

# APPENDIX M

## *Adapted for Nantucket YC*

### RECOMMENDATIONS FOR PROTEST COMMITTEES

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 (performed by Protest Committee Secretary)**

- Receive the *protest* or request for redress
- Note on the form the time the *protest* or request is delivered and the protest time limit.
- Immediately make 3 copies, for protestor, protestee, and file
- Deliver all except file copy to any member of the protest committee
- Inform each *party*, and the Principal Race Officer when necessary, when and where the hearing will be held.

#### **M2 BEFORE THE HEARING**

##### **M2.1** Make sure that

- one member of the protest committee is appointed to be the scribe, to take notes (times, distances, speeds), and write the decision
- 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. All potential witnesses **MUST** be excluded.
- 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)).

*Note: At NYC hearings are OPEN, so anybody may attend. Before the start of testimony, remind the spectators that they may not speak at any time, and they may not leave the room until the end of testimony, including witness testimony.*

**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).

#### **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))? (*IODs and Alerions must display a protest flag.*)
- 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.
- If contact is alleged, the protest committee may conduct a hearing even if the above requirements were not met.

### **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. During question time, you may interrupt if it sounds like argument rather than a question.
- 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. One of the Judges should go fetch the witness, to prevent “coaching”.
- 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.

*Note: If voices rise, and any party gets heated, pause the hearing and remind everyone that we are here to find facts, not to debate, and that everyone in the room is entitled to be treated with respect.*

- 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).
- 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.
- Determine which rules apply.

#### **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.
- Write your facts, conclusions, and decision on the protest form.

#### **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.
- Return the signed original form to the Jury Secretary, who will inform the Race Committee scorer of the decision.

### **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.

### **Protest by the Protest Committee**

A protest committee may file a protest against a boat:

- If it learns of an incident resulting in injury or serious damage.
- If during the hearing of a valid protest it learns that a boat involved in the incident that is not a party to the hearing may have broken a rule.

A protest by the protest committee must be filed within two hours of learning the relevant information.