

# Guidelines for Conducting a Hearing Involving a Support Person For US Sailing Judges

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These guidelines were developed to help judges understand the process to use when a support person may have broken a rule. We're assuming that you have your rulebook handy as you read this.

Four changes in *The Racing Rules of Sailing for 2017-2020* took effect on January 1, 2018. All four are related to hearings involving support persons. The changes establish a clear process to follow whenever the protest committee receives a report alleging a support person has broken a rule. Here is an overview of the effects of the four rule changes that World Sailing made:

- There are now four types of hearings: **protest hearings, redress hearings, hearings involving misconduct under Rule 69** alleging misconduct, and **hearings involving support persons** alleging that a support person has broken a rule.

- A new rule, **Rule 63.9**, has been added, which specifies a process the protest committee must follow when it receives, under Rule 60.3(d), a report alleging that a support person has broken a rule.

The committee must first decide whether the report is sufficiently convincing that a hearing should be called.

If so, the committee must conduct the hearing following the procedures specified in Rules 63.2, 63.3, 63.4 and 63.6. This is the same procedure that is followed in a protest or redress hearing, but with one difference. For a hearing involving a support person, the protest committee may appoint a "presenter" — a person who will present the case against the support person. In the case of a protest or a request for redress, the role of presenter is played by the protestor or the boat requesting redress.

- **Section (e)** of the definition **Party** has been expanded. For any hearing involving a support person, the parties to the hearing are: the support person alleged to have broken a rule, any boat that support person supports, and the presenter. This change means that if a hearing is held because a coach, a parent or any other support person may have broken a rule, every boat that that person supports is entitled to be represented during the hearing, and will have all the rights a protestee would have in a protest hearing. Boats can no longer be penalized without having the chance to defend themselves.

- Previously, **Rule 64.4(b)** referred to a penalty given to a competitor as a result of a breach of a rule by a support person. That did not make sense. A regatta is a contest between boats, and each boat entered is scored and can be penalized. When a competitor breaks a rule, his or her boat receives the penalty. Rule 64.4(b) has been reworded so that only boats, and not competitors, receive a penalty. In addition, revised Rule 64.4(b)(2) states that the warning described in that rule must be given in writing.

## Hearings Involving Support Persons and Protest Hearings Compared

Here is a summary of the similarities and differences between a standard protest between boats and an action taken by the protest committee involving a support person.

### Differences:

- There is no requirement for a person who alleges that a support person has broken a rule to notify the support person before he or she makes a report to the protest committee. And, of course, there is no requirement to hail 'Protest' or fly a red flag.
- A report alleging that a support person broke a rule must be made to the protest committee, but it does not have to be in writing or satisfy any of the requirements in rule 61.2. Also, a protest committee may decide to make such an allegation based on its own observation (see rule 60.3(d)).
- There is no time limit for making a report alleging that a support person broke a rule.
- There is no requirement that, just because the protest committee received a report alleging that a support person broke a rule, there must be a hearing. The protest committee may consider the report or discuss its own observations concerning a support person's actions, and then decide whether or not to call a hearing.
- Whenever a hearing is called alleging that a support person has broken a rule,  
(1) the protest committee may appoint a person to present the allegation in the hearing,  
and  
(2) every boat that the support person supports is a party to the hearing.
- The details of the allegation against the support person shall be given to all parties to the hearing. There is no requirement that this be done in writing, although that certainly is a good idea.
- The validity rules in rule 63.5 do not apply, but the protest committee should make sure that the requirements of rule 63.2 have been met.
- In the decision phase of the hearing, the protest committee shall comply with rule 64.4.

### Similarities:

- All parties to the hearing shall be notified of the time and place of the hearing, and they shall be allowed reasonable time to prepare for the hearing (see rule 63.2).
- All the requirements of rule 63.3 apply, except the requirement in the second sentence of rule 63.3(a).
- Rule 63.4, regarding possible conflicts of interest held by members of the protest committee, applies.
- Informing the Parties - Rules 65.1 and 65.2 apply.
- Reopening - Rule 66 applies.
- Appeals and Requests – Rule 70 applies.

## 2018 version of Rules Referenced

Note: New wording that took effect on 1 January 2018 is shown underlined.

In Definitions, change **Party** (e) to:

- (e) a support person subject to a hearing under rule 60.3(d) or 69; any boat that person supports; a person appointed to present an allegation under rule 60.3(d).

Add rule 64.4(b) to the list of rules in rule 63.1:

### 63.1 Requirement for a Hearing

A boat or competitor shall not be penalized without a protest hearing, except as provided in rules 30.2, 30.3, 30.4, 64.3(d), 64.4(b), 69, 78.2, A5 and P2. A decision on redress shall not be made without a hearing. The protest committee shall hear all *protests* and requests for redress that have been delivered to the race office unless it allows a *protest* or request to be withdrawn.

Add new rule 63.9:

### 63.9 Hearings under Rule 60.3(d) – Support Persons

If the protest committee decides to call a hearing under rule 60.3(d), it shall promptly follow the procedures in rules 63.2, 63.3, 63.4 and 63.6, except that the information given to the parties shall be details of the alleged breach and a person may be appointed by the protest committee to present the allegation.

