

# **Intertribal Court of Southern California**

## **The Code of Civil Procedure and Rules of Court**



### **PREAMBLE**

#### **I. Scope of Rules**

The following shall be known as “The Code of Civil Procedure and Rules of Court” [hereinafter “Rules of Court”] and shall govern the Intertribal Court of Southern California [hereinafter “ICSC”] in all suits of a civil nature. Notwithstanding its inherent equitable powers conferred by Tribal custom and tradition, the ICSC shall use and apply these Rules of Court in conjunction with all statutes, ordinances, regulations, and other laws approved and adopted by the respective Tribal government.

#### **II. Incorporation by Reference**

The ICSC reserves the right to supplement these Rules of Court with other provisions of the Federal Rules of Civil Procedure, relevant federal common law, the California Rules of Civil Procedure, or relevant California common law in the event the Rules of Court do not address, or fully address, a civil procedure matter, including, but not limited to, venue, res judicata, collateral estoppel, motions not herein discussed, and joinder of parties. Moreover, these Rules of Court empower the ICSC with the right to create new rules based upon the general principles of the Federal or California Rules of Civil Procedure and relevant common law and apply the new rules to pending and future actions.

#### **III. Construction**

The ICSC shall construe these Rules of Court to secure the just, speedy, and inexpensive determination of every action.

#### **IV. Application**

These Rules of Court, and amendments thereto, shall apply to all actions pending at the time, or filed after their effective date, except to the extent that in the opinion of the ICSC their application in a particular pending action would not be feasible or would not substantially serve the interests of justice.

# **Article I. Violations of Tribal Law**

## ***Section 1.1 The Civil Infraction***

### **1.1.01 Authority to Issue**

All law enforcement officers commissioned by the Tribe shall have the authority to enforce the provisions of Tribal law by issuing a notice of a civil infraction.

### **1.1.02 Issuance**

An enforcement officer has the authority to issue a notice of civil infraction under this *Article* if:

- (A) The civil infraction occurred in the presence of the enforcement officer.
- (B) The enforcement officer has reasonable cause to believe a person committed a civil infraction.

The Court is authorized to issue a notice of civil infraction under this chapter if it receives an affidavit from an enforcement officer or a citizen stating he or she has reasonable cause to believe that a person committed a civil infraction.

### **1.1.03 Identification**

A person stopped by an enforcement officer must identify himself by providing the enforcement officer with his name, address, and date of birth, so long as the enforcement office has reasonable cause to stop the person. If requested by the enforcement officer, the person shall produce a picture identification card, such as a driver's license or Tribal ID. If the person is unable or unwilling to provide such identification, the enforcement officer may detain the person for a reasonable period of time in order to accurately identify the person and issue a notice of civil infraction.

### **1.1.04 Final Determination unless Contested**

A notice of civil infraction represents an official determination by the ICSC that a person committed a civil infraction. This determination is final unless the individual contests it in the manner set forth in these Rules of Court.

### **1.1.05 Notice of Requirements**

The notice of civil infraction is the ICSC's valid, final determination only if the first notice of civil infraction, the second notice of civil infraction, or the first and second notices of civil infraction when read together, includes the following:

- (A) A statement that the ICSC considers the notice of civil infraction a final determination of the person's guilt and liability to pay the sanction printed on the notice, unless the person contests the civil infraction in the manner required by these Rules of Court.
- (B) A statement indicating that a civil infraction is a non-criminal offense for which imprisonment is not an available sanction.
- (C) A statement indicating the specific provision of the Tribal statute, ordinance, regulatory scheme, or other law the individual violated, along with a brief statement describing the conduct of the person that violated the ordinance.
- (D) A statement indicating the monetary penalty imposed by the ICSC for the civil infraction.
- (E) A statement listing the ways the person may respond to the notice of civil infraction. *See 1.1.07 below.*
- (F) A statement indicating that the Tribe must prove the person committed the civil infraction by a preponderance of the evidence at the civil infraction hearing.
- (G) A statement indicating that a civil infraction hearing must comply with certain procedures so as to afford the person with specific rights, such as the right to subpoena witnesses, including the issuing officer, to testify at the hearing.
- (H) A statement indicating that the person must respond to the notice of civil infraction within thirty (30) days of the date on which the notice was issued or the ICSC will enter a default judgment against the person.
- (I) A statement that the person shall sign in the presence of the enforcement officer indicating that the person promises to respond to the notice of civil infraction in one of the ways listed in *1.1.07*.
- (J) A statement indicating that the failure to respond to the notice of civil infraction or appear at the civil infraction hearing will result in a default judgment against the person in the amount of the citation plus a fine imposed by the ICSC for the person's failure to respond or appear.

