

Racing Rules of Sailing

Rule 63.6 and M3.2

A submission from the Chairman of the Racing Rules Committee

Purpose or Objective

To clarify that hearsay evidence cannot be refused in a hearing, that a protest committee is required to review all evidence presented, evaluate it and give all evidence the appropriate weight.

Proposal

Change rule 63.6 as follows:

63.6 Taking Evidence and Finding Facts

- (a) The protest committee shall take the evidence, including hearsay evidence, of the *parties* present at the hearing and of their witnesses and other evidence it considers necessary. However, the committee may exclude evidence which it considers is irrelevant or unduly repetitive.
- (b) A member of the protest committee who saw the incident shall, while the *parties* are present, state that fact and may give evidence.
- (c) A *party* present at the hearing may question any person who gives evidence.
- (d) The committee shall then give the weight it considers appropriate to the evidence presented, find the facts and base its decision on them.

M3.2 Take the evidence (rule 63.6).

The first seven bullet points remain unchanged. Then:

- Try to prevent leading questions ~~or hearsay evidence~~, but if that is impossible discount the evidence so obtained.
- The protest committee chairman should advise a party or a witness giving hearsay, repetitive or irrelevant evidence that the protest committee must give such evidence appropriate weight, which may be little or no weight at all.
- If irrelevant or repetitive evidence unduly delays a hearing, the committee may refuse to hear such evidence and exclude it from consideration. This should not be done without first carefully considering whether the party's right to a fair hearing would be compromised. Evidence that might be considered irrelevant might later turn out to be relevant. Repetitive evidence might reinforce other evidence. It is almost always better to allow irrelevant and repetitive evidence. Only in extreme cases where it will be clear that the right to a fair hearing will not be infringed should this be done.

The last three bullet points remain unchanged.

Current Position

As above

Reasons

1. This is considerable inconsistency in how protest committees handle hearsay evidence.
 2. There is guidance in the Judges Manual, but that is not a document easily accessible to all those with a role in hearings.
 3. It is very difficult to decide that hearsay evidence is being presented until it has been heard.
 4. Some hearsay evidence may be easy to verify and be helpful to making a correct decision. Some examples of useful hearsay evidence would be:
 - a. A mark rounding list but the person who wrote the list is not available for the hearing.
 - b. Video or photographic evidence but the photographer is not available
 - c. The evidence from those who may not be able to attend a hearing, such as the medical staff in a hospital.
 5. It is much easier for a protest committee to give appropriate weight to hearsay evidence than to decide what is hearsay evidence and decide if it is permitted.
 6. Sometimes a party seeks to present irrelevant evidence or unduly repetitive evidence. So while a protest committee may discourage this, only in extreme cases should the protest committee exclude such evidence.
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