

**CAO CvPi INSTRUCTION 4-3
FILING A MOTION TO RETAIN A CASE ON THE COURT'S CALENDAR**

If you are a party in a civil lawsuit and have received a Notice of Intent to Dismiss that case for lack of activity and you want to request the judge allow the case to remain active, these instructions explain the steps and forms you will need to file a Motion to Retain.

First, you should understand why you have received the Notice of Intent to Dismiss. Ordinarily, these notices are issued under Rule 41(e) of the Idaho Rules of Civil Procedure:

Rule 41(e). Dismissal of inactive cases.

Any action, appeal or proceeding, except for guardianships, conservatorships, and probate proceedings, in which no action has been taken for a period of 90 days may be dismissed unless there is a showing of good cause for retention. (1) Dismissal pursuant to this rule is with prejudice in the case of appeals and without prejudice as to all other matters. (2) At least 14 days prior to such dismissal, the clerk must give notice of the pending dismissal to all parties or their attorneys of record. (Adopted March 5, 2017; effective July 1, 2017.)

Under this court rule, a civil case may be dismissed if no action has been taken within 90 days unless you show "good cause" to retain the case as an active case. To ask the judge to keep the case active, you will need the following forms:

- CAO Cv 4-10 Motion and Affidavit to Retain
- CAO Cv 4-11 Order on Motion to Retain

Step 1. Obtain and Complete the Required Forms

Complete the forms listed above by typing or neatly and legibly printing in black ink. Fill in your full current name, address, and telephone number on the lines provided at the left-hand corner of page 1 of each form. Fill in the judicial district and your county in the heading in capital letters (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF ADA"). Fill in the name of the plaintiff and the defendant in the caption as well as the case number as that information appears in other documents in the court file.

Provide the information requested in the Motion. Make sure you describe the facts or circumstances you want the judge to consider as your "good cause" for retaining the case. Since hearings are not usually held on a Motion to Retain, the judge will make a decision based upon what is contained in the court file and the information provided in your Motion and Affidavit to Retain.

Date, sign and swear to the truth of the contents of the Motion and Affidavit to Retain in front of a notary public.

File out the top portions of Order on Motion to Retain, leaving the rest blank for the judge to complete.

Step 2: Serve and File the Motion to Retain

Serve a copy of the Motion on all parties or their attorneys who have appeared in the case. Complete the Certificate of Service at the bottom of the Motion indicating who was served and the manner in which they were served.

File the Motion to Retain with the clerk of the court and submit the proposed Order to Retain for the judge to sign.

The judge may find that you have not shown good cause to retain the case and order it dismissed, or may order the case be retained. If retained, the judge may order that you take certain action to avoid having the case dismissed.

Warning: Please note that the judge may order that the case will be automatically dismissed by a certain date **without further notice to you** unless you file another motion showing good cause why you need additional time to comply.

Once the judge has made a decision, the clerk of the court will mail copies of the Order on Motion to Retain to all parties.