### **1.1.06 Deadline for Response**

A person who receives a notice of civil infraction must respond to the notice within thirty (30) days of the date on which the notice was issued.

### **1.1.07 Response Options**

A person shall respond to the notice of civil infraction in one of the following ways:

- (A)** Pay the fine by submitting a check or money order in the amount of the infraction to the ICSC Court Clerk [hereinafter "Court Clerk"] within thirty (30) days of the date on which the notice was issued. If the person decides to pay the fine, he or she will need to fill out and submit the payment portion of the first or second notice of civil infraction and submit it to the Court Clerk along with the payment.
  
- (B)** Request a hearing to mitigate the civil infraction by explaining the circumstance surrounding the infraction, or contest the civil infraction altogether. If the person decides to request such a hearing, he must complete the portion of the notice of the civil infraction that requests a hearing and submit it to the Court Clerk within thirty (30) days of the date on which the notice was issued. Once the Court Clerk receives the completed notice, he will notify the person of the time, place, and date for the hearing, which shall be no less than seven (7) days and no more than thirty (30) days from the date the Court Clerk receives the notice of hearing.

### **1.1.08 Failure to Respond**

If the person fails to pay the fine or request a civil infraction hearing within thirty (30) days of the date on which the notice of civil infraction was issued, the ICSC shall enter a default judgment against the person, impose additional sanctions for the failure to respond, and send the outstanding fine to the ICSC's collection agency.

### **1.1.09 Filing with the Court**

The Tribal enforcement officer responsible for issuing the notice of civil infraction shall file a copy of the notice of civil infraction with the Court Clerk within seventy-two (72) hours of its issuance, excluding weekends and holidays. The ICSC may dismiss the infraction without prejudice if the Court Clerk does not receive the notice within this timeframe.

## ***Section 1.2 Hearings***

### **1.2.01 In General**

The ICSC shall conduct civil infraction hearings in accordance with these Rules of Court.

### **1.2.02 Judicial Hearings**

The Chief Judge or an associate judge of the ICSC shall preside over a civil infraction hearing that the person requests to offer mitigating evidence or contest the issuance of the civil infraction. Unless otherwise directed by the ICSC, a jury shall not preside over any stage of the proceedings.

## **Article II. Private Actions – Commencing the Action**

### ***Section 2.1 Commencing the Action***

#### **2.1.01 Commencement of an Action**

A private party (plaintiff) may commence a civil action by filing a complaint with the Court Clerk. Mailed filings are acceptable so long as they are sent by registered or certified mail with return receipt requested, addressed to the Court Clerk at the ICSC's administrative office, and substantially comply with the Rules of Court.

#### **2.1.02 Statue of Limitations**

The Court Clerk shall not accept the complaint if the events giving rise to the cause of the civil action occurred three (3) years or more before the date of the attempted filing.

#### **2.1.03 Filing Fee**

In a civil suit initiated by a private party, the plaintiff must pay the Court Clerk a minimum filing-fee of \$75 (*see Civil Fee Schedule*). If the plaintiff requests that the ICSC serve process on the defendant, he or she must pay the Court Clerk an additional service-fee of \$45. Unless determined otherwise by the ICSC, the plaintiff must pay these fees at the time of the filing.

#### **2.1.04 Number of Copies**

Unless provided otherwise in these Rules of Court, the plaintiff must submit three (3) copies of the complaint with the Court Clerk.

#### **2.1.05 Complaint Form**

- (A)** The plaintiff must write or type the complaint on 8 ½ by 11-inch white-opaque paper. The contents of the complaint must satisfy the requirements of 2.1.06. If written, the complaint shall be devoid of defacing marks such as erasures, white out, or crossed-out words, and be of such quality that ICSC personnel may photocopy it. If typed, the complaint must be double spaced, except for quotations and footnotes, which may be single-spaced.

- (B) The Court Clerk must accept all complaints unless otherwise instructed by the Chief Judge. *See 2.1.08.* However, the Chief Judge may reject a complaint that does not substantially comply with the Rules of Court, so long as the Chief Judge provides the plaintiff with his reasons for rejecting the complaint in a signed writing mailed to the plaintiff's home address, or other personal or business address on file with the ICSC.

