

# Intertribal Court of Southern California

## *Inter-Governmental Agreement*

*Established 2005*

### **CHAPTER 1. ESTABLISHMENT AND OPERATION OF THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA**

#### **Sec. 101 Establishment of the Intertribal Court of Southern California**

The Governing Agreement hereby establishes an Intertribal Court of Southern California (ICSC), a court of limited jurisdiction, which shall be the court of record for a consortium of Southern California Tribes.

#### **Section 102 Tribal Judicial Council of Southern California**

The ICSC shall be governed by the Tribal Judicial Council of Southern California (TJCSC). The TJCSC shall consist of representatives from member Tribes of Southern California that have agreed to participate in the ICSC by signing this Governing Agreement.

The TJCSC shall establish its own By-Laws and policies for the ICSC.

#### **Sec. 103 Intertribal Court Membership**

To become a member of the ICSC, a Tribe must submit an application that conforms with the process described below. The TJCSC may, in its discretion, waive these membership requirements and authorize a Tribe to participate in the ICSC. All Tribes requesting membership in the ICSC shall pay a one-time fee, the amount of which will be determined by the TJCSC.

## PART A Membership Application Process

A Tribe wishing to participate in the ICSC shall submit to the Court Administrator of the ICSC a written request stating the Tribe's desire to participate in the ICSC along with a written estimate of the nature and extent of services the Tribe believes it will require during the fiscal year in which it wishes to become a member. This request must be made within 30 days of the first day of the new fiscal year. The Court Administrator shall review the Tribe's request and determine whether or not the ICSC can accommodate the Tribe's request during the fiscal year in question. On the basis of this assessment, the Court Administrator shall make a written recommendation to the TJCSJ regarding the Tribe's membership request. The TJCSJ shall review both the Tribe's request and the recommendation of the Court Administrator and vote on whether the new Tribe may participate in the ICSC.

## PART B. Mid-Year Membership Application

In the event that an eligible Tribe requests participation in the ICSC during the middle of a fiscal year and such participation is infeasible because of insufficient ICSC resources, the ICSC shall include the Tribe as one of its participating Tribes for purposes of preparing its annual plan of operation and funding requests for the succeeding fiscal year, and the new Tribe shall be admitted to participate in the ICSC as soon as the resources permit.

## PART C. Official Membership

Upon approval of its application to participate in the ICSC, a new Tribe shall become a member of the ICSC once its Chairperson or other designated elected officer, acting pursuant to a Resolution adopted by the Tribe's governing body, signs this Governing Agreement.

## **Sec. 104 Withdrawal from Membership in the Intertribal Court of Southern California**

A Tribe that wishes to withdraw from the ICSC shall provide the Chairperson of the TJCSJ and the Court Administrator with at least thirty (30) days' written notice. The written notice shall be accompanied by a written resolution, passed by the Tribal Government, authorizing the Tribe's withdrawal from the ICSC. Before the scheduled withdrawal date, a representative from the withdrawing Tribe shall meet with the TJCSJ and make a good faith attempt to resolve any problems that may have prompted the Tribe to submit the withdrawal notice. However, if there are no problems

and the withdrawal notice was submitted solely because the Tribe is ready to create or begin to operate its own independent Tribal Court, the ICSC and the withdrawing Tribe shall work together to create a transition plan to aid the Tribe in the creation and effective functioning of their court.

**Sec. 105 Administrative Branch of the Intertribal Court of Southern California**

Pursuant to the Governing Agreement, the administrative branch of the ICSC shall provide such services as, but not limited to:

- (a) case management,
- (b) aid in the development of uniform codes for consortium Tribes,
- (c) development of court forms and rules,
- (d) coordinating logistics for judicial staffing, and
- (e) coordinating hearings, pursuant to Section 101.

