and proof of service (Ky. Fam. Ct. R. Prac. P. 2(1)(a), (b)).

5. How are the initiating papers filed? Please address:

- Whether the papers are filed electronically or by hard copy.
- Any fees for filing the initiating papers, and in what form those fees must be paid.

FILING INITIATING PAPERS

A party must file hard copies of the required initiating papers with with the Circuit Court Clerk in the county with proper venue. The Kentucky Administrative Office of Courts introduced e-filing to the state courts in December 2013. E-filing is currently available only in some counties, but is scheduled to be introduced in all 120 counties by the end of 2015. (Ky. Ct. of Justice: *Kentucky Judicial Branch launches eFiling with first electronic case filing in Franklin County (Dec. 18, 2013).*)

FILING FEES

A party must pay:

- \$115 in filing fees for a case in a Circuit Court (Ky. R. Civ. P. 3.02(1)).
- \$55 in filing fees for a case in a District Court, except under certain circumstances (Ky. R. Civ. P. 3.03(1)).

However, the party should contact the Circuit Court Clerk to determine filing fees, as fees may vary between courts based on whether the court charges certain optional fees (for example, facility and library fees).

A party must also pay fees to issue the summons and complaint for each defendant. If the party issues the summons and complaint by:

- Certified mail, then the party should contact the court to determine the mailing fees, as fees may vary depending on the documents' weight.
- A sheriff, then the party must pay a \$20 fee per defendant for service (Ky. Rev. Stat. Ann. § 23A.200).

Filing fees may be paid by any form of payment accepted by the clerk in the specific venue. A party should contact the Circuit Court Clerk to determine acceptable forms of payment.

INITIATING PAPERS

6. What are the contents that must be included in the summons?

The summons must include:

- The name of the court.
 - The style and number of the action.
 - The Clerk of Court's signature and the date of signing.
- (Ky. R. Civ. P. 4.02.)

The summons must also:

- Be directed to each defendant.
- Notify the defendant that:
 - a legal action has been filed against him; and
 - a judgment may issue against the defendant for the relief demanded, unless the defendant issues a written defense within 20 days after the summons is served.

(Ky. R. Civ. P. 4.02.)

7. What are the contents that must be included in the complaint?

Every complaint must include a caption stating:

- The name of the court.
- The style of the action, which must include the names of all parties.
- The file number.
- A designation.

(Ky. R. Civ. P. 10.01.)

A complaint must include a short and plain statement of the claim being made and a demand for judgment (Ky. R. Civ. P. 8.01(1)).

The complaint must be dismissed if the opposing party files an objection because all parties were not named in the caption (*McCoy v. W. Baptist Hosp.*, 628 S.W.2d 634, 636 (Ky. Ct. App. 1981)).

A party must make all allegations of claim or defense in numbered paragraphs, which may be referred to by number in all subsequent proceedings. Each paragraph must be limited as far as practicable to a statement of a single set of circumstances. In addition, a party must state each claim that is founded on a separate transaction or occurrence and each defense other than denials in a separate count or defense. (Ky. R. Civ. P. 10.02.)

If the party is represented by an attorney, at least one attorney of record must sign every pleading, motion and other paper with the attorney's individual name and business address. A party who is not represented by an attorney must sign all papers with his own name and state his address. (Ky. R. Civ. P. 11.)

8. Must the plaintiff verify or swear to the complaint?

A verified complaint is generally not required for a civil action unless specified by a court rule or state statute. Examples of when a party must submit a verified complaint include:

- A temporary injunction (Ky. R. Civ. P. 65.04(1)).
- An appeal from the unemployment compensation commission (Ky. Rev. Stat. Ann. § 341.450; *Taylor v. Ky. Unemployment Ins. Comm'n*, 382 S.W.3d 826, 830 (Ky. 2012)).

A party must submit a verified complaint for a divorce proceeding (Ky. Fam. Ct. R. Prac. P. 2(1)(a)).