### **2.1.06 The Contents of the Complaint**

The complaint shall be simple, concise, direct, and contain the following information:

- (A) A heading at the top of the first page that states "The Intertribal Court of Southern California," and the Tribal Court's name.
- (B) The name of the plaintiff.
- (C) The name of the defendant.
- (D) A short and plain statement of the ICSC's jurisdiction, unless the ICSC's jurisdiction arises and continues from a previous matter.
- (E) A short and plain statement of the essential facts of the case that shows the plaintiff is entitled to relief, including the nature of the claim, the amount of the claim, and the date or dates on which the claim arose.
- (F) The type and, for monetary damages, the amount of relief sought.

### **2.1.07 Signing of the Complaint**

Every complaint filed with the Court Clerk must include the signature of the plaintiff, in his or her individual legal name, or his counsel, except if:

- (A) The plaintiff is a partnership. Then, any one of the partners may sign.
- (B) The plaintiff is a corporation. Then, any full-time employee with personal knowledge of the facts underlying the claim may sign.

Beneath the signature, the signing party must include his or her printed name, telephone number, mailing address, and relationship to the plaintiff if someone other than the plaintiff signs the complaint.

### **2.1.08 Nonconforming Documents**

If instructed by the Chief Judge, the Court Clerk may refuse to accept a complaint, or other document, that does not substantially comply with these Rules of the Court.

### **2.1.09 Process of Filing the Complaint**

Upon receipt of the complaint, the Court Clerk shall:

- (A) Initial the original copy of the complaint;
- (B) Time stamp the complaint with the date, day, and time of the filing;
- (C) Assign the complaint a docket number, and write the docket number on the original and each copy of the complaint;
- (D) Record the case name and docket number in the ICSC's official log or docket book;
- (E) Collect the filing fee and provide the plaintiff or filing party with a receipt; and
- (F) Provide the plaintiff or filing party with notice of the suit. The plaintiff is responsible for serving the defendant(s) with the summons and a copy of the complaint in the manner required in 2.2.02.

## ***Section 2.2 Service of Process***

### **2.2.01 Issuance of Summons**

Upon filing the complaint, the Court Clerk shall provide the plaintiff or signing party with a notice of the suit [hereinafter "summons"], which the plaintiff will mail, along with a copy of the complaint, to the defendant.

### **2.2.02 Time Limit for Service**

Unless otherwise provided by these Rules of Court, the plaintiff, or a party hired by the plaintiff, shall serve the defendant with the summons and a copy of the complaint within fifteen (15) days of receiving them from the Court Clerk. If service does not occur within that time frame, the ICSC shall dismiss the case or order the plaintiff to serve the defendant by a specified date. If the plaintiff shows good cause for failing to execute service during the fifteen (15) day timeframe, the ICSC may extend the service deadline by a reasonable period.

### **2.2.03 The Summons**

The summons is valid only if it:

- (A) Is signed by the Court Clerk,

- (B) Bears the ICSC seal,
- (C) Identifies the Tribal Court and the parties involved,
- (D) Names the defendant(s),
- (E) States the name and address of the plaintiff's attorney, or the plaintiff if he is unrepresented, and
- (F) States the time, date, and place of the hearing; the defendant's obligation to appear and defend; and that the failure to do so will result in a default judgment against the defendant in the amount of the relief requested by the plaintiff in the complaint, or an amount otherwise determined by the ICSC.

#### **2.2.04 Process Server**

Any competent person eighteen (18) years of age or older who is not a party to the action; an immediate family member of a party to the action; or an attorney, officer, director, or employee of a party to the action may act as a process server; unless, the Court Clerk, acting at the plaintiff's request, appoints a Tribal law enforcement officer or other designated official to serve the documents on the defendant(s). The plaintiff must pay the Court Clerk a fee of one hundred (\$100) dollars per defendant if he requests that the ICSC arrange service of process.

#### **2.2.05 Service Area**

Under these Rules of Court, a defendant is subject to service of process anywhere within the territorial jurisdiction of the United States. Furthermore, the plaintiff may serve a defendant located outside of the territorial jurisdiction of the United States so long as he shows the ICSC that the defendant has sufficient minimum contacts with the United States so that the exercise of personal service won't violate traditional notions of fair play or substantial justice.

#### **2.2.06 Notice Required**

The summons shall be served in any manner reasonably calculated under the totality of the circumstances to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. The plaintiff must effectuate service in one of the manners listed in 2.2.07: personal service of a true copy of the summons and the complaint upon the defendant or an agent of the defendant authorized to receive process; substituted service by leaving a true copy of the summons and the complaint at the defendant's dwelling house or usual place of abode; office service by leaving a true copy of a summons and complaint with a person who is apparently in charge of an office; service by mail; or service by publication.



