

APPENDIX M - RECOMMENDATIONS FOR PROTEST COMMITTEES

This appendix is advisory only; in some circumstances changing these procedures may be advisable. It is addressed primarily to protest committee chairmen but may also help judges, protest committee secretaries, race committees and others connected with protest and redress hearings.

In a protest or redress hearing, the protest committee should weigh all testimony with equal care; should recognize that honest testimony can vary, and even be in conflict, as a result of different observations and recollections; should resolve such differences as best it can; should recognize that no boat or competitor is guilty until a breach of a rule has been established to the satisfaction of the protest committee; and should keep an open mind until all the evidence has been heard as to whether a boat or competitor has broken a rule.

M1 PRELIMINARIES (may be performed by race office staff)

- Receive the protest or request for redress.
- Note on the form the time the protest or request is delivered and the protest time limit.
- Inform each party, and the race committee when necessary, when and where the hearing will be held.

M2 BEFORE THE HEARING

M2.1 Make sure that

- Each party has a copy of or the opportunity to read the protest or request for redress and has had reasonable time to prepare for the hearing.
- No member of the protest committee is an interested party. Ask the parties whether they object to any member. When redress is requested under rule 62.1(a), a member of the race committee should not be a member of the protest committee.
- Only one person from each boat (or party) is present unless an interpreter is needed.
- All boats and people involved are represented. If they are not, however, the committee may proceed under rule 63.3(b).
- Boats' representatives were on board when required (rule 63.3(a)). When the parties were in different races, both organizing authorities must accept the composition of the protest committee (rule 63.8). In a measurement protest obtain the current class rules and identify the authority responsible for interpreting them (rule 64.3(b)).

M2.2 Determine if any members of the protest committee saw the incident. If so, require each of them to state that fact in the presence of the parties (rule 63.6).

M2.3 Assess 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, ensure 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 may take this as consent to proceed and should record it.
- If a *party* objects to a member, the remainder of the protest committee members need to assess whether the *conflict of interest* is significant. 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. Guidance may be found on the World Sailing website. Record the decision and the grounds for that decision.
- 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 a request for redress is made under rule 62.1(a) and is based on an improper action or omission of a body other than the protest committee, a member of that body should not be a member of the protest committee.

M3 THE HEARING

M3.1 Check the validity of the protest or request for redress.

- Are the contents adequate (rule 61.2 or 62)?
- Was it delivered in time? If not, is there good reason to extend the time limit (rule 61.3 or 62.2)?
- When required, was the protestor involved in or a witness to the incident (rule 60.1(a))?
- When necessary, was 'Protest' hailed and, if required, a red flag displayed correctly (rule 61.1(a))?
- When the flag or hail was not necessary, was the protestee informed?
- Decide whether the protest or request for redress is valid (rule 63.5).
- Once the validity of the protest or request has been determined, do not let the subject be introduced again unless truly new evidence is available.

M3.2 Take the evidence (rule 63.6).

- Ask the protestor and then the protestee to tell their stories. Then allow them to question one another. In a redress matter, ask the party to state the request.
- Invite questions from protest committee members.
- ***Make sure you know what facts each party is alleging before calling any witnesses.*** Their stories may be different.
- Allow anyone, including a boat's crew, to give evidence. It is the party who normally decides which witnesses to call, although the protest committee may also call witnesses (rule 63.6). The question asked by a party 'Would you like to hear N?' is best answered by 'It is your choice.'
- Call each party's witnesses (and the protest committee's if any) one by one. Limit parties to questioning the witness(es) (they may wander into general statements).
- ***Invite the protestee to question the protestor's witness first (and vice versa). This prevents the protestor from leading his witness from the beginning.***
- Allow members of the protest committee who saw the incident to give evidence (rule 63.6), but only while the parties are present. Members who give evidence may be questioned, should take care to relate all they know about the incident that could affect the decision, and may remain on the protest committee (rule 63.3(a)).
- Try to prevent leading questions or hearsay evidence, but if that is impossible discount the evidence so obtained.
- Accept written evidence from a witness who is not available to be questioned only if all parties agree. In doing so they forego their rights to question that witness (rule 63.6).
- Ask one member of the committee to note down evidence, particularly times, distances, speeds, etc.
- Invite first the protestor and then the protestee to make a final statement of her case, particularly on any application or interpretation of the rules.

M3.3 Find the facts (rule 63.6).

- Write down the facts; resolve doubts one way or the other.
- Call back parties for more questions if necessary.
- When appropriate, draw a diagram of the incident using the facts you have found.

M3.4 Decide the protest or request for redress (rule 64).

- Base the decision on the facts found (if you cannot, find some more facts).
- In redress cases, make sure that no further evidence is needed from boats that will be affected by the decision.

M3.5 Inform the parties (rule 65).

- Recall the parties and read them the facts found, conclusions and rules that apply, and the decision. When time presses it is permissible to read the decision and give the details later.
- Give any party a copy of the decision on request. File the protest or request for redress with the committee records.

M4 REOPENING A HEARING (rule 66)

M4.1 When a party, within the time limit, has asked for a hearing to be reopened, hear the party making the request, look at any video, etc., and decide whether there is any significant new evidence that might lead you to change your decision. Decide whether your interpretation of the rules may have been wrong; be open-minded as to whether you have made a mistake. If none of these applies refuse to reopen; otherwise schedule a hearing.

M4.2 Evidence is 'new'

- if it was not reasonably possible for the party asking for the reopening to have discovered the evidence before the original hearing,
- if the protest committee is satisfied that before the original hearing the evidence was diligently but unsuccessfully sought by the party asking for the reopening, or
- if the protest committee learns from any source that the evidence was not available to the parties at the time of the original hearing.

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 as other hearings but the protest committee must have at least three members (rule 69.2(b)). 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 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.

M5.4 Although action under rule 69 is taken against a competitor, not a boat, a boat may also be penalized (rule 69.2(c)).

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.

M6 APPEALS (rule 70 and Appendix R)

When decisions can be appealed,

- retain the papers relevant to the hearing so that the information can easily be used for an appeal. Is there a diagram endorsed or prepared by the protest committee? Are the facts found sufficient? (Example: Was there an overlap? Yes or No. 'Perhaps' is not a fact found.) Are the names of the protest committee members and other important information on the form?
- comments by the protest committee on any appeal should enable the appeals committee to picture the whole incident clearly; the appeals committee knows nothing about the situation.

M7 PHOTOGRAPHIC EVIDENCE

- Photographs and videos can sometimes provide useful evidence but protest committees should recognize their limitations and note the following points:
- The party producing the photographic evidence is responsible for arranging the viewing.
- View the video several times to extract all the information from it.
- The depth perception of any single-lens camera is very poor; with a telephoto lens it is non-existent. When the camera views two overlapped boats at right angles to their course, it is impossible to assess the distance between them. When the camera views them head on, it is impossible to see whether an overlap exists unless it is substantial.
- Ask the following questions:
 - Where was the camera in relation to the boats?
 - Was the camera's platform moving? If so in what direction and how fast?
 - Is the angle changing as the boats approach the critical point? Fast panning causes radical change.
 - Did the camera have an unrestricted view throughout?