

# Language Access Nuts & Bolts 101:

## Legal Obligations and Practical Considerations

### I. Introduction

The current policy of the State of Georgia is to secure the rights of Deaf/Hard of Hearing (DHH) (also referred to as “hearing impaired”) persons who, because of impaired hearing, cannot readily understand or communicate in English or spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of the courts, legislative bodies, administrative agencies, licensing commission, departments, and boards of the state and its subdivisions unless qualified interpreters are available to assist them.<sup>1</sup> The same policy is also extended to limited English proficient (LEP) persons.<sup>2</sup> The right to an interpreter applies to witnesses in addition to the actual parties/litigants in the case.<sup>3</sup> The Supreme Court of Georgia Commission on Interpreters (“COI” / “Georgia Commission on Interpreters”/ “the Commission”) provides interpreter licensing, regulatory and education services for Georgia courts so they can ensure the rights of non-English speaking persons.<sup>4</sup> As of 2011, DHH and LEP persons have a right to an interpreter, without cost, in all cases criminal *and civil*.<sup>5</sup> This includes administrative forums.<sup>6</sup> The expense of providing an interpreter in any legal proceeding is borne by the local court or appropriate governing body.<sup>7</sup>

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<sup>1</sup> See, Georgia Administrative Office of the Courts – Committee on Access and Fairness in the Courts, *available at* <http://www.georgiacourts.org/index.php/aoc/directors-office/committee-on-access-and-fairness-in-the-courts/95> . (Last visited February 5, 2015).

<sup>2</sup> See, Supreme Court of Georgia Rule for the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (“Rule”), Appendix A (II) *available at* [http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL\\_JULY.pdf](http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL_JULY.pdf) (Last visited February 5, 2015).

<sup>3</sup> Rule, Appendix A.

<sup>4</sup> See, COI Mission Statement *available at* [http://w2.georgiacourts.org/coi/index.php?option=com\\_content&view=article&id=51&Itemid=53](http://w2.georgiacourts.org/coi/index.php?option=com_content&view=article&id=51&Itemid=53) . (Last visited February 5, 2015).

<sup>5</sup> See, Rule, Appendix A *available at* [http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL\\_JULY.pdf](http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL_JULY.pdf) . (Last visited February 5, 2015).

<sup>6</sup> *Id.*

<sup>7</sup> Rule, Appendix A (VII)(B).

## A. Commonly Used Terms

### 1. Limited English Proficient (LEP)

- a. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English are limited English proficient, or "LEP."

### 2. Deaf/Hard of Hearing (DHH)

- a. Individuals with the audiological condition of not hearing and/or individuals with mild-to-moderate hearing loss.

### 3. Interpretation/Interpreter<sup>8</sup>

- a. The process by which oral communication is rendered from one language to another. The original (source) language is either spoken or signed language, and the rendition is delivered into the (target) spoken language or in a signed language.
- b. The individual performing this task is an "interpreter."

### 4. Translation /Translator<sup>9</sup>

- a. The process by which written text is rendered from one language to another. The original (source) language is in written form, and the translation into the other (target) language is also produced in written form.
- b. The individual performing this task is a "translator."

## II. Legal Obligations

### A. Federal Law

1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d
2. *Lau v. Nichols*, 444 U.S. 563 (1974)
3. Executive Order 13166, 65 FR 50121 (2000)

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<sup>8</sup> See, National Association of Judicial Interpreters and Translators (NAJIT) "*Frequently Asked Questions about Court and Legal Interpreting and Translating- What is the Difference Between Interpretation and Translation?*" available at <http://www.najit.org/certification/faq.php#difference> . (Last Visited March 12, 2015).