**Sec. 106 Services to Member Tribes**

At the beginning of the third quarter of each fiscal year, each participating Tribe in the ICSC shall submit to the Court Administrator a plan estimating the nature and extent of the services, which the Tribe believes it will require during the following fiscal year. However, if the Tribe believes that it will require the same amount of services as the prior year, this provision is deemed waived if not acted upon. If a participating tribe fails or refuses to meet the conditions of this section, the Court Administrator may recommend, and the TJCSC may approve, the suspension of ICSC services to that Tribe until it complies with the provisions of this section. The Tribe may appeal to the TJCSC regarding its decision by submitting an appeal in writing to the Court Administrator. The Court Administrator will then forward the appeal to the TJCSC.

**Sec. 107 Records of the Court**

The ICSC shall keep a record of all proceedings of the Court, showing the:

- (a) title of the case,
- (b) names and addresses of the parties, attorneys, lay counselors and witnesses;
- (c) substance of the complaint;
- (d) dates of all hearings or trials;
- (e) name of the Judge;
- (f) findings of the Court or verdict of the jury and judgment;
- (g) Preservation of testimony for perpetual memory by electronic recording, otherwise; together with any other facts or

circumstances deemed of importance to the case. [A record of all proceedings leading to incarceration shall be submitted to the Regional Director, to be made a part of the records of the Pacific Regional Office as required by 25 U.S.C. 200.]

Unless specifically exempted by this Governing Agreement or Rules of Court, the records of the Court shall be public and available at the administrative offices of the Court.

### **Sec. 108 Jurisdiction**

The jurisdiction of the ICSC shall extend to all lands, persons, and subject matter as set forth below or to the fullest extent authorized by federal and tribal law.

#### **PART A. Territory**

The ICSC's jurisdiction shall include all territory within the boundaries of the member Tribes of the ICSC or other areas defined by a member Tribe of the ICSC as its "Indian Country".

#### **PART B. Persons**

The jurisdiction of the ICSC shall extend to all persons, entities, or organizations within the territory of the member Tribes of the ICSC to the fullest extent authorized by Federal, State and Tribal law. If the person, entity, or organization is not within the territory of the ICSC, the ICSC's personal jurisdiction still attaches if the person, entity, or organization:

- (a) Transacts business within the territory of a member tribe
- (b) Agrees to supply goods or services to the Tribe, or
- (c) Commits an act within a member Tribe that causes injury.

#### **PART C. Subject Matter**

The jurisdiction of the ICSC shall extend to all matters authorized by the Tribal Law of the member Tribes and applicable Federal and State Law, including matters in equity and common law.

### **Sec. 109 Tribal Immunity from Suit**

Every ICSC Tribe shall be immune from suit. Nothing in this Governing Agreement shall be construed to allow an ICSC Member Tribe to be sued

by another tribe, person, entity, or other organization. However, an individual ICSC Tribe may waive its sovereign immunity for a specific case by passing a Tribal resolution, signed by the Tribal Chairperson or other designated official, and submitting it along with a written authorization form to the ICSC's Court Administrator.

**Sec. 110 Term of Agreement**

The Terms of this Governing Agreement commence on the date of its execution and continue until thirty (30) days after a Tribe submits a written withdrawal request as detailed in Section 104.

**Sec. 111 Amendments**

Only written instrument duly signed and executed by member Tribe and the TJCSC may amend this Governing Agreement.

**Sec. 112 Successors in Interest**

The terms of this Governing Agreement shall be binding on all successors in interest of each party.

**Sec. 113 Severability**

The provisions of this Governing Agreement are severable, and the invalidity of any provision or portion of this Agreement shall not affect the validity of any other provision or portion of this Agreement, thus leaving the remaining provisions or portions of the Agreement in full force and effect.

## **CHAPTER 2. ESTABLISHMENT AND OPERATON OF COURT OF APPEALS**

### **Sec. 201 Creation of Court Appeals**

This section of the Governing Agreement hereby creates a Court of Appeals within the ICSC.

