

## **Racing Rules of Sailing**

### Rule 69, Appendices M & N

A submission from the Chairmen of the Constitution Committee, Race Officials Committee and Racing Rules Committee

#### **Purpose or Objective**

To update RRS 69 to remedy shortcomings based on experience since the current version was introduced, and in response to the undertaking to CAS to review the processes.

The rule should be updated to achieve the following:

- (i) remove the concept of “Gross” misconduct as distinct to misconduct from this rule;
- (ii) to reintroduce a rule of misconduct by supporters, coaches and similar;
- (iii) to maintain the concept of increasing penalties determined by the severity of the misconduct;
- (iv) to establish a higher threshold before the decision of a protest committee should be notified to a national authority or ISAF; and
- (v) to remove from the rule the procedures to be followed by ISAF, which will be set out in a new or amended Regulation generally.

To improve the guidance to protest committees acting under rule 69.

To update RRS Appendix N (International Juries) in line with the new RRS 69 and to improve the guidance for the conduct of hearings.

#### **Proposal 1**

Delete rule 69 and replace as follows:

### **SECTION C**

#### **MISCONDUCT**

#### **69 MISCONDUCT**

##### **69.1 Obligation not to Commit Misconduct; Resolution**

##### **(a) Misconduct is:**

- (1) conduct that is a breach of good manners, a breach of good sportsmanship or unethical behaviour;**
  - (2) conduct that may bring the sport into disrepute; or**
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- (3) a breach of a *rule* that is deliberate, repeated or otherwise more than a *misjudgement*.
- (b) A competitor, boat owner or *support person* shall not commit an act of misconduct or bring the sport into disrepute.
- (c) An allegation of a breach of rule 69.1(a) shall be resolved in accordance with the provisions of rule 69. It shall not be grounds for a *protest* and rule 63.1 does not apply.

## 69.2 Action by a Protest Committee

- (a) A protest committee acting under this rule shall have at least three members.
  - (b) When a protest committee, from its own observation, including evidence taken during a hearing or information received from any source, believes that a person may have broken rule 69.1(b), it shall decide whether or not to call a hearing.
  - (c) If the protest committee decides to call a hearing, it shall promptly inform the person in writing of the alleged breach and of the time and place of the hearing and follow the procedures in rules 63.2, 63.3(a), 63.4 and 63.6 except that:
    - (1) unless appointed by ISAF, a person may be appointed by the protest committee to present the allegation and have the same rights, as would a *party* to a protest; and
    - (2) a person against whom an allegation has been made under this rule shall be entitled to be present throughout the hearing and to have an advisor, supporter or representative with him.
  - (d) If the person is unable to attend the hearing and
    - (1) does provide good reason, the protest committee shall reschedule it; or
    - (2) does not provide good reason and does not come to it, the protest committee may conduct it without the person present.
  - (e) The standard of proof to be applied is the test of the comfortable satisfaction of the protest committee, bearing in mind the seriousness of the alleged misconduct. However, if the standard of proof in this rule conflicts with the laws of a country, the national authority may, with the approval of ISAF, change it with a prescription to this rule.
  - (f) If the allegation or any part of the allegation is upheld, the protest committee may take one or more of the following actions
    - (1) issue a warning;
    - (2) in the case of a breach by a competitor or boat owner (unless rule 69.2(g) applies), change their boat's score in one or more races, including disqualification(s) that may or may not be excluded from her series score;
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(3) exclude the person from the event or venue or remove any privileges or benefits; and

(4) take any other action within its jurisdiction.

(g) A competitor may be penalized under rule 69.2(f) for the misconduct of a *support person*. However, a penalty may only be imposed on a competitor for the misconduct of a *support person* if

(1) the competitor may have gained a competitive advantage as a result of the misconduct; or

(2) the *support person* has committed a further act of misconduct after the competitor has been warned by the protest committee; or

(3) the protest committee decides that such a penalty is necessary to prevent future misconduct of the *support person*.

(h) If the protest committee

(1) imposes a penalty greater than one DNE;

(2) excludes the person from the event or venue; or

(3) in any other case if it considers it appropriate,

it shall report its findings, including the facts found, its conclusions and decision to the national authority of the person or, for specific international events listed in the ISAF Regulations, to ISAF. If the protest committee has acted under rule 69.2(d)(2), the report shall also include that fact and the reasons for it.

(i) If the protest committee decides not to conduct the hearing without the person present, or if the protest committee has left the event and a report alleging a breach of rule 69.1(b) is received, the race committee or organizing authority may appoint the same or a new protest committee to proceed under this rule. If it is impractical for the protest committee to conduct a hearing, it shall collect all available information and, if the allegation seems justified, make a report to the national authority of the person or, for specific international events listed in ISAF Regulations, to ISAF

### 69.3 Action by a National Authority and ISAF

The disciplinary powers, procedures and responsibilities of national authorities and ISAF that apply are specified in ISAF Regulation 35, Disciplinary Code. National authorities and ISAF may impose further penalties, including suspension of eligibility, under that Code.

This submission, prepared by the Rule 69 Working Party, requires the submission 202-15 to add a definition of support person and new rule 3 to be approved.

A consequential submission regarding RRS 60 will be made separately.

### Current Position

See current rule 69.

