

Racing Rules of Sailing

Rule 69

A submission from the Danish Sailing Association

Purpose or Objective

To express the obligation on competitors not to commit gross misconduct, clarify the standard of proof in rule 69 and require MNA action.

This submission has three separate proposals.

Proposal 1

69 ALLEGATIONS OF GROSS MISCONDUCT

69.1 Obligation not to Commit Gross Misconduct

- (a) A competitor shall not commit gross misconduct, including a gross breach of a rule, good manners or sportsmanship or conduct bringing the sport into disrepute. For the purposes of rule 69, a competitor includes a person in charge, a boat owner and any other person who has agreed to be governed by the rules.**
- (b) An allegation of a breach of rule 69.1(a) shall be determined in accordance with the provisions of rule 69.**

69.2~~4~~ Action by a Protest Committee

- (a) When a protest committee, from its own observation or a report received from any source, believes that a competitor may have **broken rule 69.1(a)** ~~committed a gross breach of a rule, good manners or sportsmanship, or may have brought the sport into disrepute~~, it may call a hearing. **If the protest committee decides to call a hearing, it** shall promptly inform the competitor in writing of the alleged **breach** ~~misconduct~~ and of the time and place of the hearing. If the competitor provides good reason for being unable to attend the hearing, the protest committee shall reschedule it.
 - (d) If the competitor does not provide good reason for being unable to attend the hearing and does not come to it, the protest committee may conduct it without the competitor present. If the committee does so and penalizes the competitor, it shall include in the report it makes under rule 69.2~~4~~(c) the facts found, the decision and the reasons for it.
 - (f) When the protest committee has left the event and a report alleging **a breach of rule 69.1(a)** ~~misconduct~~ is received, the race committee or organizing authority may appoint a new protest committee to proceed under this rule.
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Current Position 1

As above.

Reason 1

At present, rule 69 does not have an express obligation on competitors not to commit gross misconduct. This is highly undesirable and potentially can be legally challenged. The proposed rule 69.1(a) of this submission states this explicitly and makes clear that the other provisions of Part 5 cannot be used to determine rule 69 breaches.

Proposal 2

69.21 Action by a Protest Committee

- (b) A protest committee of at least three members shall conduct the hearing, following the procedures in rules 63.2, 63.3(a), 63.4 and 63.6. If it **is established to the comfortable satisfaction of the protest committee, bearing in mind the seriousness of the alleged misconduct, that the competitor has broken rule 69.1(a),** ~~decides that the competitor committed the alleged misconduct~~ it shall either
- (1) warn the competitor or
 - (2) impose a penalty by excluding the competitor and, when appropriate, disqualifying a boat, from a race or the remaining races or all races of the series, or by taking other action within its jurisdiction. A disqualification under this rule shall not be excluded from the boat's series score.

The prescriptions of a national authority may, with the consent of the ISAF, amend the standard of proof in this rule.

Current Position 2

As above.

Reason 2

The current rule 69 does not state the standard of proof and this presents legal problems. Without an express standard of proof, the actual standard is left to implication and the laws of the country where the racing is being undertaken as the RRS are a legal contract between the parties. By setting a standard in the rules, these problems are removed. Flexibility is given to MNAs to amend the standard if it is necessary to do so but ISAF must agree so that the standard is not changed without good reason.

The burden for most racing rules is "on a balance of probabilities", whereas for rule 69, it is common to apply "beyond reasonable doubt". However, this is not stated explicitly, and it is inconsistent with the standard of proof used in Regulation 21 (Anti-Doping Code). The proposed

rule 69.2(b) of this submission clarifies the standard of proof in rule 69 cases and makes it consistent with the anti-doping rules.

The “comfortable satisfaction” standard is also recognised and approved by CAS.

If this proposal is accepted, a submission for a case to the ISAF Case book will be prepared for next year to explain to protest committees what the “comfortable satisfaction” standard means and how they should apply it.

Proposal 3

69.32 Action by a National Authority or Initial Action by the ISAF

- (a) When a national authority or the ISAF receives a report alleging a ~~gross~~ breach of **rule 69.1(a)** ~~a rule, good manners or sportsmanship, a report alleging conduct that has brought the sport into disrepute,~~ or a report required by rule 69.24(c) or 69.24(e), it **shall** ~~may~~ conduct an investigation, **in accordance with its established procedures,** and, when appropriate, ~~shall~~ conduct a hearing. It may then take any disciplinary action within its jurisdiction it considers appropriate against the competitor or boat, or other person involved, including suspending eligibility, permanently or for a specified period of time, to compete in any event held within its jurisdiction, and suspending ISAF eligibility under ISAF Regulation 19. **The national authority shall promptly inform the other national authorities involved and the ISAF of its decision and reasons, even if its decision is to take no further action.**
- (b) The national authority of a competitor shall also suspend the ISAF eligibility of the competitor as required in ISAF Regulation 19.
- (c) The national authority shall promptly report a suspension of eligibility under rule 69.32(a) to the ISAF, and to the national authorities of the person or the owner of the boat suspended if they are not members of the suspending national authority.

69.43 Subsequent Action by the ISAF

Upon receipt of a report required by rule 69.32(c) or ISAF Regulation 19, or following its own action under rule 69.32 (a), the ISAF shall inform all national authorities, which may also suspend eligibility for events held within their jurisdiction. The ISAF Executive Committee shall suspend the competitor’s ISAF eligibility as required in ISAF Regulation 19 if the competitor’s national authority does not do so.

Current Position 3

As above.

Reason 3

The current wording of rule 69 does not require the MNA to conduct an investigation. Therefore, the reports about penalties are handled very differently by MNAs. This submission increases consistency by requiring the MNA to conduct an investigation. When a protest committee decides to penalize a competitor under rule 69, it is a serious matter. Therefore, it is only reasonable that an MNA being informed about such a penalty must conduct an investigation and inform the competitor, the involved MNAs and ISAF about the outcome as soon as possible. The proposed rule 69.3(a) of this submission implements such a requirement and requires established procedures for the MNAs.