### **Sec. 202 Jurisdiction of Court of Appeals**

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the ICSC Trial Court. The Court of Appeals shall review all determinations of the ICSC Trial Court on matters of law, but shall not set aside any factual determinations of the Trial Court if such determinations are supported by substantial evidence.

### **Sec. 203 Composition of the Court of Appeals**

As the need for appellate services arises, the TJCSJ shall appoint a Chief Judge and two Associate Judges, none of whom shall have served or presided over the case on appeal at the trial level. The TJCSJ will set forth the terms of each appointment and the compensation for each Judge.

### **Sec. 204 Records of Court of Appeals**

The Court of Appeals shall keep a record of all appellate proceedings, showing the:

- (a) title of the case,
- (b) name and addresses of all parties and representatives,
- (c) briefs,
- (d) dates of any oral arguments,
- (e) names of the Judges who heard and decided the case, and
- (f) judgment, together with any other facts and circumstances deemed of importance to the case. [A record of all proceedings leading to incarceration shall be submitted to the Regional Director of the Pacific Regional Office, to be made a part of the records of the Office as required by 25 U.S.C. 200.]

Unless specifically provided under this Governing Agreement or Rules of Court, all decisions and opinions of the ICSC shall be published in a format that shall be available to the public at the administrative offices of the Court.

## **Sec. 205 Right of Appeal**

### PART A. Civil Cases

Any party aggrieved by a final order or judgment of the ICSC Trial Court may file a petition requesting the ICSC Court of Appeals review the order or judgment as provided by Section 206.

### PART B. Criminal Cases

In any criminal case, the defendant shall have an appeal as a matter of right from a judgment of conviction. An ICSC Member Tribe shall have no right of appeal from a final judgment of the Trial Court regardless of whether the verdict is rendered by a judge or jury. Appeals in criminal cases shall be taken as provided in Section 207.

## **Sec. 206 Procedure on Decision for Review in Civil Cases**

### PART A. Time to Petition and How to Petition

A party to a civil case shall file a Petition for Review, including any docket fee and bond required pursuant to this section, with the Court Clerk within fifteen (15) days from the date of entry of the Trial Court's final order or judgment. No extension of the fifteen (15) day period shall be granted.

### PART B. Contents of Petition for Review

The Petition for Review shall:

- (a) specify the parties taking the appeal,
- (b) designate the final order or judgment, or part appealed from, and
- (c) contain a short statement why the petition should be granted.

The Court Clerk shall mail a copy of the petition for review to all parties other than the petitioner. Other parties shall have fifteen (15) days to respond to the petition for review, after which time the Court of Appeals shall either grant the petition, and allow the appeal to be heard, or deny the petition.

PART C. Docket Fee and Bond

The Petition for Review shall be accompanied by a docket fee of one hundred (\$100.00) dollars and a bond, the amount of which will be determined by the Chief Judge of the ICSC but shall not exceed five-hundred (\$500.00) dollars. The Chief Judge of the ICSC may waive or reduce the docket fee and/or bond amount if he/she finds the appellant is indigent.

PART D. Stay on Appeal

In civil cases the petitioner may request the Trial Court to stay the judgment pending the determination of the petition or of the appeal if the petition is granted, and either party may request the Trial Court grant or stay an injunction pending appeal. The Trial Court may condition a stay or injunction pending appeal on the depositing of cash or bond satisfactory to the Trial Court. The appellant's bond shall be sufficient to cover the damages awarded by the Trial Court with interest. The cash or bond may be deposited at or after the time the petition is filed. The stay shall be effective when the Trial Court approves the deposit of cash or bond. The appellant may petition the Court of Appeals to review any decision of the Trial Court under this Section.

**Sec. 207 Procedures on Appeal of Criminal Cases**

PART A. Time to Appeal and How to Appeal

Any appeal in a criminal case must be taken within fifteen (15) days of the Trial Court's final judgment by filing a written Notice of Appeal with the Court Clerk of the ICSC. No extension of the fifteen (15) day period shall be granted.

