



## **I.R.C.P. 74. Actions for Writ of Mandate or Prohibition**

### **Idaho Rules of Civil Procedure Rule 74. Actions for Writ of Mandate or Prohibition.**

The Rules of Civil Procedure apply to an action for a writ of mandate or a writ of prohibition.

#### **(a) Definitions.**

(1) *Writ of Mandate.* A writ of mandate is an order issued by the court to any inferior court, corporation, board or person that:

(A) compels the performance of an act which a party has a duty to perform as a result of an office, trust or station; or

(B) compels the admission of a party to the use and the enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior court, corporation, board or person.

(2) *Writ of Prohibition.* A writ of prohibition is an order that arrests the proceedings of any court, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of the court, corporation, board or person.

(3) *Alternative Writ.* An alternative writ orders a party to:

(A) immediately after receipt of the writ or at some other specified time, do the act required to be performed or to stop doing or refrain from taking any other specified act until further order of the court, or

(B) show cause before the court at a specified time and place why the party has not done the mandated act or stopped the prohibited act.

(4) *Peremptory Writ.* A peremptory writ requires a party, immediately after receipt of the writ or at some other specified time, to do the act required to be performed or to stop doing or refrain from taking any other specified act.



**(b) Procedure.**

*(1) Alternative Writ.*

(A) When any complaint or petition for a peremptory writ of mandate or prohibition asks that an alternative writ be issued first, the court may issue the alternative writ based on a verified complaint or affidavit showing grounds.

(B) Copies of the summons, petition, any affidavits, and the alternative writ must be served upon the defendant at least 14 days before to the date of any show cause hearing.

(C) No contested trial of the petition for peremptory writ may be had at a show cause hearing pursuant to an alternative writ, and no peremptory writ may issue as a result of a contested show cause hearing.

(D) If the party on whom the alternative writ was served appears at the time specified to show cause, the court must, at the show cause hearing, set a time for the trial of the action on its merits and the court may hear limited testimony as to whether the alternative writ should remain in force pending trial on the merits.

*(2) Peremptory Writ.*

(A) A responsive pleading to the complaint or petition is filed and served in the same manner as an answer to any other complaint in a civil action.

(B) If an answer raises a question of fact essential to the determination of the motion and affecting the substantial rights of the parties, the court may order the question to be tried before a jury and postpone the final hearing until a jury trial can be had on the contested fact. The order for trial must clearly state the question to be tried and designate the county for the trial. If the jury finds for the plaintiff, the court may also direct the jury to assess any damages which the plaintiff may have sustained.

On entry of the judgment, if the writ is awarded it must be issued immediately as a peremptory writ.

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[1] <https://isc.idaho.gov/rules/IRCP/03012016-Adoption-Newly-Formatted.pdf>