<sup>9</sup> *Id.*

## B. State Law/Rules

1. *Ramos v. Terry*, 279 Ga. 889 (622 SE2d 339) (2005)
2. *Ling v. State*, 288 Ga. 299 (702 SE2d 88) (2010)
3. [Supreme Court of Georgia Rule Governing Use of Interpreters for Non-English Speaking and Hearing Impaired Persons](#) (“Rule”)(2012)
  - a. 2011 amendment ( General Rule)
4. O.C.G.A. §§ 24-6-652 through 658 (Deaf/ Hard of Hearing)
5. O.C.G.A. § 15-6-77 (e)(4) ( Cases brought under the Family Violence Act, O.C.G.A. § 19-13-1 *et seq.*)

## III. Practical Considerations

### A. Role of the Interpreter

1. Interpreters communicate ideas, not mere words.
2. Interpreters serve as neutral communication mediums between the court, litigant/witness and attorney.
3. Professionally trained interpreters are:
  - a. Competent
  - b. Accurate
  - c. Impartial
  - d. Confidential
4. Georgia Interpreters must adhere to the Supreme Court of Georgia [Code of Professional Responsibility for Interpreters](#).<sup>10</sup>

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<sup>10</sup> Direct Link:

<http://w2.georgiacourts.org/coi/files/Code%20of%20Professional%20Responsibility%20for%20Interpreters.doc>  
(Last visited February 5, 2015)

- a. Additionally, “interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are engaged, even when that information is not privileged or required by law to be confidential.” (*Rule*, Section VI (E))

## **B. Determining if a foreign language or sign language interpreter is required**

### **1. Request by Counsel/*Pro Se* Litigant**

- a. Protocol varies from judicial circuit to judicial circuit. Examples include:
  - i. Verbal/Written request to Judge’s Law Clerk /Administrative Assistant
  - ii. Verbal/Written request to the District Court Administrator
  - iii. Verbal/Written request to specified point-person within the judicial circuit
  - iv. Verbal/Written request to the court’s Clerk’s office

### **2. *Sua Sponte***

- a. Determination by the Judge
  - i. Upon request, or *sua sponte*, the decision maker (usually the judge presiding over the case) should voir dire the litigant or witness to determine his/her level of English comprehension. To make that determination, the decision maker should normally include questions on the following:
    - a. Identification (e.g., name, address, DOB, place of birth)
    - b. Active Vocabulary
      - i. “*How did you come to the proceeding today?*”
      - ii. “*What kind of work do you do?*”
      - iii. “*Describe what you see in the room.*”
      - iv. “*What have you eaten today?*”
    - v. **Questions should be phrased to avoid “yes” or “no” replies.**
  - c. The civil or criminal proceeding

- i. “What is your understanding of the nature of the charge or the type of proceeding we are having today?”
- ii. “What is the purpose of the proceedings?”
- iii. “What is your understanding of my role as the judge?”
- iv. “What is your understanding of the legal rights you have as a party or defendant in this case?”
- v. “What is your understanding of your responsibilities as a witness in this case?”

*Rule, Appendix A (II)(C).*

**NOTE:** In some instances, the decision-maker may skip the voir dire process and appoint the interpreter based solely on counsel’s or the pro se litigant’s written and/or verbal request. The Rule does not mandate the court to voir dire the LEP/DHH individual. The Rule states that the court “should” do so.

**NOTE:** The fact that an individual speaks or understands some English does not preclude the individual from the right to have an interpreter appointed by the court.

- d. After examination the decision maker should state his or her conclusion on the record, and the file in the case should be clearly marked and data entered electronically when appropriate by personnel to ensure that an interpreter will be present when needed in any subsequent proceeding.

*Rule, Appendix A (II)(D).*

**NOTE:** Please see *Rule, Appendix A (III-V)* regarding specific requirements for foreign language interpreters in Criminal, Civil and Juvenile cases, respectively.

