

Chapter MVD 1

PLEADING, PRACTICE AND PROCEDURE

MVD 1.01	Pleading, practice and procedure	MVD 1.03	Petition for rules
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History: Chapter MVD 1 as it existed on May 31, 1973 was repealed and a new chapter MVD 1 was created, Register, May, 1973, No. 209, eff. 6-1-73.

MVD 1.01 Pleading, practice and procedure. (1) **GENERAL.** The following rules, adopted by the division of motor vehicles of the state of Wisconsin pursuant to chapter 227, Wis. Stats., shall govern the procedure and 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.

(2) **DEFINITIONS.** (a) "Person" is as defined in section 990.01 (26), Wis. Stats.

(b) "Division" means the division of motor vehicles of the state of Wisconsin.

(c) "Administrator" means the administrator of the division of motor vehicles of the state of Wisconsin and includes the deputy administrator.

(d) "License" means any license, permit, certificate of registration or other grant of authority issued pursuant to chapters 110, 194, 218 or 341 to 349, Wis. Stats., and subject to suspension or revocation by the division.

(e) "Examiner" means the administrator or individual designated by him to preside at a hearing.

(f) "Proceeding" means the course of administrative procedure and actions taken in the conduct of a contested case, and includes a hearing.

(g) "Hearing" means a procedure in which the parties may publicly be heard and present evidence prior to a decision.

(h) "Revocation or suspension" of licenses includes refusal to renew the same.

(i) "Respondent" means a dealer or licensee named as a party in any contested case whose license may be revoked or suspended in that proceeding.

(j) "Subpoena" includes a subpoena duces tecum.

(3) **INITIATION OF PROCEEDINGS.** Proceedings to revoke or suspend licenses may be initiated in one of 2 ways:

(a) On a verified complaint by an individual, the department of justice or an officer required by law to enforce the law in question, filed in triplicate (original and 2 copies) with the division;

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

(4) **STYLE OF PLEADINGS.** All pleadings, notices, orders, briefs and other papers filed in connection with any matter or proceeding before the division shall be captioned "Before the Department of Transportation of the State of Wisconsin Division of Motor Vehicles", and shall be entitled "In the Matter of the Revocation or Suspension of the _____ of

(license, permit, or certificate of registration)

_____, Respondent". Docket numbers shall be included when assigned by the division.

(5) **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 administrator governing _____" or both. Separate charges shall be stated in separate paragraphs and numbered consecutively.

(6) **PROCEDURE UPON FILING OF COMPLAINT.** Upon the filing of a complaint as prescribed by section MVD 1.01 (3) (a), the administrator 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 there is such probable cause he shall order a hearing and shall notify the requesting party thereof. If he determines that no further action is warranted, he shall so notify the requesting party in writing.

(7) **NOTICE OF HEARING.** Notices of hearing shall be issued by the division and shall specify the time and place of a hearing and the time for filing an answer. 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 hearing is based on a complaint filed as provided in section MVD 1.01 (3) (a) such complaint shall be attached to the following notice:

"To _____ (Name)
_____ (Street)
_____ 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
_____ heretofore issued to the above named Respondent pur-
certificate)
suant to section _____, Wis. Stats., should be suspended or re-
voked. The issues involved and the charges there to be considered
are (as set forth in the attached complaint) to which you are re-
quired to make answer in writing by the _____ day of _____,
19____.

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

“DIVISION OF MOTOR VEHICLES OF
THE STATE OF WISCONSIN

By: _____”
Administrator

(b) If based on only part of the charges set forth in such com-
plaint, the form set forth in subsection (a) shall be altered by insert-
ing in lieu of the matter enclosed in brackets: “as set forth in para-
graph _____, _____, _____ and _____ of the attached complaint.”

(c) If initiated on the division’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 division 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. _____”

(8) ANSWERS. The time for making answer to the charges alleged
in the complaint shall be as specified in the notice of hearing, but
not less than 10 days after service of the notice of hearing and com-
plaint nor less than 10 days from the date therein set for hearing.
It shall be filed by personal delivery to the division or by certified
mail to the division and shall be in triplicate (original and 2 copies).
Upon receipt thereof, the division shall immediately forward a copy
to the complainant(s) or his legal representative. The examiner may
for cause shown grant extensions of time to answer. The answer
need not be in any particular form but shall be in writing subscribed
by the respondent or his agent or attorney, and must contain:

(a) Specific denial of each material allegation of the charges con-
troverted 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.

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. The above provisions relative to answers shall not apply in the case of a hearing called on 24 hour notice as provided in section 218.01 (3) (c), Wis. Stats.