## 2.2.07 Service Methods

Unless the ICSC holds otherwise, service of process is effective only if the process server delivers a true copy of the summons and complaint:

- (A) To the defendant personally,
- (B) To a person fourteen (14) years of age or older residing at the defendant's dwelling house or usual place of abode. When substituted service is used, the plaintiff, as soon as reasonably possible, shall mail by registered or certified mail with return receipt requested, a true copy of the summons and the complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made.
- (C) To a person employed at the defendant's business who is of an age, competence, and position within the business so as to reasonably ensure the ICSC that the defendant will receive notice. The plaintiff must make service during normal business hours. If office service is used, the plaintiff, as soon as reasonably possible, shall mail by registered or certified mail with return receipt requested, a true copy of the summons and the complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which office service was made.
- (D) To an agent of the defendant who is authorized by law to receive the service of process.
- (E) By registered or certified mail with return receipt requested, so long as the summons and complaint are delivered to the defendant's dwelling house or usual abode, the defendant's principal place of business, or on the defendant's agent for service and process, and the plaintiff files the return receipt with the Court Clerk as proof of service; or
- (F) By publishing the summons and complaint in the Tribal or local newspaper at least once a week for the four consecutive weeks preceding the hearing. This option is only available if the plaintiff, or his counsel, signs an affidavit stating he was unable to serve the defendant using any of the methods listed in 2.2.01 - 2.2.05 and the ICSC issues a court order granting the plaintiff the right to serve the defendant in this manner. The Rules of Court outlaw service of process by publication in cases where the defendant's principal place of business and residence are located outside of the geographic area traditionally served by the newspaper.

### **2.2.08 Service of Corporations**

Service of process on a corporate defendant is effective if the process server serves the summons and complaint by mail or personally during normal business hours on any registered agent, officer, director, general partner, managing agent of the corporation or partnership, or clerk on duty in the office of a registered agent.

### **2.2.09 Service of Minors**

Service of process on a minor defendant is valid if the process server serves the summons and complaint on the minor's father, mother, conservator of the minor's estate, guardian, other person with custodial rights over the minor; any member of the minor's household who is at least eighteen (18) years of age; any person in whose service the minor is employed; or the minor's guardian ad litem, if the ICSC or other state or federal court has appointed such a person.

### **2.2.10 Service on an Incompetent or Confined**

If a court or state agency of the state where the defendant resides has declared that the defendant is of unsound mind, the process server may serve the summons and complaint on the defendant's parent, guardian, or a member of the defendant's household who is at least eighteen (18) years of age. In addition if the defendant is confined to a mental or correctional institution, the process server may also serve the superintended or authorized agent of the institution.

### **2.2.11 Proof of Service**

For personal or substituted service, the process server shall provide the Court Clerk with a signed affidavit indicating the date, time, and place of service, and the name of the person whom the process server served if the person is someone other than the defendant. For mail service, the process server shall file the return receipt with the Court Clerk once he receives it from the postal service.

## ***Section 2.3 The ICSC's Jurisdiction***

### **2.3.01 Generally**

The jurisdiction of the ICSC extends to the fullest extent authorized by the United States Constitution and Tribal law, and specifically includes all subject matter, persons, entities, and corporations set forth in *2.3.02 and 2.3.03*.

### **2.3.02 Subject Matter Jurisdiction**

The ICSC is a court of general jurisdiction and, under this Title of the Rules of Court, has jurisdiction to hear all civil actions authorized by Tribal, state, or federal law, and other civil actions arising in law and equity.

### **2.3.03 Personal Jurisdiction**

The ICSC's personal jurisdiction extends to furthest extent permitted under the United States Constitution and Tribal law, and attaches to all persons present or domiciled within the territorial jurisdiction of a member Tribe or the state of California when served; all entities and corporations created under the laws of the Tribe or the state of California; all persons, entities, or corporations that have an interest in property situated within the territorial jurisdiction of a member Tribe, including the Tribe's Indian Country, that is the subject of the suit; all persons, entities, and corporations that consent to the ICSC's jurisdiction; and all persons, entities, and corporations that are engaged in substantial activities within the territorial jurisdiction of the ICSC or the state of California, whether those activities are wholly intrastate, interstate, or otherwise. If the person, entity, or corporation is not engaged in substantial activities within the territorial jurisdiction of the ICSC or the state of California, personal jurisdiction attaches to the person, entity, or corporation if he/she/it:

