



Judicial Board Rules of Procedure Misconduct at Major International Events

(Part C of Regulation 35)

1. INTRODUCTION

- 1.1 These Rules of Procedure apply to any disciplinary complaints to World Sailing under Part C of Regulation 35, being disciplinary complaints arising from misconduct at:
- (a) Olympic and Paralympic Sailing Competitions;
 - (b) all events organised by or on behalf of World Sailing;
 - (c) the America's Cup and its associated events; and
 - (d) the Volvo Ocean Race.

2. GENERAL

- 2.1 For the avoidance of doubt, in these Rules of Procedure the word "Participant" shall have the meaning ascribed in Regulation 35.2.1, but shall also include the persons presenting the Charge.
- 2.2 The disciplinary bodies in sailing are not courts of law. They are concerned with achieving a fair and just outcome for all Participants in an expeditious manner.
- 2.3 All Participants involved in proceedings shall act in a spirit of cooperation to ensure proceedings are conducted expeditiously, fairly and appropriately, having regard to their sporting context.
- 2.4 An Independent Panel ("the Panel"):
- (a) is not bound by any enactment or rule of law relating to the admissibility of evidence; and
 - (b) may draw such inference from the failure of a witness (including a Participant) to give evidence or answer a question as it considers appropriate.
- 2.5 The Panel shall conduct the proceedings as it sees fit but at all times in a manner which:
- (a) complies with the World Sailing Constitution, Regulations and these Rules;
 - (b) complies with its duty to act fairly and impartially;
 - (c) allows the Participants reasonable opportunity to put their respective cases and to deal with the other Participants' cases;
 - (d) avoids unnecessary delay or expense and provides a fair and efficient means for resolving the dispute.
- 2.6 If a Participant continues in the proceedings notwithstanding the fact that a provision of, or requirement under, these Rules has not been complied with that Participant shall have waived its right to object (unless it promptly states its objection).

- 2.7 In calculating time limits under these Rules, exclude the date of the event that triggers the period and any reference to a day or days shall mean a calendar day or days (unless specified to be working days).
- 2.8 The fact that a Participant is liable to face or has pending any other criminal, civil or disciplinary proceedings in relation to the same matter shall not prevent or fetter the Panel from conducting the proceedings.
- 2.9 Any challenge to the appointment of a Panel member shall be made to the Registrar within five (5) days of notification of the Panel membership. The Judicial Board shall determine any challenges in accordance with Regulation 35.3.8
- 2.10 The Participants and the Panel shall communicate through the Registrar. Any communication from one Participant to the Registrar (and vice versa) shall be copied to the other Participant.
- 2.11 All communications shall be delivered or sent by first class post, fax or email to the Participants at the address set out in the Charge or Reply, or at such address as any Participant may have previously notified the Registrar of, and to the Registrar at judicial.board@sailing.org

3. THE CHARGE

- 3.1 Any Charge to be issued by a World Sailing Disciplinary Investigating Officer (“the Investigating Officer”) shall be lodged with the Chief Executive Officer as soon as practicable. The Charge must satisfy the provisions of Regulation 35.4.17 and be accompanied by any supporting material on which the Investigating Officer wishes to rely.

4. REPLY FOLLOWING CHARGE

- 4.1 Within fourteen days of written notice of the Charge having been provided to the Participant in accordance with Regulation 35.4 (or such other time as the Panel shall allow), the Charged Participant shall lodge with the Registrar a written reply (the “Reply”) which:
- (a) admits or denies each Charge or part of a Charge; and
 - (b) states whether the Participant wishes for the matter to be dealt with:
 - i) on written submissions alone; or
 - ii) at a hearing.
- 4.2 The Reply shall also include:
- (a) a clear explanation of the nature and extent of the Participant’s admission or denial of the Charge(s) or any part of a Charge;
 - (b) a list of witnesses upon whom the Participant intends to rely together with a written statement setting out his/her evidence in full (which must be signed by the witness before prior to any reliance being placed on it by the Panel); and

- (c) copies of any documentation, evidence or other relevant material (of whatever nature) on which the Participant intends to rely at a hearing.

4.3 If the Participant:

- (a) fails within fourteen days of the service of the Charge (or any extended time) to lodge a Reply with the Registrar and the Panel is satisfied that the Charge was served; or
- (b) fails to indicate in the Reply whether he wishes the matter to be dealt with at a hearing or on written submissions; or
- (c) fails to comply with the requirements of this Rule 4,

then the Panel may, of its own motion or on the application of the Investigating Officer, determine the Charge in such manner and upon such evidence as it considers appropriate.