PART B. Notice of Appeal

The Notice of Appeal shall:

- (a) specify the party or parties taking the appeal,
- (b) specify the judgment or part thereof appealed from, and
- (c) contain a short statement setting forth the reasons for the appeal.

The Court Clerk shall mail a copy of the Notice of Appeal to all parties except for the party taking the appeal.

## PART C. Release on Bond Pending Appeal

In criminal cases the defendant may be continued on release or be released on bail. The appellant may petition the Court of Appeals, or Chief Judge thereof, to review any decision of the Trial Court taken under this Section.

### **Sec. 208 Judgment Against Surety**

Any surety to a bond thereby submits himself/herself to the jurisdiction of the ICSC, and irrevocably appoints the Court Clerk as his/her agent upon whom any papers affecting his liability on the bond may be served. The liability of a surety may be enforced on motion without the necessity of any independent action. The motion, as prescribed by the Trial Court, may be served on the Court Clerk who shall mail copies of the motion to the surety at his/her last known address.

### **Sec. 209 Record on Appeal**

Within five (5) days of the filing of the Petition for Review in a civil case or a Notice of Appeal in a criminal case, the Court Clerk shall certify and file with the Court of Appeals all papers comprising the record in the case.

### **Sec. 210 Briefs and Memoranda**

Within thirty (30) days after a Petition for Review is granted, or the Notice of Appeal is filed, or within such other time as the Court of Appeals allows, the Appellant may file a written brief, memorandum or statement in support of his appeal. At the time of filing, the Appellant must submit one (1) original for the Court and one (1) copy for each Appellate. Thereafter, the Court Clerk shall mail one (1) copy by registered or certified mail, with return receipt requested, to each Appellate. The return receipt shall then be filed with the Court Clerk.

The Appellate shall have fifteen (15) days after receipt of the appellant's brief, memorandum or statement to file an answer brief, memorandum, or statement if he or she so desires. The Court of Appeals may modify this timeframe if it believes under the circumstances it would be judicious to do so. The Appellate shall file one (1) original for the Court and one (1) copy for each Appellant. Thereafter, the Court Clerk shall mail one (1) copy by registered or certified mail, with return receipt requested, to each appellant. The return receipt shall be filed with the Court Clerk.

No further briefs, memoranda or statements shall be allowed, without leave of Court of Appeals.

### **Sec. 211 Oral Argument**

In Civil Cases, the Court of Appeals may, in its discretion, hold oral arguments or decide the case based upon the briefs submitted by the parties. However, in all Criminal Cases, the Court of Appeals shall hold oral arguments.

## **CHAPTER 3. JUDGES**

### **Sec. 301 Appointment**

The TJCSJ shall appoint the Chief Judge, all Pro Tem Judges, and all Judges for the Court of Appeals of the Intertribal Court. The Court Administrator shall hire all the ICSC's Administrative personnel.

### **Sec. 302 Term**

The Chief Judge of the ICSC shall hold office for a term of four (4) years and shall be eligible for reappointment. A Pro Tem Judge may be appointed on a temporary basis on such terms and conditions as are determined by the TJCSJ. Any person appointed to fill an existing vacancy created by the death, resignation, or removal for cause of the Chief Judge shall hold office only for the remainder of the Chief Judge's original term. However, the Appointee shall be eligible for reappointment.

### **Sec. 303 Minimum Qualifications of Judges**

To be eligible to serve as an ICSC Judge, a person must:

- (a) be thirty (30) years of age or older,
- (b) be of good moral character,
- (c) hold a higher standard of conduct and integrity,
- (d) possess a high-school diploma or its equivalency,
- (e) be capable of carrying out the duties of the office,
- (f) demonstrate knowledge of Indian, Federal, and California State Law, and
- (g) have never been convicted of a felony offense.

Indian preference in hiring will be applied to all qualified applicants.

