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Chapter MVD 1

PLEADING, PRACTICE AND PROCEDURE

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MVD 1.01 Pleading, practice and procedure. (1) **GENERAL.** The following rules of procedure, adopted by the motor vehicle department of the state of Wisconsin pursuant to sections 227.04, 227.05, 227.06 and 227.08, Wis. Stats., of 1943, created by chapter 375, laws of 1943, shall govern the form, content, and filing of pleadings, in contested cases, the procedure for submission, consideration and disposition of petitions for rules, and of petitions for declaratory rulings. In any case where the statute involved provides a procedure inconsistent with these rules, the statute shall govern to the extent of such inconsistency. If in any case the forms set out in these rules be found not appropriate, parties may devise forms substantially similar to those herein prescribed, to meet such situations. Chap 227

(2) **REVOCACTION AND SUSPENSION OF LICENSES—definitions.** As used in these rules, "license" means any license, permit, certificate of registration or other grant of authority issued pursuant to chapters 85, 110, 194 or 218, Wis. Stats., and subject to suspension or revocation by the department; "hearing" includes a joint hearing by the department and any other administrative agency; "revocation or suspension" of licenses includes refusal to renew the same; "commissioner" as used herein means the commissioner of the motor vehicle department of the state of Wisconsin and includes the deputy commissioner whenever the latter shall act pursuant to section 110.02, Wis. Stats.; "department" means the motor vehicle department of the state of Wisconsin acting directly or through its duly authorized officer or agent [section 85.10 (42), Wis. Stats.]; in addition to its definition as set forth in section 227.01 (2), "rule" as used herein includes the official motor vehicle department "orders" as made and promulgated by the commissioner. (3)

(3) **HOW PROCEEDINGS INITIATED.** Proceeding to revoke or suspend licenses may be initiated in one of two ways:

(a) On a verified complaint by an individual or an officer required by law to enforce the law in question, filed in triplicate (original and two copies) with the department;

(b) By the department on its own motion, whenever its investigation discloses probable grounds therefor.

(4) **STYLE OF PLEADINGS.** All pleadings, notices, orders and other papers filed in such proceedings shall be captioned "Before the Motor Vehicle Department of the State of Wisconsin" and shall be entitled "In the Matter of the Revocation or Suspension of the _____ of _____,

(license, permit, or certificate of registration) Respondent". The party whose license is involved shall be known and designated as the "Respondent".

MOTOR VEHICLE DEPARTMENT

(5) COMPLAINT ON DEPARTMENT'S INVESTIGATION. If the complaint is founded upon an investigation made by the department, it shall be incorporated in the notice of hearing and statement of issues as prescribed by section MVD 1.01 (8).

(6) FORM OF CHARGES. If the alleged offense is a continuing one, its general nature and the approximate time covered shall be stated in the complaint or notice of hearing; if a specific incident is relied on, it shall be alleged with such particularity as to time, place and circumstances as may be necessary to enable the respondent to prepare his defense; and in either case the offense may be alleged in the language of the statute or rule claimed to have been violated, and shall conclude: "contrary to sec. ____ of the statutes" or "contrary to rule ____ of the rules and regulations of the commissioner governing _____" or both. Separate charges shall be stated in separate paragraphs and numbered consecutively.

(7) PROCEDURE UPON FILING OF COMPLAINT. Upon the filing of a complaint as prescribed by section MVD 1.01 (3) (a), the commissioner shall cause an investigation to be made of the matters alleged to determine whether there is probable cause for action by him and if he determines that there is such probable cause he shall order a hearing as prescribed by section MVD 1.01 (8) and also notify the complainant thereof. If he determines that no further action is warranted, he shall notify the complainant in writing.

(8) NOTICE OF HEARING AND STATEMENT OF ISSUES. Notice of hearing shall be addressed to the respondent at his last known post-office address, shall include the statement of issues and shall be in substantially the following form:

(a) If on complaint filed as provided in section MVD 1.01 (3) (a), such complaint shall be attached to the following notice:

"To _____ (name)
_____ St.
_____, Wis.