#### **C. Appointment of Sign Language Interpreters**

1. “**Court qualified**” or “**Qualified**” - To be recognized as a court qualified interpreter or qualified interpreter in Georgia, an interpreter must hold a current certification from the Registry of Interpreters for the Deaf (RID).<sup>11</sup> These designations are defined by the Official Code of Georgia. See, O.C.G.A. §§ 24-6-652 through 658. (*Rule, Appendix B (III)*)

#### **D. Appointment of Foreign Language Interpreters**

1. **Licensing Designations by the Commission**

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<sup>11</sup> For a list of “court qualified” or “qualified” sign language interpreters in Georgia visit - <http://www.georgiacourts.org/index.php/aoc/directors-office/committee-on-access-and-fairness-in-the-courts/95> (Last visited July 28, 2014).

- a. **Certified** - individuals competent in court interpretation as demonstrated by successful completion of an oral and written examination demonstrating competence in interpreting as provided for by the Georgia Commission on Interpreters and the completion of required continuing education providing familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system. In lieu of the examination, the Commission may recognize federal certification or certification of states participating in the national Consortium for State Court Interpreter Certification. (*Rule*, Appendix B (II)(A))
- b. **Conditionally Approved** - individuals appearing competent in court interpretation that have completed mandatory classroom training and passed a written examination demonstrating familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system. Also, such individuals must have achieved a sufficient score on an oral examination as determined by the Georgia Commission on Interpreters. **It is intended that a court will choose an interpreter from this category only if a Certified Interpreter is not available.** (*Rule*, Appendix B (II)(B) (Emphasis Added))
- c. **Registered** - individuals appearing competent in court interpretation that have completed mandatory classroom training and passed a written examination demonstrating familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system. This list will only include those interpreters interpreting a language for which no oral examination is given. Qualification tests for this list may also test language and interpretation skills. **It is intended that a court will choose an interpreter from this category only if a Certified Interpreter or Conditionally Approved Interpreter is not available.** (*Rule*, Appendix B (II)(C)(Emphasis Added))

**NOTE:** The Rule requires courts to make a diligent effort to appoint a Certified interpreter. If a Certified interpreter is unavailable, a Conditionally Approved interpreter or a Registered interpreter is to be given preference. There will be occasions when it is necessary to utilize a telephonic language service or a less qualified interpreter. Faced with a need, where no interpreter is available locally, courts should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay might be more appropriate than the use of a telephonic language service. (*Rule*, Section I)

## **2. Rare Languages**

- a. On occasions where a foreign language interpreter is needed for a rare/indigenous language for which COI has no licensed interpreter, courts are encouraged to contact

COI.<sup>12</sup> COI may be able to assist the court in securing an interpreter who speaks the rare language needed.

- b. Where COI is unable to assist the court with securing an interpreter in the rare language, the court should consider the following before appointing an individual who is not licensed to interpret and who is a member of the rare language community:
  - i. Potential conflicts of interest ( e.g., the interpreter may know the litigant or witness that requires the interpretation services) possibly resulting in the interpreter’s inability to be impartial
  - ii. Heightened risk of breach of confidentiality
  - iii. Interpreters’ ability to interpret accurately and competently (e.g., familiarity with legal terms of art).

#### **E. Appointment of Non-Licensed Interpreters**

1. If after a diligent search by the court a certified or other licensed interpreter cannot be found or is unavailable, the court should weigh the necessity of having the proceeding at that time without a licensed interpreter or with an unlicensed interpreter against continuing the proceeding to a later date when a qualified, licensed interpreter is available.
  - a. If the court determines that the use of a non-licensed interpreter is warranted then:
    - i. Refer to COI’s [Instructions for Use of a Non-Licensed Interpreter](#).<sup>13</sup>
    - ii. At the end of the proceeding, the court/ clerk should make a diligent effort to secure a certified or other licensed interpreter for any future legal proceedings regarding that case.
2. Being bilingual does not qualify an individual to serve as an interpreter.<sup>14</sup>