9. What is the applicable pleading standard? Please address any:

- Key distinctions from Federal Rule of Civil Procedure 8.
- Different pleading requirements for particular claims (for example, fraud).

STATE PLEADING STANDARD

All pleadings setting forth a claim must include:

- A short and plain statement of the claim showing that the pleading party is entitled to relief.
- A demand for judgment for relief.

(Ky. R. Civ. P. 8.01(1).)

KEY FEDERAL DISTINCTIONS

Unlike federal courts, Kentucky state courts follow a liberal construction rule for pleadings. In Kentucky, pleadings are judged according to substance rather than their label or form (*McCullum v. Garrett*, 880 S.W.2d 530, 533 (Ky. 1994)). The complaint is meant to "give[] a defendant fair notice and identif[y] the claim" (*Grand Aerie Fraternal Order of Eagles v. Carneyhan*, 169 S.W.3d 840, 844 (Ky. 2005)).

In the federal courts, a plaintiff's allegations regarding the amount in controversy are sufficient unless recovery of an amount exceeding the jurisdictional minimum is shown to be legally impossible (see *Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 829 (7th Cir. 2011)). However, in Kentucky courts, although a party should not specify a dollar amount for unliquidated damages in the complaint, a party must include a statement that the amount of damages sought is greater than the court's minimum jurisdictional threshold (Ky. R. Civ. P. 8.01).

Also, under federal law, the complaint must contain facts sufficient to give rise to a claim that is plausible on its face (*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007))). However, it is unclear whether Kentucky courts use the same standard. Although the Kentucky Supreme Court has never addressed the requirements specified in *Ashcroft* and *Twombly*, the Kentucky Court of Appeals, in an unpublished opinion affirming a trial court's holding that a *pro se* litigant failed to state a claim, quoted parts of the *Twombly* opinion stating that "a formulaic recitation of the elements of a cause of action will not do" (*Espinosa v. Louisville/Jefferson County Metro Gov't*, No. 2008-CA-000944-MR, 2009 WL 277488, at *1 (Ky. Ct. App. 2009)). Therefore, while the *Espinosa* opinion suggests that the Kentucky appellate courts might eventually adopt the *Iqbal* and *Twombly* pleading standards, no published Kentucky appellate opinion has done so.

PLEADING REQUIREMENTS FOR PARTICULAR CLAIMS

Fraud

A party must state the circumstances constituting fraud or mistake with particularity. However, a party may allege a person's malice, intent, knowledge and other condition of mind generally. (Ky. R. Civ. P. 9.02).

When claiming fraud, a plaintiff must plead the following elements with particularity:

- There is a material misrepresentation.
- The misrepresentation is false.
- The misrepresentation is known to be false or was made recklessly.
- The misrepresentation was made with inducement to be acted on.
- The plaintiff acted in reliance on the misrepresentation.
- The plaintiff's action in reliance caused injury.

(*Denzik v. Denzik*, 197 S.W.3d 108, 110 (Ky. 2006); *United Parcel Serv. Co. v. Rickert*, 996 S.W.2d 464, 468 (Ky. 1999).)

Slander of Title

To maintain a slander of title action in Kentucky, the plaintiff must plead and prove that:

- The defendant knowingly and maliciously communicated, orally or in writing, a false statement which has the effect of disparaging the plaintiff's title to property.
- The plaintiff incurred special damage resulting from the defendant's communication.

(*Bonnie Braes Farms, Inc. v. Robinson*, 598 S.W.2d 765, 766 (Ky. Ct. App. 1980).)

Tortious Interference of Contract

To prevail on a tortious interference of contract claim, the plaintiff must plead and prove the following six elements:

- The existence of a contract.
- The defendant knew of the contract.
- The defendant intended to cause the breach of the contract.
- The defendant caused one of the contract's parties to breach the contract.
- The breach caused damages to the non-breaching party to the contract.
- The defendant acted with malice toward the non-breaching party to the contract.