Respondent

"Please take notice that a hearing will be held on the ____ day of _____, 19__, at room No. _____ (or other proper designation) of the _____ Building (or other proper designation), No. _____ St., in the city of _____, Wis. at ____ o'clock __M., or as soon thereafter as the matter may be reached, on the question whether the _____

(license, permit or certificate) heretofore issued to the above named Respondent pursuant to Section _____, Wisconsin Statutes, should be suspended or revoked. The issues involved and the charges there to be considered are [as set forth in the attached complaint] to which you are required to make answer in writing at least ____ days before the time set for said hearing.

"Dated at Madison, Wisconsin, this ____ day of _____, 19__.

"MOTOR VEHICLE DEPARTMENT OF THE STATE OF WISCONSIN

By _____"

Commissioner

(b) If on only part of the charges set forth in such complaint the form set forth in subsection (a) shall be altered by inserting in lieu of the matter enclosed in brackets: "as set forth in paragraph _____, _____ and _____ of the attached complaint,"

(c) If initiated on the department's own motion, the form set forth in subsection (a) shall be altered by inserting in lieu of the matter enclosed in brackets:

"the following:

"1. _____

"2. _____

"3. _____"

(d) If in part on complaint and in part on charges initiated by the department on its own motion, the form set forth in subsection (a) shall be altered by inserting in lieu of the matter enclosed in brackets:

"As set forth in the attached complaint, (Or paragraphs _____, _____, _____, and _____ of the attached complaint together with the following additional issues and charges:

"1. _____

"2. _____

"3. _____"

(9) ANSWER. The answer of the respondent shall be verified, unless an admission of the allegation might subject the party to prosecution for a felony, and shall be filed with the department in triplicate (original and two copies) within at least ½ the time intervening between the notice of hearing and the time set for said hearing, and such time for answer shall be stated in said notice as required by section MVD 1.01 (8). The answer must contain:

(a) A specific denial of each material allegation of the charges controverted by the respondent.

(b) A statement of any new matter constituting a defense or mitigating the offense charged, which the respondent wishes to have considered.

(10) ADMISSION BY NOT DENYING. Every material allegation of the charges not controverted as prescribed shall be taken as true, but new matter in the answer shall be deemed controverted without any reply being served or filed.

(11) DEFAULT; RELIEF THEREFROM. In case the respondent fails to submit an answer as required by section MVD 1.01 (9), or fails to appear at the hearing at the time fixed therefor, the charges specified may be taken as true and the department may make findings and enter its order on the basis of the facts revealed by the preliminary investigation. But the department may, for good cause shown, relieve the respondent from the effect of such default and permit him to answer and defend the proceeding, at any time before the department enters its order or within 60 days thereafter.

(12) SERVICE AND FILING OF PAPERS. Unless otherwise provided by law, all orders, notices and other papers may be served by the department by first class or registered mail addressed to the party at his last known post-office address, or to his attorney of record. Papers

required to be filed with the department may be mailed to the following address:

1 West Wilson Street
Madison 2, Wisconsin

(13) CONDUCT OF HEARINGS; CONTINUANCES; APPEARANCES; EXAMINATION OF WITNESSES. Unless otherwise ordered by the department, all hearings shall be conducted on behalf of the department by the commissioner or director of one of the divisions of the department designated by him. Continuances and adjournments may be granted by such presiding officer for cause shown. The respondent may appear in person or by any officer, regular employee or attorney. The complainant may likewise so appear but shall not be deemed a party. Witnesses competent to take an oath shall be sworn by the presiding officer and may be examined on behalf of the department by the presiding officer or by a representative of the attorney general acting as counsel for the department, or, with the permission of the presiding officer, by any employee of the department or by the complainant or his attorney. The respondent or any of his agents, officers or employees may be examined adversely as prescribed by section 325.14, Wis. Stats.

(14) SUBPOENAS. The commissioner or any director of any division of the department may sign and issue subpoenas, whether he is to conduct the hearing or not.

(15) PREHEARING CONFERENCES. Prehearing conferences may be held at the convenience of the parties and shall be conducted by the commissioner or any director of a division or other employee of the department designated by him, who shall keep and preserve a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference. Such record shall be attached to the file and constitute a part of the official record of the case.

(16) ARGUMENTS. Except as provided in ^{Wisconsin Chapter 227.12, Wis. Stats.} section 227.12, Wis. Stats., arguments shall be submitted to the department in writing, unless otherwise ordered. Three copies of such written arguments shall be filed with the department.