Change rule 64.4 to:

### 64.4 Decisions Concerning Support Persons

- (a) When the protest committee decides that a *support person* who is a *party* to a hearing under rule 60.3(d) or 69 has broken a *rule*, it may
- (1) issue a warning,
  - (2) exclude the person from the event or venue or remove any privileges or benefits, or
  - (3) take other action within its jurisdiction as provided by the *rules*.
- (b) The protest committee may also penalize a boat that is a party to a hearing under rule 60.3(d) or 69 for the breach of a *rule* by a *support person* by changing the boat's score in a single race, up to and including DSQ, when the protest committee decides that
- (1) the boat may have gained a competitive advantage as the result of the breach by the *support person*, or
  - (2) the *support person* committed a further breach after the protest committee warned the boat in writing, following a previous hearing, that a penalty may be imposed.

## Rule 60 Right to Protest (Rule 60.3 is relevant to this paper.)

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 a person with a *conflict of interest* other than the representative of the boat herself. However, it may protest a boat
- (1) if it learns of an incident involving her that may have resulted in injury or serious damage, or
  - (2) if during the hearing of a valid *protest* it learns that the boat, although not a *party* to the hearing, was involved in the incident and may have broken a *rule*;
- (b) call a hearing to consider redress;
- (c) act under rule 69.2(b); or

- (d) call a hearing to consider whether a *support person* has broken a *rule*, based on its own observation or information received from any source, including evidence taken during a hearing.

### **Applicable Cases**

Case 139 deals with Rule 69.2(j), Misconduct: Action by a Protest Committee. This case specifically discusses when a support person has committed an act of misconduct and when it should report the breach to the national authority or to World Sailing. Case 139 text is below.

Case 138 deals with Rule 2 Fair Sailing and Rule 69, Misconduct.

### **Hearing Process rules**

The rules below apply to the process for hearings involving support persons, as does the advice given in Appendix M, Recommendations for Protest Committees.

**63.1** (See above).

#### **63.2 Time and Place of the Hearing; Time for Parties to Prepare**

All *parties* to the hearing shall be notified of the time and place of the hearing, the *protest* or redress information shall be made available to them, and they shall be allowed reasonable time to prepare for the hearing.

#### **63.3 Right to Be Present**

- (a) A representative of each *party* to the hearing has the right to be present throughout the hearing of all the evidence. When a *protest* claims a breach of a rule of Part 2, 3 or 4, the representatives of boats shall have been on board at the time of the incident, unless there is good reason for the protest committee to rule otherwise. Any witness, other than a member of the protest committee, shall be excluded except when giving evidence.
- (b) If a *party* to the hearing of a *protest* or request for redress does not come to the hearing, the protest committee may nevertheless decide the *protest* or request. If the *party* was unavoidably absent, the committee may reopen the hearing.

#### **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 the hearing, unless
  - (1) all *parties* consent, or
  - (2) the protest committee decides that the *conflict of interest* is not significant.
- (c) When deciding whether a *conflict of interest* is significant, the protest committee shall consider the views of the *parties*, the level of the conflict, the level of the event, the importance to each *party*, and the overall perception of fairness.
- (d) However, for World Sailing major events, or for other events as prescribed by the national authority of the venue, rule 63.4(b) does not apply and a person who has a *conflict of interest* shall not be a member of the protest committee.

## 63.6 Taking Evidence and Finding Facts

The protest committee shall take the evidence of the *parties* present at the hearing and of their witnesses and other evidence it considers necessary. A member of the protest committee who saw the incident shall, while the *parties* are present, state that fact and may give evidence. A *party* present at the hearing may question any person who gives evidence. The committee shall then find the facts and base its decision on them.

## CASE 139

### Rule 69.2(j), Misconduct: Action by a Protest Committee

*Examples illustrating when it would be 'appropriate' under rule 69.2(j)(3) to report a rule 69 incident to a national authority or World Sailing.*

#### Facts

The protest committee has found that a competitor or support person has committed an act of misconduct and imposed a penalty under rule 69.

#### Question 1

When should the protest committee report the breach to the national authority of the person or to World Sailing?

#### Answer 1

Rule 69.2(j) requires a report to the national authority or to World Sailing when the penalty applied is greater than DNE for one race, if the person has been excluded from the venue or in other cases when the protest committee considers it 'appropriate'. It would be 'appropriate' to report in the following circumstances, as examples:

- (1) In a single race event the protest committee believes that the penalty for the breach would have been more than DNE for one race if it were in a multiple race event. This might be because of the seriousness of a single breach or a number of lesser breaches.
- (2) A support person is found in breach of rule 69 and would have been excluded from the venue, but the event is now into its last day and exclusion from the venue would be ineffective.
- (3) The protest committee has good reason to believe that the person who has breached rule 69 has previously been penalized for a breach of rule 69.1(a) and especially if the breach is similar.
- (4) The breach has an impact on events beyond the jurisdiction of the protest committee. For example, selection or qualification for another event and the breach has adversely affected the selection or qualification of another competitor.

#### Question 2

Should the report be sent to the national authority or World Sailing?

#### Answer 2

The report is only sent to World Sailing when the breach occurs at specific international events as listed in World Sailing Regulation 35, Disciplinary Code. Otherwise the report is to be sent to the national authority of the person(s) found to have breached rule 69 (not necessarily to the national authority of the boat owner or venue).

World Sailing 2016

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Thanks to *Sailing World* for allowing use of an article by Dick Rose titled "Rule Changes for Support and Fairness," published December, 2017. <https://www.sailingworld.com/rule-changes-for-support-and-fairness>