

Judicial Activism  
August 2005

This is a subject which is sure to get the attention of almost everyone because it is so emotionally charged in today's politics. So before I start, let me assure you that I am only talking about SCCA, not the Supreme Court; that subject I will leave to commentators far more authoritative than myself (my favorite, in case you're interested, is Judge Robert Bork, "The Tempting of America"). I also am quick to point out that this is only my personal opinion, although I cannot imagine what contra argument could persuasively be raised.

Judicial Activism may be defined as the application of a rule of law in a manner not clear in the plain wording or in the manifest intent of the promulgators thereof. In interpreting the competition rules of the SCCA (GRC, Solo Rules, Road Rally Rules, etc.), unlike the U.S. Constitution and other laws, there is no provision for ascertaining the subjective "intent" of any rule other than by reference to statements in the rules themselves, e.g., PCS 17.1.1B "intent" and PCS 17.1.1D Authorized Modifications. To do otherwise would be to violate GCR 1.2.4. line 1. Thus I submit to you that since neither the Competitor nor the Stewards have any special insight into the "intent" of a rule, unless one of them happens to be a member of the BoD who approved the rule or the Board who wrote the rule, and since SCCA does not recognize the principle of *stare decisis* or make any provision for organized reporting of judicial interpretations of the rules, there is no reasonable way to determine the intent or the proper interpretation and application of a rule other than by examining, in context, the plain English wording of the rule itself. It is truly amazing how often this principle is honored only in its breach, by stewards, by race organizers, and even by the Club Racing department. *Surely it is not fair to a competitor to enforce against him a provision not actually ascertainable by reading the rule itself.*

It is NOT up to the Stewards to field-fix a badly written rule; it is for the BoD to catch this stuff when it is presented to them and it is for the Stewards to enforce the rule just exactly as it is written because that is the only "interpretation" available to competitor and steward alike. *Now go read the last line of GCR 17.1.1.D.6.c.2. (PCS p. 16).*

See you at the track.

Gary