(*Monin v. Wal-Mart Real Estate Bus. Trust*, No. 2007-CA-000781-MR, 2008 WL 352346, at *1 (Ky. Ct. App. 2008)).

10. Please address the circumstances, if any, where a complaint is not part of the initiating papers, including what papers are filed instead of a complaint.

For a civil action, there are no circumstances where a complaint is not part of the initiating papers (Ky. R. Civ. P. 4.04(1)).

For a divorce proceeding, a party files a verified petition instead of a complaint (Ky. Fam. Ct. R. Prac. P. 2(1)(a)).

11. Please discuss any prerequisites for filing certain claims (for example, filing a complaint against a government entity).

STATE TAX APPEALS

To commence an action relating to state taxes in a Kentucky court, a party must first exhaust all administrative remedies by obtaining a final order of the state Board of Tax Appeals or the county board of assessment (Ky. Rev. Stat. Ann. § 131.370).

DECISIONS BY STATE AGENCY

Before commencing an action relating to a state agency decision, a party must first exhaust all administrative remedies by obtaining a final order from the relevant state agency (Ky. Rev. Stat. Ann. § 13B.140).

ACTIONS FOR DAMAGES AGAINST THE STATE GOVERNMENT

A claimant to the state Board of Claims may appeal to the Kentucky Circuit Court within 45 days of receiving the final decision from the Board of Claims if the claimant was awarded at least \$1,000 (Ky. Rev. Stat. Ann. § 44.140).

WORKERS' COMPENSATION

A party may file a final order or memorandum of agreement from an administrative judge or board to be rendered as a judgment in the Circuit Court (Ky. Rev. Stat. Ann. § 342.305). A party may seek review of a workers' compensation-related claim in the Court of Appeals only after the Workers' Compensation Board issues a decision (Ky. Rev. Stat. Ann. § 342.290).

ENFORCING LIENS

A lien must be perfected and notice given under the lien statutes before a party may bring an action to enforce the lien (*Laferty v. Wickes Lumber Co.*, 708 S.W.2d 107, 108 (Ky. Ct. App. 1986); *Meehan v. Ruby*, No. 2009-CA-002402-MR, 2011 WL 1515415, at *2-3 (Ky. Ct. App. 2011)).

SERVICE OF PROCESS

12. When must the defendant be served with process? Can the time to serve the defendant be lengthened?

SERVING THE DEFENDANT WITH PROCESS

For civil claims in Kentucky, there is no specified time in which process must be served. After the party files the complaint, the clerk issues the required summons and at the initiating party's request, either causes the process to be served by:

- Registered or certified mail.
- A person authorized to effectuate service.
- Returning the summons and complaint to the party for service.

(Ky. R. Civ. P. 4.01.)

In a divorce proceeding, the other party must be served with the verified complaint when it is filed with the Clerk of Court (Ky. Fam. Ct. R. Prac. P. 2(1)(a), (b)).

ADDITIONAL TIME FOR SERVICE

In Kentucky, parties have no need to lengthen the time to serve the defendant because an action commences when the party files the complaint or verified petition is filed (see *Question 4*).

13. What documents must be served?

In a civil action a defendant must be served a complaint and summons or warning order (Ky. Rs. Civ. P. 4.01, 4.07).

In a divorce proceeding, the other party must be served a verified petition (Ky. Fam. Ct. R. Prac. P. 2(1)(a)).

14. Who may serve process? Is a license or other certification required?

Process may be served by anyone who is at least 18 years old (Ky. R. Civ. P. 4.04(8)). No license or other certification is required.

15. What are the methods for service within the state?

In Kentucky, the available methods of service are:

- Service by certified or registered mail.
- Personal service by a person who is at least 18 years old. (Ky. Rs. Civ. P. 4.01 and 4.04.)

For certified or registered mail, service is complete only when the documents are delivered (*Ky. R. Civ. P. 4.01(1)(a)*).