4.4 Upon review of a Participant's Reply, the Investigating Officer may, within 7 days or such extended time as the Panel may allow, provide any further evidence or relevant material on which he intends to rely.

4.5 If the Investigating Officer has served upon the Participant any such further material, the Participant shall provide any further evidence or other relevant material upon which he intends to rely, provided that it does so at the earliest opportunity or within the time allowed by the Panel, and in any event no later than seven (7) working days before any hearing. Evidence or other material not provided within time may be excluded by the Panel.

5. CONDUCT OF PROCEEDINGS AND GENERAL POWERS OF THE PANEL

5.1 The Panel shall have the power to make a declaration on any matter to be determined in the proceedings. In addition, without prejudice to any power conferred on the Panel by operation of law, the Panel shall have the power:

- (a) to dismiss a case as vexatious, frivolous and/or because it has already been addressed by the disciplinary, judicial and/or appellate systems of World Sailing
- (b) to determine if the matter shall be dealt with on written submissions alone or at a hearing.
- (c) to allow any Participant to amend its written case and/or to submit further evidence;
- (d) to extend or abbreviate any time-limit provided by these Rules (save for the time limit for the decision which may only be extended by the Judicial Board);
- (e) to establish the date, time and place of any hearing, and grant any adjournment thereof;
- (f) to instruct that a transcript be made of the proceedings;
- (g) to determine that issues shall be dealt with as preliminary issues, or at a preliminary hearing;
- (h) to require that the Participants make written submissions, or submit skeleton arguments in advance of any hearing;
- (i) to determine who shall attend, or be called to give evidence at, any hearing.

- (j) to question a witness at any stage and control the questioning of a witness by the Participants.
- (k) to conduct enquiries;
- (l) to order any Participant to make any property under its control available for inspection by the Panel;
- (m) to order the production to the Panel and the other Participant/Participants for inspection, copies of any documents in a Participant's control which the Panel considers material and relevant;
- (n) to decide which rules of evidence on admissibility, relevance and/or weight shall apply;
- (o) to dismiss a claim or to proceed in the absence of one or more of the Participants, in the event of a failure to comply with any directions of the Panel or a failure to attend a hearing;
- (p) to consolidate proceedings subject to the consent in writing of all the Participants concerned and the Judicial Board;
- (q) to join any other Participant to the proceedings on the application of a Participant, subject to the consent in writing of such third Participant; and
- (r) to order on an interim basis, subject to final determination in a decision, any remedy which the Panel would have the power to grant in a final decision (including to order a Participant to do or refrain from doing anything and/or staying execution of the decision below). The Panel may not make any interim order or grant any provisional award unless and until the Charge has been properly submitted and served on the other Participants.

5.2 The Panel may make directions for the conduct of the proceedings in writing without a hearing, or may order and hold a directions hearing which may take the form of an oral hearing or may be conducted by telephone conference, video link. The directions of the Panel are final and not subject to appeal, but may be modified by the Panel if appropriate.

5.3 The Registrar shall circulate the directions within three (3) working days after any directions hearing.

6. DETERMINATION ON WRITTEN SUBMISSIONS

6.1 If a Participant states in the Reply that he wishes the matter to be dealt with on written submissions, the Panel may dispense with an oral hearing, make whatever orders it thinks appropriate and determine the Charge on the papers.

6.2 If the Participant admits the Charge in the Reply and wishes it to be dealt with on written submissions, he may set out in the Reply any submissions in mitigation.

7. DETERMINATION AT A HEARING

- 7.1 Where the Participant states in the Reply that he wishes the matter is to be dealt with at a hearing, he has the right to be heard by the Panel. The format and timing of the hearing is at the discretion of the Panel, and may be by way of personal hearing or by audio or video conference.
- 7.2 If the Participant is an individual, he must attend a hearing unless the Panel orders otherwise.
- 7.3 The Investigating Officer, through the World Sailing Chief Executive Officer, shall nominate an individual or individuals (which may include himself and/or legal representatives) to present the Charge to the Panel and call evidence and make submissions in support of the Charge.
- 7.4 Any other Participant appearing before the Panel has the right to choose to be represented by any person who may speak on his or its behalf, including a legal representative. In the event that a Participant is to be represented, the Panel must be notified of that fact and the identity of the representative at the time of the Reply.
- 7.5 If a Participant gives evidence in his own defence, he must give his evidence first (i.e. before any other defence witness gives evidence). Witnesses of fact who attend a hearing shall not be permitted to enter the hearing until they are called to give their evidence.

8. JURISDICTION

- 8.1 The Panel may decide on its own jurisdiction, including whether the Panel is properly constituted, what matters have been submitted to it and any objections with respect to the validity of the Charge.