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<sup>12</sup> COI - Administrative Office of the Courts, 244 Washington Street, SW - Suite 300, Atlanta, Georgia 30334 / E-mail: [coi@gaaoc.us](mailto:coi@gaaoc.us) / Telephone: (404) 463-6478 / Fax: (404) 651-6449

<sup>13</sup> Direct Link - [http://w2.georgiacourts.org/coi/files/model%20form\(1\).doc](http://w2.georgiacourts.org/coi/files/model%20form(1).doc)

<sup>14</sup> “It is critically important to ensure that interpreters are competent and not merely bilingual. A bilingual person may inaccurately interpret or roughly interpret a summary of communications between the court and an LEP person, they may have a conflict of interest, or they may even be adverse. Under these circumstances, an LEP person is denied meaningful access to court operations in a way that a fluent English speaker is not. The DOJ Guidance emphasizes the importance of interpreter competency and states: ‘Competency requires more than self-identification

3. Children should never be used to interpret. It is also inappropriate for bilingual attorneys, relatives or friends of the LEP party/witness, judges and courthouse staff to serve as an interpreter in a legal proceeding.<sup>15</sup>

**NOTE:** Remember to make sure the decision maker has the interpreter take the [Interpreter's Oath](#)<sup>16</sup> before the proceeding begins. Additionally, keep a copy of the oath in your case file.

*“Do you solemnly swear or affirm that you will faithfully interpret from (state the language) into English and from English into (state the language) the proceeding before this court in an accurate manner to the best of your skill and knowledge?”*

**NOTE:** A court's failure to appoint a qualified sign language or foreign language interpreter, as needed, can result in reversible error on appeal. *See, Ramos v. Terry, 279 Ga. 889, 893 (2005).*<sup>17</sup>

## F. Record of Interpreter Testimony

### 1. Foreign Language Interpreters

- a. **Generally** - Where a Certified interpreter is used, no record shall generally be made of the non-English testimonial statements. (*Rule*, Section VII(A)(1))
  - i. Where a challenge is made to the accuracy of an interpretation, the court shall first determine whether the interpreter is able to communicate accurately with and interpret information to and from the non-English speaking person. *Id.*

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as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.’ DOJ Guidance, 67 Fed. Reg. at 41,461.” *U.S. DOJ Letter to NC Administrative Office of the Courts*, p. 9 (March 8, 2012) available at [http://www.justice.gov/crt/about/cor/TitleVI/030812\\_DOJ\\_Letter\\_to\\_NC\\_AOC.pdf](http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf) (Last visited March 12, 2015).

<sup>15</sup> GA Administrative Office of the Courts Brochure: *Working with Foreign Language Interpreters in the Courtroom* available at [http://w2.georgiacourts.org/coi/index.php?option=com\\_content&view=article&id=94&Itemid=104](http://w2.georgiacourts.org/coi/index.php?option=com_content&view=article&id=94&Itemid=104) (Last visited February 5, 2015).

<sup>16</sup> Direct Link - [http://w2.georgiacourts.org/coi/index.php?option=com\\_content&view=article&id=58&Itemid=75](http://w2.georgiacourts.org/coi/index.php?option=com_content&view=article&id=58&Itemid=75)

<sup>17</sup> “It is an abuse of discretion to appoint someone to serve as interpreter who is neither certified nor registered as an interpreter without ensuring that the person appointed is qualified to serve as an interpreter, without apprising the appointee of the role s/he is to play, without verifying the appointee's understanding of the role, and without having the appointee agree in writing to comply with the interpreters' code of professional responsibility.” *Id.* at 892; *See also*, Edmondson-Cooper, Jana J., *Is it Reversible Error?*, Georgia Courts Journal (March 2015) available at [http://w2.georgiacourts.gov/journal/index.php/component/content/article/59-march-2015/322-is-it-reversible-error#\\_edn28](http://w2.georgiacourts.gov/journal/index.php/component/content/article/59-march-2015/322-is-it-reversible-error#_edn28) (Last visited March 10, 2015).

