

Racing Rules of Sailing

Definition of Interested Party and Conflict of Interest, Rule 63.4, Consequential Changes to Other Rules, Appendix M and Appendix N

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

Purpose or Objective

To bring the Racing Rules of Sailing up to date with the current best practices regarding Conflicts of Interest and to be consistent with the new definition of Conflict of Interest approved in November 2014.

Proposal 1

1. Delete the Definition Interested Party and replace with new Definition Conflict of Interest

Option 1 – a modified version of existing definition:

Conflict of Interest **A person has a conflict of interest if they may gain or lose as a result of a decision to which they contribute, or if they have a close personal interest in that decision.**

Option 2 – from ISAF Regulations:

Conflict of Interest **A conflict of interest exists when a race official has, or reasonably appears to have, a personal or financial interest which could affect the ability of the official to be impartial.**

2. Delete rule 63.4 and replace with:

63.4 Conflict of Interest

(a) A protest committee member shall declare any possible conflict of interest as soon as he is aware of it. A party to the hearing who believes a member of the protest committee has a conflict of interest shall object as soon as possible. A conflict of interest declared by a protest committee member shall be included in the written information provided under rule 65.2.

(b) A member of a protest committee with a conflict of interest shall not be a member of the committee for a hearing, unless all parties consent or the protest committee first decides that the conflict of interest is not [material or significant]*. When deciding whether a conflict of interest is [material or significant]* it shall consider the level of the conflict, the importance to each party and the overall perception of fairness.

Option to add (c):

(c) Except for international or major events, or as prescribed by an MNA, the protest committee may allow a member who may have a conflict of interest to take part to the hearing. When deciding to do so, the protest committee shall consider whether the

conflict of interest is [material or significant]*, the level of the conflict, the importance to each party and the overall perception of fairness.

* Note: Committees and Council are to decide which of 'material', 'significant' or 'material or significant' is the best option.

3. Make the following consequential amendments to rules 60.2, 60.3, 71.1, rule E1.1 and the Protest Form

60.2 A race committee may

- (a) protest a boat, but not as a result of information arising from a request for redress or invalid *protest*, or from a report from an ~~interested party~~ **a person with a conflict of interest** other than the representative of the boat herself.

60.3 A protest committee may

- (a) protest a boat, but not as a result of information arising from a request for redress or an invalid protest, or from a report from an ~~interested party~~ **a person with a conflict of interest** other than the representative of the boat herself. However, it may protest a boat:

71.1 ~~No interested party~~ **A person with a conflict of interest** or member of the protest committee shall not take any part in the discussion or decision on an appeal or a request for confirmation or correction.

E1.1 Definitions

Add to the definition ~~Interested Party~~ **Conflict of Interest**: ~~'but not a competitor when acting as an observer'~~. **An observer does not have a conflict of interest solely by being a competitor**

Protest Form

~~No objection about interested party.~~ **Any conflict of interest has been declared and no objection raised.**

Current Position

As above.

Reasons

1. There is no change of concept from the submission to change rule 63.4 in November 2014 but some concerns were raised at that time.
 2. A 'hard line' rule on conflict of interest is not practical at all events, especially for club events that depend on volunteer members and others who frequently have some degree of conflict. The submission reflects the reality and as is therefore a significant improvement over the current rule. The new rule will also cause protest committees to address the issue of conflict more frequently.
-

3. The current ISAF Conflict of Interest Guidance that applies to ISAF Race Officials recognises the need for some flexibility to suit different events. This submission is consistent with that guidance.
4. The proposal introduces the concept of the parties being able to consent to the protest committee members, having been fully informed of the conflict.
5. The protest committee may also decide that a conflict is not material, depending on the level of conflict and the level of the event. A Case will be drafted to help interpret 'material' as it would be too cumbersome to include all the considerations in the rule itself. Some of the concepts from the currently approved Conflicts of Interest Guidance administered by a working party of the ROC will be used to ensure consistency.
6. The definition of Conflict of Interest, is not limited to protest committee members but applies to all race officials.
7. There is no doubt that this area is extremely difficult to be definitive. Except for very clear cut situations, almost every situation is different. The Rule 69 Working Party, who prepared this submission, firmly believe that the submission is far more aligned to the real situation than the current rule.
8. The consequential changes introduce a new definition: Conflict of Interest.
9. In 71.1 a higher, less flexible standard is applied to those deciding an appeal that might otherwise be permitted in the proposed rule 63.4. There is no change in standard from the current RRS.
10. The change to the protest form also accommodates the proposed change in rule 63.4(b) that requires any conflict to be declared but permits the parties to consent to the conflict of interest.

Proposal 2

1. Amend rule 86.1(a) as follows:
 - (a) Prescriptions of a national authority may change a racing rule, but not the Definitions; a rule in the Introduction; Sportsmanship and the Rules; Part 1, 2 or 7; rule 42, 43, **63.3, 63.4**, 69, 70, 71, 75, 76.3, 79 or 80; a rule of an appendix that changes one of these rules; Appendix H or N; or ISAF Regulation 19, 20, 21 or 22.

Current Position

As above.

Reasons

1. Rules 63.3 and 63.4 contain fundamental principles of fairness when conducting hearings. It is not appropriate for these to be changed, except through RRS Appendices.
-

2. Should Proposal 1 not be accepted, this proposal remains valid to ensure the current rules cannot be changed by sailing instructions.

Proposal 3

1. Delete the second point of rule M2.1.
2. Add new rule M2.3:

M2.3 CONFLICTS OF INTEREST

- **Ensure that all protest committee members declare any possible *conflicts of interest*. At major events this will often be a formal written declaration made before the event starts that will be kept with the protest committee records.**
- **At the start of any hearing, check that the *parties* are aware of any *conflicts of interest* of protest committee members. Ask the *parties* if they consent to the members. If a *party* does not object as soon as possible after a *conflict of interest* has been declared, the protest committee should record this and proceed.**
- **If a party objects to a member, the remainder of the protest committee members need to assess if the *conflict of interest* is material. The assessment will consider the level of the event, the level of the conflict and the perception of fairness. It may be acceptable to balance conflicts between protest committee members. This may need reference to further guidance to be found [insert link]. Record the decision and the grounds for that decision.**
- **If a *party* does not object as soon as possible after a *conflict or interest* has been declared, the protest committee may take this as consent to proceed and should record this.**
- **In cases of doubt it may be preferable to proceed with a smaller protest committee. Except for hearings under rule 69, there is no minimum number of protest committee members required.**
- **When redress is requested under rule 62.1(a), a member of the race committee should not be a member of the protest committee.**

3. Amend rule N3.3 as follows:

N3.3 Members shall not be regarded as ~~*interested parties*~~ **having a material *conflict of interest*** (see rule 63.4) by reason of their nationality **or club membership or similar**. **When otherwise considering material *conflict of interest* as required by rule 63.4, considerable weight must be given to the fact that decisions of an international jury cannot be appealed and this may affect the perception of fairness and reduce the level of conflict that is material. In case of doubt, the decision should err on the side of caution and the case should proceed as permitted by N3.2**

Reasons

1. If the changes in Proposal 1 are accepted, protest committees will need guidance to ensure the new rules are applied consistently. This is achieved through changes to Appendix M
 2. The change to Appendix N recognises that a higher standard is required when there is no appeal from the decision of an International jury. It also recognises that event with international juries have greater resources to be able to avoid minor conflicts of interest.
-