For service by warning order, the defendant is deemed summoned on the 30th day after entry of the warning order (*Ky. R. Civ. P. 4.08*).

The means of service also vary depending on the defendant.

SERVICE ON AN INDIVIDUAL

An individual may be served personally or by certified or registered mail. If the individual refuses to accept the service, then service may be made either personally or by mail to an agent authorized to receive service for the individual. (*Ky. R. Civ. P. 4.04(2)*.)

Service must be on a Kentucky office or agency if:

- A non-resident transacts business in Kentucky through the office or agency.
- A Kentucky resident transacts business through an office or agency in an action related to the office or agency's business.

(*Ky. R. Civ. P. 4.04(9)*.)

SERVICE ON AN UNMARRIED INFANT OR PERSON OF UNSOUND MIND

To serve an unmarried infant or a person of unsound mind, service must be made on:

- The minor or person's guardian or committee, if known.
- The minor or person's parent, if the minor or person does not have a guardian or committee.
- The person who has control over the minor or person in Kentucky, if the minor does not have a parent, guardian or committee.

If the minor or person does not have a guardian, committee, parent or controlling person, then the court must appoint an attorney as guardian *ad litem*, who is to be served. (*Ky. R. Civ. P. 4.04(3)*.)

SERVICE ON A PARTNERSHIP OR UNINCORPORATED ASSOCIATION

For a partnership or unincorporated association, service must be on either:

- A partner or managing agent in the partnership or an officer or managing agent in the association.
- An authorized agent.

(*Ky. R. Civ. P. 4.04(4)*.)

SERVICE ON A CORPORATION

Service must be on either:

- A corporate officer or managing agent.
- The chief agent in the county where the action is brought.
- Any other authorized agent.

(*Ky. R. Civ. P. 4.04(5)*.)

SERVICE ON THE STATE OF KENTUCKY OR STATE AGENCY

Service must be on either:

- The Kentucky Attorney General.
- Any assistant Kentucky attorney general.

(*Ky. R. Civ. P. 4.04(6)*.)

SERVICE ON A COUNTY, CITY OR PUBLIC BOARD

For a county, service must be on either:

- The county judge.
- The county attorney, if the county judge is absent from the county. (*Ky. R. Civ. P. 4.04(7)*.)

For a city, service must be on the chief executive officer or an official attorney of the city (*Ky. R. Civ. P. 4.04(7)*).

For a public board, service must be on a member of the board (*Ky. R. Civ. P. 4.04(7)*).

16. What are the methods for service outside the state?

An out-of-state individual may be served either by:

- Certified mail.
- Personal delivery by a person who is at least 18 years old.

(*Ky. R. Civ. P. 4.04(8)*.)

Service must be on a Kentucky office or agency if:

- A non-resident transacts business in Kentucky through the office or agency.
- A Kentucky resident transacts business through an office or agency in an action related to the office or agency's business.

(*Ky. R. Civ. P. 4.04(9)*.)

An out-of-state defendant subject to jurisdiction under Kentucky's long-arm statute may be served by serving the Kentucky Secretary of State, the statutory agent of the defendant. At plaintiff's request, the clerk of the court where the action is brought must either:

- Send by certified mail two copies of the summons and mail two copies of the summons with two attested copies (stamped certified that it is a true copy) of the complaint to the Secretary of State.
- Transmit an electronically attested copy of the complaint and summons to the Secretary of State via the Kentucky Court of Justice electronic filing system.

(*Ky. Rev. Stat. Ann. § 454.210; Ky. Secretary of State*.)

The plaintiff must provide the clerk of court with:

- The fee, which is:
 - \$10 per defendant if service is by certified mail or registered mail; or
 - \$15.05 per defendant if service is by restricted certified mail.
- An address for each defendant being served.

(*Ky. Rev. Stat. Ann. § 454.210; Ky. Secretary of State*.)