- ii. If it is determined that the interpreter cannot perform these functions, arrangements for another interpreter should be made, unless testimony that is cumulative, irrelevant, or immaterial is involved. *Id.*
  - iii. Where the court determines that the interpreter has the ability to communicate effectively with the non-English speaker, the court shall resolve the issue of the contested interpretation and the record to be made of the contested testimony in its discretion. *Id.*
  - iv. Any transcript prepared shall consist only of the English language spoken in court. *Id.*
- b. **Criminal Cases** – In criminal cases, whenever a Certified interpreter is not utilized, the court shall make an audio or audio-visual recording of any testimony given in a language other than English. ( *Rule*, Section VII(A)(2))
  - c. **Civil Cases** – In civil cases, whenever a Certified interpreter is not utilized and the party was denied the right to an interpreter of his or her own choosing, the court shall make an audio or audio-visual recording of any testimony given in a language other than English. (*Rule*, Section VII (A)(3))

## 2. **Sign Language Interpreters**

- a. **Generally** – the testimony of a hearing impaired person may be recorded as provided for in the Official Code of Georgia.<sup>18</sup> (*Rule*, Section VII (B))

## G. **Additional Practical Considerations**

1. The Supreme Court Rule applies to administrative forums as well as courts of law.
2. When the court knows a case requires the use of an interpreter, the court should schedule the case to allow for more time.
3. A party or witness may be able to speak or understand some English, however the court should be attentive to the possibility that the party or witness will need an interpreter later in the legal proceeding or other future legal proceeding.
4. The court should be aware that an LEP or DHH litigant or witness may refuse interpretation and/or translation services for various reasons, including but not limited to,;

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<sup>18</sup> O.C.G.A. § 24-6-657

- a. The litigant or witness may not identify as LEP/DHH and does not believe that she or he needs the assistance of an interpreter.
  - b. The litigant or witness does not understand the interpreter is *neutral*, appointed by the court, because opposing counsel requested that the court appoint an interpreter ( *This is most frequent where one party is represented by counsel and the opposing party is pro se.*)
5. If the litigant or witness refuses to use the court-appointed interpreter, the court should **establish on the record** that:
- a. The litigant or witness is LEP/ DHH.
  - b. The court provided the litigant or witness with a certified or other licensed interpreter ( if no certified interpreter was available) free of charge.
  - c. The litigant or witness refuses to use the interpreter and insists on communicating without any language assistance from the court-appointed interpreter.
  - d. This preserves the record in case of an appeal by either party and the litigant or witness asserts his or her right to due process was violated because she or he was prevented from fully participating in the initial hearing because of a language barrier.
  - e. **The court should be aware that that court may need to appoint an interpreter despite the litigant’s or witness’ refusal, to ensure that due process is not jeopardized.**
6. If the litigant or witness insists on using their own interpreter ( e.g., family member, friend, etc.) , then the court should inform the litigant or witness that it is inappropriate to use a non-licensed interpreter in a legal proceeding when a certified or other licensed interpreter is available.
7. Courts are encouraged to become aware that the use of a litigant’s or witnesses’ immigration status/ national origin by an attorney to gain leverage in a civil case is widely considered to be unethical behavior.
- a. *See, Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064-65 (9th Cir. 2004).
  - b. *See, WASH. RULES OF PROF’L CONDUCT R. 4.4 cmt.* (2013).
  - c. *See, N.C. State Bar, Formal Ethics Op. 3* (2005), available at <http://www.ncbar.com/ethics/ethics.asp?id=726> (threats to “report immigration status”, when it is extraneous to the case, may be an “abuse of the justice system”).
  - d. *See, ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 92-363* (1992).