(9) **DEFAULTS.** When respondent fails to file a written answer within the time provided in the notice of hearing or any extension thereof, or respondent files a written answer within such time but fails to appear at the hearing, respondent is in default, the charges specified may be taken as true, and the division may make findings and enter its order without further notice or hearing. But the division may, for good cause shown, relieve the respondent from the effect of such default and permit him to answer and defend in the proceeding at any time before the division enters its order or within 60 days thereafter.

(10) **HEARINGS, PRE-HEARING CONFERENCES.** (a) At any hearing the examiner shall preside. 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 division by the presiding officer or by a representative of the attorney general acting as counsel for the division, or, with the permission of the presiding officer, by any employee of the division or by the complainant or his attorney. An examiner shall disqualify himself if by reason of personal interest in or knowledge of the matter to be heard he is unable to act fairly or impartially. No person who has directly participated in the investigation of the matter to be heard shall be designated or serve as examiner.

(b) The examiner, at any time prior to the commencement of a hearing, may require the parties or their counsel to appear at a pre-hearing conference for the simplification of issues or consideration of other matters which expedite or aid in the disposition of the proceedings. The examiner shall keep and preserve as part of the official record of the case a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference. The examiner may issue such orders as necessary to reflect actions taken or agreements entered into at the conference and which will control subsequent proceedings.

(c) If any original document in a proceeding is lost or withheld by any person, or is otherwise unavailable, the examiner may authorize the filing or use of a copy in place of the original. The examiner may authorize the substitution of a copy of any original document received in evidence as an exhibit and return the original to the owner.

(11) **SERVICE.** Unless otherwise provided by law, all orders, notices and other papers may be served personally by a person appointed by the administrator, or by first class or certified mail addressed to the party being served at his last known post office address, or to his

attorney of record. Papers required to be filed with this division may be mailed to the following address:

Administrator
 Division of Motor Vehicles
 Hill Farms State Office Bldg.
 4802 Sheboygan Avenue
 Madison, Wisconsin 53702

(12) **SUBPOENAS.** Any party may request the examiner to issue subpoenas to compel the attendance of witnesses.

(13) **CONTINUANCES.** Continuances, postponements, adjournments, recesses and extensions of time may be granted or directed by the examiner for cause shown. Hearings may be recessed or adjourned at the request of any party adversely affected by the introduction of evidence constituting undue surprise to afford such party a fair and reasonable opportunity to examine and study such evidence.

(14) **BRIEFS.** The examiner may require written briefs and shall indicate the dates by which and the manner and order in which they shall be submitted and/or exchanged.

(15) **ADVERSE WITNESSES.** (a) Any party or any of his agents, officers or employees with knowledge of material facts relevant to the matter being heard may be examined by any other party adverse in interest at a hearing as if under cross examination without making such person his own witness. The testimony taken shall not be binding on or conclude the examining party and may be rebutted or impeached.

(b) Any witness who is hostile, unwilling, adverse or evasive may with permission of the examiner be interrogated by leading questions and impeached by the party calling him.

(16) **AMENDMENTS AND VARIANCES; PARTIES.** (a) The examiner may at any state of a proceeding direct or permit the amendment or correction of any process, pleading or other defect in the proceedings of a non-prejudicial nature on such terms as may be fair and just. Any person who is a necessary party to the determination of the issues in any proceeding may be made a party as the examiner may authorize or direct.

(b) Subject to the approval of the examiner, proof at any hearing may depart from the allegations of the complaint or answer and the complaint or answer may be amended to conform to such proof. Continuances shall be granted, on request, if undue surprise results. Introduction of evidence which tends to prove conduct, acts or omissions of the same type, character or nature alleged in the complaint or answer, shall not constitute undue surprise.

(17) **MOTIONS AND PROCEDURAL ORDERS.** (a) Motions other than those made orally at a hearing shall be in writing and scheduled for hearing on notice by the examiner or order to show cause.

(b) The examiner may refuse to hear any motion which is frivolous or made solely for the purpose of delay. Motions for extension may be ruled on ex parte.

(18) **CONSENT ORDERS AND STIPULATIONS.** The parties may stipulate to the issuance of a consent order at any time before testimony begins at a hearing on the merits of the complaint. Stipulations not made on the record at a hearing shall be in writing subscribed by

the parties. The division shall be a necessary party to any such stipulation.

(19) DEPOSITIONS AND DISCOVERY. (a) The examiner on application of any party may by issuance of a subpoena or other appropriate order authorize the taking of a deposition of a party or any other person for discovery or other purposes, in such manner and upon such terms and conditions as he may prescribe. Such subpoenas or orders may require the production of documents or physical evidence. Depositions may be taken orally or in writing, or upon written interrogatories. Depositions may be authorized only for the purpose of obtaining information or evidence not otherwise readily available without the taking of a deposition or which is reasonably calculated to lead to the discovery of admissible evidence. The taking of a deposition may be denied if it will result in undue delay of the proceedings. Upon motion of any party, or at any time the examiner determines, a proponent of procedures authorized in this section may be required to show good cause that such procedures are not being used for purposes of delay or are not otherwise unnecessary or duplicative.

