

## **I.C.A.R. 4. Pro Rempore Trial Judges By Agreement.**

Idaho Court Administrative Rule 4. Pro Rempore Trial Judges By Agreement.

(a) Pursuant to Section 12 of Article 5 of the Idaho Constitution pro se parties, or attorneys of record with written approval of their clients, may agree in writing to have a civil action involving a controversy between private parties pending and at issue in the district court or magistrates division of the district court and triable to the court tried by a judge pro tempore designated by them as a trial judge. A judge pro tempore must be a member of the Idaho State Bar in good standing and meet the other constitutional and statutory qualifications for a district judge or lawyer magistrate.

(b) The agreement shall be presented to the administrative district judge of the judicial district for approval. Unless the administrative judge determines, in the judge's discretion, that the agreement should not be approved the administrative district judge shall appoint the person designated in the agreement to become a judge pro tempore to hear and determine all contested matters in the designated case as a trial judge, which appointment shall become effective upon the execution and filing of the oath required by I.C. § 59-401. The agreement, order and oath shall be filed in the action. The action shall thereafter be assigned to the judge pro tempore who shall preside over further proceedings in the action as a trial judge. If the administrative district judge declines to approve the agreement, the judge shall enter an order to that effect, stating the reasons for declining to approve the agreement.

(c) Power of Judge Pro Tempore. In conducting proceedings in the designated action, a judge pro tempore within the limits of the cause shall have all of the powers and duties of a district judge or magistrate while presiding over an action as a trial judge. Provided, that a judge pro tempore shall not have the power to hear appeals or to exercise any of the inherent powers of the court, including specifically the power to sanction for contempt or mandamus the conduct of non-parties; all such matters involving the exercise of the inherent power of the court shall be referred to the administrative district judge.

(d) Hearings and Trials. All proceedings shall be conducted by the judge pro tempore in the manner prescribed by the statutes and rules governing proceedings in the district court and the magistrates division of the district court; except that upon written stipulation of the parties and approval of the judge pro tempore, a hearing or trial may be conducted at a place other than in a regular courtroom. The place of hearing or trial shall be provided by and at the expense of the parties.

(e) Records and Files. The judge pro tempore shall have the responsibility of maintaining the case file and records in the same manner as is done in district court and the magistrates division of the district court. The judge pro tempore shall file all papers in accordance with Rule 5(e) of the Idaho Rules of Civil Procedure. At the conclusion of the proceeding the judge pro tempore shall deposit all records and files in the case with the clerk of the district court or magistrates division of the district court. In case of appeal the judge pro tempore shall settle the record.

(f) Record of Proceedings. In accordance with Idaho Code section 1-1103, the parties may stipulate in writing with the approval of the judge pro tempore to waive the reporting or recording of any part of the proceedings or testimony. If the parties desire a record to be made, the parties shall provide the

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means and bear the expense of making the record.

(g) Reassignment of Case. Upon written request of the parties or of the judge pro tempore, or upon the death or disability of the judge pro tempore, the administrative district judge shall reassign the action to a district judge or a lawyer magistrate. A judge pro tempore may be removed by the administrative district judge for the same cause that a district judge or magistrate may be removed.

(h) Compensation. The judge pro tempore shall receive such compensation as is agreed upon by the parties and the judge pro tempore, and such compensation shall be paid by the parties directly to the judge pro tempore. The agreement between the parties, as set forth in paragraph 4(a), shall provide that the judge pro tempore is an independent contractor and not an agent nor employee of the Judicial Department.

(i) Effect of Orders and Judgments. All orders and judgments entered by the judge pro tempore or pursuant to his or her findings of fact and conclusions of law shall have the same binding effect as a decision or judgment of a district judge or magistrate and be subject to enforcement and appeal in the same manner.

(Adopted April 14, 1993, effective July 1, 1993.)

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