The Secretary of State must mail the summons and complaint to the defendant within seven days after receipt. Service is deemed to be complete on the return of the Secretary of State. (*Ky. Rev. Stat. Ann. § 454.210*.)

17. Are there any days on which service of process is restricted (for example, Sundays or holidays)?

There are no days on which service of process is restricted.

18. What are the consequences for ineffective service of process?

If a party fails to effectively serve process, the case may be dismissed (*Ky. R. Civ. P. 12.02*).

19. How are any defects in serving process cured?

The court may allow a summons, process or other proof of service to be amended unless the amendment would prejudice the opposing party's rights (*Ky. R. Civ. P. 4.16*). A party may cure any defects in the serving process by issuing an alias summons, which is effectively an amended summons, that complies with the rules for a summons (see *Commonwealth, Dep't of Highways v. Parker, 394 S.W.2d 899, 900 (Ky. 1965)*).

20. Must proof of service of process be filed? Please address:

- Any required form of proof of service of process (for example, affidavit, affirmation or declaration).
- Any information required in the proof of service.
- When the proof of service must be filed.

In Kentucky, whether a party must file proof of service with the court depends on the type of claim and how service was rendered. For:

- A civil action or a small claim that was served by mail, the Clerk of Court files the registered or certified mail return receipt or envelope in the record (*Ky. R. Civ. P. 4.01(1)(a)*).
- A civil action or a small claims that was served by personal service, the person serving the summons must submit proof to the court within the time during which the defendant must respond (*Ky. R. Civ. P. 4.03*).
- A divorce proceeding, the parties must file proof of service (*Ky. Fam. Ct. R. Prac. P. 2(1)(b)*).

REQUIRED FORM

Kentucky law and court rules do not specify the required form of proof of service. However, if a party in a civil action uses Form AOC-105 (summons for a civil action), there is a box at the bottom in which the server may certify service and identify the person to whom service was made.

REQUIRED INFORMATION

Generally, a proof of service must include the date when the summons or verified petition was served. If a summons is personally served, the proof of service must also include the signature of the person who served the summons.

WHEN PROOF MUST BE FILED

Proof of service must be filed within the time in which the person who is served must respond to the summons or verified petition, which is generally 20 days starting from the day after service (*Ky. Rs. Civ. P. 4.02, 4.03*).

AMENDING THE COMPLAINT**21. Can the complaint be amended after it has been filed, but before it has been served?**

A party may amend its pleading:

- Once, at any time before a responsive pleading is served.

- Within 20 days after the pleading is served, if:
 - the pleading is one to which no responsive pleading is permitted; and
 - the action has not been placed upon the trial calendar.

Otherwise a party may amend its pleading only by leave of court or by the adverse party's written consent. (*Ky. R. Civ. P. 15.01*.)

22. Can the complaint be amended after it has been filed and served? If so:

- When can this be done as of right?
- When must the plaintiff seek a court order to amend the complaint?

In Kentucky, the complaint may be amended after it has been filed and served.

AMENDMENT AS OF RIGHT

A party may amend its pleading either:

- Once any time before a responsive pleading is served.
- Any time within 20 days after the pleading is served, if:
 - the pleading is one to which no responsive pleading is permitted; and
 - the action has not been placed upon the trial calendar.

(*Ky. R. Civ. P. 15.01*.)

COURT ORDER FOR AMENDING THE COMPLAINT

A party may amend the pleading only by either leave of court or by the adverse party's written consent if either:

- A responsive pleading has been filed.
- 20 days have passed if no responsive pleading is required.

(*Ky. R. Civ. P. 15.01*.)

Attorneys should note that a motion to dismiss under Rule 12.02 of the Kentucky Rules of Civil Procedure is technically not a responsive pleading. Therefore, a complaint may be amended once as a matter of course without leave of the court if the opposing party files a motion to dismiss under Rule 12.2. However, some courts may consider the nuance between a pleading and motion as merely semantic.

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