9. DECISIONS OF THE PANEL

- 9.1 The Panel shall consider whether or not a Charge is proven. In doing so the Panel will have regard to any admission of the Charge (or a part of the Charge) made by the Participant. If a Charge is denied, or if it is admitted but there remains a factual dispute about the circumstances, the Panel shall consider the witnesses and other evidence placed before it together with each Participant's submissions in order to make findings as to the factual basis on which the Charge is either proved or not proved.
- 9.2 In proceedings before the Panel, the findings of any protest committee or international jury shall be presumed to be correct unless clear evidence is shown to the satisfaction of the Panel that this is not the case or that the findings were reached without appropriate procedural fairness.
- 9.3 Unless otherwise stated, the applicable standard of proof shall be comfortable satisfaction of the Panel, bearing in mind the seriousness of the alleged misconduct.

- 9.4 Unless previously agreed or directed by the Panel, the Panel shall announce its decision on whether the Charge is proven first. The Panel shall announce its decision as soon as reasonably practicable and in such manner as it considers appropriate.
- 9.5 If a Charge is proven, the Participants shall be invited to address the Panel as to any matter relevant to its consideration of sanction, which shall include the disciplinary record of the Participant and any mitigation raised. The Panel shall then announce its decision as to any sanction or other order to be imposed as soon as is reasonably practicable and in such manner as it deems appropriate.
- 9.6 The decisions of the Panel shall be in writing, shall be dated and signed by its members (such signature may be electronic), and shall state the reasons on which it is based.
- 9.7 Where there are three Panel members, the Panel shall decide on any issue by a majority. Written dissenting opinions are discouraged and in any event shall not form part of any decision.
- 9.8 The Panel shall arrange for all decisions to be delivered to the Registrar as soon as completed. The Registrar shall transmit all decisions to the Participants forthwith.
- 9.9 The Panel shall complete all its decisions in the proceedings within 3 months of the Charge being issued (unless this time is extended by the Judicial Board on application by the Panel).
- 9.10 Subject to Regulation 35.8.5, all decisions of the Panel shall be final and binding on the Participants and on any party claiming through or under them and the Participants agree, by submitting to the proceedings held under these Rules, irrevocably to waive their right to any form of appeal, review or recourse to any state court or other judicial authority, subject to any applicable statutory or other rights.

10. COSTS

- 10.1 The costs of the Panel shall be borne by World Sailing unless the Panel orders that a Participant shall contribute in full or in part to those costs due to the Participant's unreasonable conduct in the proceedings.
- 10.2 The Participants shall be responsible for their own legal and other costs.

11. CONFIDENTIALITY

- 11.1 The proceedings of a Panel shall take place in private.
- 11.2 Subject to Rules 11.4 and 11.6 below, all oral or written representations, submissions, evidence and documents created in the course of any proceedings are confidential between World Sailing and the individual or body concerned.
- 11.3 All oral or written representations, submissions, evidence and documents created or used in the course of any proceedings shall be subject to qualified privilege.

11.4 Decisions of the Panel shall be published by World Sailing in accordance with Regulation 35.3.12. In addition to publication of decisions of the Panel, World Sailing may publish with the permission of the Panel:

- (a) a summary of any decision, finding, hearing, order, proceedings or resolution; or
- (b) any representations, submissions, evidence and documents created or used in the course of proceedings whether or not this reflects on the character or conduct of a Participant.

11.5 Each Participant shall be deemed to have consented to any such publication.

11.6 World Sailing shall have the right to use and rely upon any representations, submissions, evidence and documents that are provided to it during the course of any inquiry and/or are created or otherwise generated or used during the proceedings of an Independent Panel for the purpose of carrying out its regulatory functions and monitoring and implementing compliance with the Racing Rules of Sailing and the World Sailing Constitution and Regulations.

12. APPLICABLE LAW AND LANGUAGE

12.1 The seat of the proceedings shall be London. However, the Independent Panel may at its discretion hold a hearing in another place.

12.2 Proceedings under these Rules shall be governed by the law of England and Wales unless otherwise determined by the Independent Panel. Any non-mandatory provisions of the Arbitration Act 1996 which are expressly excluded or modified by these Rules are not incorporated into the Rules.

12.3 Subject to any different order being made by the Panel during the proceedings, the language of the proceedings shall be English, and all submissions, statements or evidence in any other language shall be accompanied, at the time they are introduced into the proceedings, by a translation into English, with such translation being provided by the Participant that introduced the submission, statement or evidence.

12.4 Members of the Judicial Board, any Independent Panel and any World Sailing staff involved in any disciplinary proceedings shall not be held personally liable for any acts or omissions in relation to any such proceedings.