(b) Depositions may be taken before any person having power to administer oaths. Examinations shall be conducted as on direct examination, except that adverse parties or hostile witnesses may be examined as under cross examination. No deposition shall be taken before any officer or commissioner who is the attorney or of counsel for any party or person interested, or is himself otherwise interested in the action, matter or proceeding in or for which the deposition is taken, except by written consent of the parties.

(c) Depositions under this section may be used as evidence if otherwise admissible under the same circumstances in which they may be admitted in civil actions in courts of law.

(d) If any part of a deposition is put in evidence, any party may require the production of the remainder or any other portion of the deposition. Depositions under this section may be used for impeachment purposes.

(e) Copies of all written interrogatories and cross interrogatories shall be submitted to the examiner. Each interrogatory shall be fully and completely answered in writing and under oath. Answers, including objections, if any, shall be submitted to the requesting party with a copy to the examiner, within 10 days after service of the interrogatories, or such other period as the examiner may specify. The requesting party may move for an order overruling objections which are without merit and an order compelling an answer thereto and fixing a time for such answer.

(f) In lieu of or in addition to procedures under subsection (e), any party may serve upon any other party, with a copy to the examiner, a demand to admit or deny the genuineness of relevant documents or the existence or truthfulness of relevant facts. If the party upon whom demand is made fails or refuses to comply with the demand or fails to file objections setting forth grounds for such objections within 10 days after service of the demand, the facts included in the demand shall be taken as true. Answers or objections shall be under oath. The party making the demand may move for an order overruling objections which are without merit and compelling an admission or denial in accordance with the demand.

(g) Upon failure of the party served to answer as required under subsections (e) and (f), the examiner may, upon motion of the requesting party, enter such order as may be fair and just, including:

1. An order that designated facts or documents shall be taken to be established in accordance with the claim of the party serving the demand to admit or deny.
2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.
3. An order striking out pleadings or parts thereof.

(h) On application of any party, the examiner may require any other party to disclose the names and addresses of witnesses who will testify at the hearing and to produce for inspection or copying any documentary or physical evidence to be used as evidence at the hearing.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73.

MVD 1.02 Other contested matters; rules under section MVD 1.01 (2) through (19) applicable. In any other contested matter which may come before the division for its decision, proceedings shall be as nearly as possible governed by section MVD 1.01 (2) through (19) of these rules, with such changes as may be appropriate in the form and style of pleadings, orders, etc.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73.

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

(2) **FORM OF PETITION.** (a) Every such petition shall be captioned "Before the Department of Transportation of the State of Wisconsin Division of Motor Vehicles" 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 2 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, the 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 division 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 division. Any petition requiring such supporting data may in the division's discretion be summarily rejected if it does not conform to this rule.

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

(5) DUTIES OF ADMINISTRATOR. Whenever any such petition shall be filed, the administrator shall submit the same to such person or persons employed by or associated with the division 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 administrator. The administrator may order such further investigation as he deems advisable.

(6) HEARINGS. No hearing shall be held on any such petition unless ordered by the administrator. If ordered by the administrator such hearing shall be in public and notice thereof shall be given to interested parties in such manner and within such time as the administrator 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 division may file their names and post office addresses with the administrator, together with a statement of the subject matter in which they are interested, in which case the administrator shall notify them of all hearings relating to such subject matter. Unless otherwise ordered by the administrator, hearings shall be conducted by the administrator or some other employee of the division 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 administrator, he shall submit to the administrator a summary of the arguments on both sides. If testimony or other evidence is taken it shall be reported to the administrator in such manner as he may order.

(7) ARGUMENTS. Except as provided under chapter 227, Wis. Stats., arguments shall be submitted to the division in writing, unless otherwise ordered. Three copies of such written arguments shall be filed with the division.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73.

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 division 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 division. 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 Department of Transportation of the State of Wisconsin Division of Motor Vehicles" 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 the Division of Motor Vehicles 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 administrator.

(4) DUTIES OF ADMINISTRATOR. Upon the filing of such petition the administrator 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 (7), 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 administrator 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 administrator. 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 administrator 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 (10). Petitioner(s) (and interveners) may appear in person or by any officer, regular employee or attorney. Sections MVD 1.01 (10), (12), (16) and 1.03 (7) 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 administrator may decline to make a declaratory ruling in any case.

(b) The order of the administrator 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 division 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 division 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 division, 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 administrator may order the license of any such party suspended or revoked.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73.