### **Sec. 304 Salary**

The Chief Judge of the ICSC and any Pro Tem Judges shall be paid a salary that is to be determined by the TJCSJ.

## **Sec. 305 Removal of a Judge**

If any member Tribe to the ICSC, ICSC personnel, or member of a Tribe belonging to the ICSC submits written charges of specific misconduct against a Judge or claims that the Judge is physically or mentally unable to carry out the duties of the office, the ICSC Administrator shall initiate an investigation and, if the written charges are reasonably substantiated, begin proceedings to remove the Judge from office.

### **PART A. Misconduct (as used in this Section shall mean)**

- (a) Conviction of a felony or of a misdemeanor involving dishonesty or acts that are offensive to community norms; or
- (b) Abusive or clearly incompetent performance of duties in office; or
- (c) A continued failure to perform the duties of office, whether from illness, disability, or otherwise.

### **PART B. Removal Proceedings**

The TJCSJ may order that a Judge be suspended from duty for a period not to exceed twenty (20) days after written charges are filed with the ICSC. This determination shall only be made by a majority vote of the TJCSJ at a meeting where a quorum of the Board is present. The TJCSJ may appoint a Pro Tem Judge to assume the Judge's duties pending the TJCSJ ' final decision.

A Judge subject to written charges shall be given at least ten (10) days advance written notice of any removal hearing that is to be held and that he or she is entitled to appear and have representation present. The written notice shall include an itemized list of the charges and the grounds for removal that will be considered at the hearing. Such notice shall be served by registered or certified mail, or be delivered personally to the Judge.

The Judge shall be given an opportunity to present witnesses and documentary evidence, to make oral and/or written argument on his or her behalf, to cross-examine witnesses, and to be represented by counsel at his or her own expense.

When determining whether to remove a judge, the TJCSJ shall cast their votes by secret ballot. Two thirds (2/3) of these ballots must be

in favor of removal for the judge to be removed. The TJCS ' decision is final and not subject to appeal.

### **Sec. 306 Disqualification**

A Judge shall disqualify him/herself from any proceeding in which:

- (a) his/her impartiality might reasonably be questioned,
- (b) he/she has any personal bias or prejudice concerning any party,
- (c) he/she or a member of his/her immediate family might be a witness, has any interest, has any personal knowledge of any disputed evidentiary facts concerning the proceedings, or has acted or is acting as a lawyer or lay counselor in the proceedings, or
- (d) he or she might otherwise appear to be biased or prejudiced.

As used in this Section, immediate family shall include grandparents, parents, spouses, children, aunts, uncles, grandchildren, brothers, sisters, cousins, and in-laws.

### **Sec. 307 Rules of the Court**

The Chief Judge may prescribe written Rules of Court, consistent with the provisions of this Governing Agreement, including rules establishing the time and place of court sessions. The TJCS shall approve the ICSC Rules of Court before becoming effective. However, in the event that the Governing Agreement or any subsequent Rules of Court conflict with Tribal Law, the Tribal Law shall govern.

## **CHAPER 4. COURT ADMNISTRATION**

### **Sec. 401 Office of the Court Clerk**

The Court Administrator shall appoint a Court Clerk that will be compensated at a rate determined by the TJCS. The Court Clerk shall be subject to discharge, with or without cause, by the Court Administrator.

### **Sec. 402 Qualifications**

To be eligible to serve as Court Clerk, a person:

- (a) Must be at least twenty-one (21) years of age.
- (b) Must be of high moral character and integrity.
- (c) Must be a high school graduate or equivalent.
- (d) Must be proficient in typing or keyboarding.

- (e) Must never have been convicted of a felony.
- (f) Must be physically able to carry out the duties of the office.

### **Sec. 403 Duties**

The Court Clerk shall render assistance to the ICSC, authorized law enforcement officers of Tribal communities, and members of the Tribe's belonging to the ICSC in any matters relating to documents that are incidental to the lawful functions of the Court Clerk. The Court Clerk shall attend and keep written records of all Court proceedings, administer oaths, and collect fines, costs, fees, and other monies.