(17) VARIANCES. The provisions of section 263.28, Wis. Stats., with reference to variances between the allegations and the proof, shall apply to proceedings under these rules.

MVD 1.02 Other contested matters; rules under section MVD 1.01 (2) through (17) applicable. In any other contested matter which may come before the department for its decision, proceedings shall be as nearly as possible governed by section MVD 1.01 (2) through (17) of these rules, with such changes as may be appropriate in the form and style of pleadings, orders, etc.

MVD 1.03 Petition for rules. (1) WHO MAY PETITION. Any interested person or persons or trade association may petition the department in writing for the adoption, repeal or amendment of any rule within the scope of the department's rule-making powers.

(2) FORM OF PETITION. (a) Every such petition shall be captioned "Before the Motor Vehicle Department of the State of Wisconsin" and entitled

"In the Matter of the Adoption of a Rule [or Order] Relating
to _____"
(here insert subject matter dealt with in the proposed rule or order)
or "In the Matter of the Amendment (or Repeal) of Rule [or Order]
number _____ of the Rules and Regulations [or Orders] relating
to _____"
(here insert proper title of the rules, regulations or orders in which
the rule or order to be repealed or amended appears).

(b) If the petition is for the adoption of a new rule or order, the form of such proposed rule or order shall be set out in the petitions, except that two or more forms may be set out in the alternative if the petitioner so desires.

(c) If the petition is for the repeal of an existing rule or order, such existing rule or order shall be set out verbatim in the petition. If the petition is for the amendment of an existing rule or order, the existing rule or order shall be set out at length with a horizontal line (or a line of hyphens) drawn through any words, figures and punctuation marks which the petitioner desires to have stricken and with new matter underscored or (if the petition is printed) in italics.

(d) A petition may be for the adoption, amendment or repeal of more than one rule or order, or for the repeal and recreation of any rule or order, provided that each such proposal shall be separately stated in conformity with paragraphs (b) and (c) of this rule.

(e) The petition shall be signed by one or more natural persons. The post-office address of each signer shall be set out opposite his name and if he signs on behalf of a corporation or association that fact shall also be indicated opposite his name.

(3) **SUPPORTING DATA.** Whenever the adoption, repeal or amendment of any rule or order is sought by reason of the existence of a factual situation which the petitioner claims exists, the petition shall be accompanied by a sworn statement or affidavit of at least one of the petitioners stating what facts the petitioner claims exist justifying the department in taking the action prayed for and stating what evidence of such facts the petitioner has in his possession and desires to present to the department. Any petition requiring such supporting data may in the department's discretion be summarily rejected if it does not conform to this rule.

(4) **FILING.** All such petitions shall be filed with the commissioner.

(5) **DUTIES OF COMMISSIONER.** Whenever any such petition shall be filed, the commissioner shall submit the same to such person or persons employed by or associated with the department as may be concerned, with a request for a written report on the advisability or inadvisability of the change recommended. He may make a preliminary investigation of the facts alleged in any supporting affidavit accompanying the petition. If he deems it desirable he shall consult with the attorney general's office as to the legality of the proposed rule, order or amendment. He shall then submit the petition together with the results of his investigation to the commissioner. The commissioner may order such further investigation as he deems advisable.

(6) **HEARINGS.** No hearing shall be held on any such petition unless ordered by the commissioner. If ordered by the commissioner such hearing shall be in public and notice thereof shall be given to inter-

ested parties in such manner and within such time as the commissioner may prescribe. Notice of the hearing shall be given in writing to the person filing the petition and shall be served by first class mail sent to the address shown on the petition, but if there is more than one signature to the petition it shall not be necessary to notify signers other than the one filing the petition. Persons or associations of persons desiring to be notified of all such hearings relating to any particular field of regulation by the department may file their names and post-office addresses with the commissioner, together with a statement of the subject matter in which they are interested, in which case the commissioner shall notify them of all hearings relating to such subject matter. Unless otherwise ordered by the commissioner, hearings shall be conducted by the commissioner or some other employee of the department designated by him. The person conducting the hearing shall keep a list of the persons appearing for and against the proposed change. If the hearing is conducted by anyone other than the commissioner, he shall submit to the commissioner a summary of the arguments on both sides. If testimony or other evidence is taken it shall be reported to the commissioner in such manner as he may order.