### Reasons

1. The behaviour of coaches and parents has been the cause of considerable problems. The Rule 69 Working Party was tasked to resolve this. Changes in concept were presented in November 2014. This submission achieved that aim while taking into account views expressed last November and the current rule 69 does not provide means to handle these problems.
2. There has been considerable difficulty in determining what is and is not "gross" in the context of misconduct. Misconduct is misconduct, and if it is minor or severe the penalty will reflect that.
3. A general definition of misconduct is helpful in the RRS as there are many different views around the world as to what constitutes misconduct.
4. A Case has also been prepared and is submitted as submission 272-15. Depending on this proposal, the Case will require editing.
5. As the procedures for Rule 69 hearings are different from those of other hearings they should be clearly set out, both for the help of the committee and to avoid procedural error.
6. It should also be clear that when a protest committee appoints one of its members or any other person to act as the presenter of any case against a competitor, that individual has the same rights as a party to a protest.
7. It should be clear as to when a protest committees report should be forwarded to ISAF or MNA
8. It should also be clear what happens if either a competitor cannot attend a hearing or if the report prompting a hearing is only received after the event.
9. The proposed revised RRS 69 increases the threshold for reporting a breach of RRS 69 to ISAF or MNA to avoid reporting minor penalties. The grounds for this change are to avoid discouraging protest committees from taking action and to avoid MNAs/ISAF needing to handle inappropriate cases.
10. These changes were supported in principle by Council in November 2014.

### Proposal 2

Amend rule M5 as follows:

#### **M5 ~~GROSS~~ MISCONDUCT (rule 69)**

- M5.1** An action under this rule is not a *protest*, but the protest committee gives its allegations in writing to the competitor before the hearing. The hearing is conducted under ~~the same~~ rules **similar to those governing a protest hearing** ~~as other hearings~~ but the protest
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committee must have at least three members (rule 69.2(~~ab~~)). Use the greatest care to protect the competitor's rights.

- M5.2** A competitor or a boat cannot protest under rule 69, but the protest form of a competitor who tries to do so may be accepted as a report to the protest committee, which can then decide whether or not to call a hearing.
- M5.3** Unless ISAF has appointed a person for the role, the protest committee may appoint a person to present the allegation. This person might be a race official, the person making the allegation or other appropriate person. When no reasonable alternative person is available, a person who was appointed as a member of the protest committee may present the allegation.
- M5.4** When the protest committee needs more information to make the decision to call a hearing as required by rule 69.2(c), it should consider appointing a person or persons other than protest committee members to conduct an investigation.
- M5.5** When an investigator is appointed, all information they gather, favourable or unfavourable, shall be disclosed to the protest committee, and if the protest committee decides to call a hearing, to the parties.
- M5.63** When it is desirable to call a hearing under rule 69 as a result of a Part 2 incident, it is important to hear any boat-vs.-boat *protest* in the normal way, deciding which boat, if any, broke which *rule*, before proceeding against the competitor under ~~this~~ rule **69**.
- M5.74** Although action under rule 69 is taken against a competitor, not a boat, a boat may also be penalized (rule 69.2(~~ef~~)).
- M5.5** ~~The protest committee may warn the competitor (rule 69.2(c)(1)), in which case no report is to be made (rule 69.2(d)). When a penalty is imposed and a report is made as required by rule 69.2(d) or 69.2(f), it may be helpful to recommend whether or not further action should be taken.~~
- M5.8** When a protest committee upholds a rule 69 allegation it will need to consider if it is appropriate to report to either an MNA or ISAF. Guidance on when to report may be found in the ISAF Case Book. When the protest committee does make a report it may recommend whether or not further action should be taken.
- M5.9** Unless the right of appeal is denied in accordance with rule 70.5, the parties to a rule 69 hearing may appeal the decision of the protest committee.
- M5.10** Further guidance for protest committees for cases of misconduct may be found on the ISAF website.

#### Reasons

1. These changes to Appendix M will help protest committees to conduct rule 69 matters in an appropriate manner and will also give any person subject to action under rule 69 confidence that the matter will be managed in an appropriate manner.

2. Following these guidelines will reduce the risk of procedural criticism should the case be appealed.
3. While this submission has been prepared by the Rule 69 Working Party to be consistent with the proposed changes to rule 69, Proposal 2 is a separate proposal as it is not dependent on Proposal 1 being approved. There is nothing in the current rule 69 that prohibit these procedural clarifications, except that reporting to national authorities or ISAF is different.

### Proposal 3

1. To move rule N3.2 to N1.6 and renumber N1.6 and N1.7 appropriately.
2. Add new rule N4:

### **N4 MISCONDUCT (Rule 69)**

- N4.1 ISAF Regulation 35, Disciplinary Code contains procedures that apply to specific international events with regard to the appointment of a person to conduct any investigation. These procedures override any conflicting provision of this appendix.**
- N4.2 A person shall be responsible for presenting to the hearing panel any allegations of misconduct under rule 69. This person shall not be a member of the hearing panel but may be a member of the jury. Such person shall be required to make full disclosure of all material that may come into their possession in the course of their investigation to the person subject to allegations of a breach of rule 69.**
- N4.3 A hearing panel, to the extent it is practically possible, shall not act as an investigator of any allegations made under rule 69 prior to the hearing. At any hearing the panel shall be entitled to ask any investigative questions it may see fit.**
- N4.4 If the panel decides to call a hearing, all material disclosed to the panel in order for them to make that decision must be disclosed to the person subject to the allegations before the hearing begins.**

### Reasons

1. Placing the current rule N3.2 into N1.6 brings all of the rules governing the requirements for constituting an international jury into one section.
  2. An international jury conducting a hearing under rule 69 is subject to more stringent procedures than a non-international jury as an international jury decision is not subject to appeal. The more stringent procedures introduce a greater segregation of duties.
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