8. Additionally, a litigant's or witness' immigration status should not be considered a controlling factor in domestic relations cases.
  - a. *See, Padron v. Padron*, 281 Ga. 646, 641 SE2d 542 (2007).
  - b. *See, In Re Adoption of D.J.F.M., a child*, 284 Ga. App. 420, 643 SE2d 879 (2007).
9. **Remember** - The Supreme Court Rule applies to “all criminal and civil proceedings in Georgia where there are non-English speaking persons in need of interpreters. See also *Ling v. State*, 288 Ga. 299 (702 SE2d 881) (2010). All other court-managed functions, including information counters, intake or filing offices, cashiers, records rooms, sheriff's offices, probation and parole offices, alternative dispute resolution programs, *pro se* clinics, criminal diversion programs, anger management classes, detention facilities, and other similar offices, operations and programs, shall comply with Title VI of the Civil Rights Act of 1964.” *Rule*, Appendix A (II)(Emphasis Added).

#### IV. Resources

- A. **ABA Standards for Language Access in Courts (2012)** - [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf)
- B. **Supreme Court of Georgia Commission on Interpreters** - <http://w2.georgiacourts.org/coi/>
  1. Statewide Licensed Interpreter Registry
  2. Language Identification Guide
- C. **Registry of Interpreters for the Deaf (RID)** - <http://rid.org/>
- D. **Georgia Administrative Office of the Courts (AOC)**
  1. **Committee on Access and Fairness in the Courts** - <http://www.georgiacourts.org/index.php/aoc/directors-office/committee-on-access-and-fairness-in-the-courts>
    - a. AOC “Working with Foreign Language Interpreters” Brochure
    - b. AOC DHH Brochure (*forthcoming*)

- E. Georgia Legal Services Program (GLSP) - [www.glsp.org](http://www.glsp.org)
1. Text INTERPRETER to 99699 to access materials on language access in the courts.
  2. *“Eliminating Barriers to Justice: Addressing Ethical Obligations, Cultural Competency, and Best Practices for Ensuring Meaningful Language Access in Georgia Courts”* - <http://www.glsp.org/2014/02/27/ga-supreme-court-justices-urge-the-use-of-qualified-intepreters-in-court-at-glsp-sponsored-cle/>
- F. Edmondson, Jana J. and Krisher, Lisa J., *“Seen But Often Unheard: Limited-English-Proficiency Advocacy in Georgia,”* *Clearinghouse Review: Journal of Poverty Law and Policy*, 46 Clearinghouse Rev. 343 (Nov.-Dec. 2012)
- G. Edmondson, Jana J., *“Working with an Interpreter: Providing Effective Communication & Ensuring Limited English Proficient Clients Have Meaningful Access to Access to Justice,”* *Georgia Bar Journal*, Vol. 18 No.5, pp.18-24 available at <http://digital.ipcprintservices.com/publication/?i=146401&p=20> (Last visited March 12, 2015).
- H. Edmondson-Cooper, Jana J., *“Breaking Free, Being Heard: A Domestic Violence Survivor’s Right to an Interpreter in Georgia Courts,”* *The Family Law Review: a publication of the Family Law Section of the State Bar of Georgia*, pp. 26-28, Spring 2013, available at [http://www.gabar.org/committeesprogramssections/sections/familylaw/upload/FLR\\_Spr\\_13\\_web.pdf](http://www.gabar.org/committeesprogramssections/sections/familylaw/upload/FLR_Spr_13_web.pdf) (Last visited March 12, 2015).
- I. *“Justice Melton in Q+A on Language as a Barrier to Access,”* *Daily Report* (February 19, 2014) available at <http://www.glsp.org/2014/02/19/justice-melton-answers-questions-from-glsp-on-language-access-in-the-courts/> (Last visited March 9, 2015).
- J. Edmondson-Cooper, Jana J. *“Is it Reversible Error?”* *Georgia Courts Journal* (March 2015) available at <http://w2.georgiacourts.gov/journal/index.php/component/content/article/59-march-2015/322-is-it-reversible-error> (Last visited March 10, 2015)