(7) **ARGUMENTS.** Written or printed arguments for or against the proposed change may be filed in the manner prescribed in section MVD 1.01 (17). Arguments for the proposed change may be so submitted with the petition, at the option of the petitioner.

MVD 1.04 Declaratory ruling under section 227.06, Wis. Stats.
(1) WHO MAY PETITION. Any person in interest or his duly authorized agent or attorney may petition the department for a declaratory ruling with respect to the applicability to any persons, property or state of facts of any rule, order or statutes enforced by the department. Two or more persons similarly situated may join in a single petition and additional parties may intervene by petition.

(2) **FORM OF PETITION; VERIFICATION.** (a) Every such petition shall be captioned "Before the Motor Vehicle Department of the State of Wisconsin" and entitled "In the Matter of the Applicability of Rule [or Order] No. _____, of the Rules and Regulations Relating to _____ (or, of Section _____ of the Wisconsin Statutes) (or of Motor Vehicle Department Order No. _____) to _____, Petitioner."

(b) The petition shall contain a plain and concise statement of the ultimate facts showing the petitioner's interest (including any license held by petitioner) and the situation as to which a declaratory ruling is desired, without argument or unnecessary repetition.

(c) The petition shall conclude with a prayer for the declaratory ruling to which the petitioner supposes himself to be entitled.

(d) Every such petition shall be signed by or on behalf of each petitioner, stating his post-office address, and shall be verified by at least one of them.

(3) **FILING.** The petition shall be filed in triplicate (original and two copies) with the commissioner.

(4) **DUTIES OF COMMISSIONER.** Upon the filing of such petition the commissioner may cause an investigation to be made as to the facts alleged in the petition and may consult with the attorney general's

department as to any legal questions involved. If he determines that any of the allegations of the petition may be untrue or should be qualified, or that material facts bearing on the matter may not have been alleged, he shall prepare and serve on the petitioner(s) (and any interveners) a notice of hearing and statement of issues, setting forth the questions upon which the petitioner(s) will be required to produce evidence. The said notice shall follow as nearly as possible the form prescribed in section MVD 1.01(8), but shall not require that an answer be made. If he determines that there is no issue of fact he shall state in the notice of hearing that issues of law only will be considered. Notice of hearing shall be given as soon as possible after filing of the petition.

(5) **MOOT OR HYPOTHETICAL CASES.** The commissioner will not consider moot or hypothetical cases, or cases in which the petitioner has no interest, financial or otherwise. Whenever a petitioner desires a declaratory ruling as to a prospective course of action, the petition shall allege and the proof must show that petitioner in good faith intends to pursue such course of action in the event of a favorable ruling by the commissioner. Whenever the petition shows on its face, or the proof establishes, that the question presented is moot or hypothetical or that petitioner has no legal interest therein, the commissioner may make and serve an order dismissing the petition, stating the grounds of his action.

(6) **HEARINGS; APPEARANCES.** Hearings shall be conducted as nearly as possible as prescribed by section MVD 1.01(13). Petitioner(s) (and interveners) may appear in person or by any officer, regular employee or attorney. Sections MVD 1.01(14) to 1.01(17) shall apply to proceedings under this title.

(7) **ORDER; AMENDMENT OF RULES; DISCIPLINARY ACTION.** (a) Except in cases referred to the board under section 227.05(3), Wis. Stats., the commissioner may decline to make a declaratory ruling in any case.

(b) The order of the commissioner need not contain findings of fact but shall, except as otherwise provided in paragraph (a), be so framed as to dispose of all questions raised in the proceedings. It may state that certain acts or fact situations are or will be contrary to the applicable statute, rule or order while others are not or will not be so. If during the pendency of the proceedings the department has adopted an amendment of its applicable rules, such amendment shall be given due effect. The order shall state that the ruling is not applicable to any fact situation not contemplated by the department and specifically mentioned in the order.

(c) Whenever the petition or the proof shows that any petitioner or intervener has wilfully violated any statute or rule or order of the department, constituting grounds for revocation or suspension of a license, the order may contain a finding to that effect and in addition to (or in lieu of) a declaratory ruling the commissioner may order the license of any such party suspended or revoked.