## **CHAPTER 5. ATTORNEYS AND LAY COUNSELORS**

### **Sec. 501 Qualifications for Admission as Attorney or Lay Counselor**

#### **Sec. 502 Attorney**

No person may practice as an attorney before the ICSC or the Court of Appeals unless he/she is admitted to practice, is enrolled as an attorney of the ICSC, and has received written approval from the Chief Judge. To be eligible to practice as an attorney before the ICSC, a person:

- (a) Must be a member of a state or federal court bar in good standing.
- (b) Must be knowledgeable of the ICSC's Rules of Court and procedure, and Tribal and Federal Indian Law.
- (c) Must be of high moral character and integrity. The Chief Judge may make inquiries as to the attorney's qualifications before admitting the attorney. Each individual wishing to be admitted to practice before the ICSC must be recommended by an individual already admitted. This requirement will take effect once twenty (20) individuals have been admitted to practice before the ICSC and the Court of Appeals.

#### **Sec. 503 Lay Counselors**

To be eligible to serve as a lay counselor before the ICSC, a person:

- (a) Must be at least twenty-one (21) years of age.
- (b) Must be of high moral character and integrity.

- (c) Must have knowledge of the ICSC Rules of Court and Procedures, and of tribal Law, and Federal Indian Law.
- (d) Must be a high school graduate or equivalent.
- (e) Must never have been convicted of a felony.

### **Sec. 504 Roll of Attorneys and Lay Counselors**

The Court Clerk shall maintain a roll of attorneys and lay counselors that have been admitted to practice before the ICSC.

### **Sec. 505 Disbarment and Suspension**

#### **PART A. Disbarment**

The ICSC may disbar an attorney or lay counselor from practicing before the Court or suspend the attorney for such time as the Court deems appropriate, pursuant to rules adopted by the Court, provided that the Court provides the attorney or lay counselor with reasonable notice of the charges against her/him and an opportunity to respond to the charges.

#### **PART B. Appeals from ICSC Action**

Any person who is disbarred or suspended by the ICSC may appeal that determination to the Court of Appeals within fifteen (15) days from the disbarment or suspension. The Court of Appeals shall request a statement detailing the reasons for the disbarment or suspension from the Chief Judge of the ICSC. After receiving the statement, the Court of Appeals shall review the record before the Trial Court and may, in its discretion, hold oral arguments for the Applicant. The Court of Appeals shall ultimately determine whether the Applicant will be disbarred or suspended from practicing before the ICSC and the Court of Appeals. The Court of Appeals determination is final.

#### **PART C. Appeals from Judicial Action**

Any person who is disbarred or suspended by a Judge of the Court of Appeals may appeal that determination to the Court of Appeals within (15) days of the disbarment or suspension. The Judge responsible for ordering the disbarment or suspension shall recuse himself and may not take part in the appeal. The Court of Appeals shall request a statement detailing the reasons for the disbarment or suspension from

the Judge who ordered the disbarment or suspension. After receiving the statement, the Court of Appeals shall review the record and may, in its discretion, hold an oral argument for the Applicant. The Court of Appeals shall ultimately determine whether the Applicant will be disbarred or suspended from practicing before the ICSC and the Court of Appeals. The Court of Appeals determination is final.

PART D. Re-application

Any person who has been disbarred or suspended from practicing before the ICSC or the Court of Appeals may reapply for admission one (1) year from the date of disbarment or suspension. The person must submit a statement listing the reasons for their disbarment or suspension, and their reasons why they should be readmitted. After receiving these statements, the TJCSA shall determine whether there is good cause to readmit the person to practice before the Court. If the applicant for readmission is denied, the applicant may appeal such decision in writing to the Court of Appeals within ten (10) days from receipt of such denial. The decision of the Court of Appeals shall be final.