- (A)** Transacts business with the ICSC, a member Tribe, a natural member of a member Tribe, or any other person, entity, or corporation located within the territorial jurisdiction of a member Tribe, including its Indian Country, or the state of California.
- (B)** Agrees to supply goods or services, or does supply such goods or services to a member Tribe, a natural member of a member Tribe, or any other person, entity, or corporation located within the territorial jurisdiction of a member Tribe, including its Indian Country, or
- (C)** Commits, or causes to commit, an act or omission within the territorial jurisdiction of a member Tribe or the state of California that injures the plaintiff.
- (D)** Commits, or causes to commit, an act or omission outside of the territorial jurisdiction of the member Tribes and the state of California that injures the plaintiff and:
  - i. Solicitation or service activities were carried on within the territorial jurisdiction of the ICSC, including its Indian Country, or the state of California by or on behalf of the person, entity, or corporation.
  - ii. Products, materials, or things distributed, processed, serviced, or

manufactured by the person, entity, or corporation were used or consumed within the territorial jurisdiction of the ICSC, including its Indian Country, or the state of California in the ordinary course of trade.

- (E) Has such minimum contacts with a member Tribe or the state of California so the exercise of personal jurisdiction provides fair play and substantial justice.

If personal jurisdiction does not arise from the provisions above, the ICSC has personal jurisdiction over the defendant person, entity, or corporation if a Tribal statute or rule specifically confers grounds for personal jurisdiction over the defendant, or the exercise of personal jurisdiction is permissible under the United States Constitution.

## ***Section 2.4 The Defendant's Answer***

### **2.4.01 Time Frame for the Answer**

In any civil cases where the plaintiff seeks damages or injunctive relief, the defendant must provide the plaintiff and the Court Clerk with a written answer within thirty (30) days of the date on which he received the summons and complaint.

### **2.4.02 Contents of the Answer**

The answer shall admit or deny each of the allegations in the complaint, raise any affirmative defenses, and assert any counterclaims (against the plaintiff), cross-claims (against third parties), or third party claims.

### **2.4.03 Failure to Deny**

The answer must admit or deny each of the allegations in the complaint. The ICSC considers the defendant's failure to deny an allegation an admission of guilt unless he provides the court with a reasonable excuse justifying his failure to deny the allegation, or the ICSC determines such an action would not substantially serve the interests of justice.

### **2.4.04 Filing of the Answer**

The defendant shall file three (3) copies of the answer with the Court Clerk and mail one (1) copy of the answer to each of the named plaintiffs.

### **2.4.05 Trial Date**

The Court Clerk shall schedule the trial date for at least ninety (90), but no more than one hundred and twenty (120), days from the date on which the defendant filed

the answer. The ICSC may adjust this timeframe if such an action would substantially serve the interests of justice.

#### **2.4.06 Negotiated Settlement**

At any time prior to the time when the ICSC issues the final judgment in the case, the parties may voluntarily settle the case on mutually agreeable terms unless the ICSC finds that the agreement would not provide substantial justice for one of the parties. The settlement agreement shall be in writing, signed by both parties, and submitted to the Court Clerk. If approved by the ICSC, the agreement is considered the final judgment off the ICSC, legally enforceable by the ICSC, and is given full faith and credit by all other Tribal, state, and federal courts.

#### **2.4.07 Counterclaims**

In the answer, the defendant may set forth as many counterclaims, whether their nature is legal or equitable, as he has against a plaintiff.

#### **2.4.08 Cross-claims**

In any action where two or more parties are joined as defendants, a defendant may allege in his answer as many cross-claims as he has against another defendant so long as the cross claims:

- (A) Arise out of the transaction or occurrence set forth in the plaintiff's complaint, or
- (B) Are related to property that is the subject matter of the action.

#### **2.4.09 Third Party Claims**

The defendant may serve a summons and complaint upon a non-party that the defendant believes is liable for all or part of the plaintiff's claim against the defendant. Once served with the summons and complaint, the third party defendant shall reply with an answer, in which he shall assert any defenses he may have against the defendant, counterclaims against the defendant, cross-claims against other defendants, or third party claims against non-parties that the defendant believes may be liable for all or part of the defendant's claim.

The plaintiff may assert any claims against the third party defendant that arise from the transaction or occurrence set forth in the complaint. In response, the third party defendant may assert any defenses against the plaintiff that are available to the original defendant, counterclaims against the plaintiff that arise out of the transaction or occurrence set forth in the plaintiff's complaint, cross claim against other defendants, or third party claims against non-parties that the defendant believes may be liable for all or part of the plaintiff's claim.

This subsection expressly confers the third party defendant the right to file a third party claim against a non party that the third party defendant believes may be liable to him for all or part of a claim asserted against him.

#### **2.4.10 Joinder of a Third Party**

The ICSC may join a non-party to the original action if an existing party files a counterclaim, cross-claim, or third party claim against that non-party. *See Article III*, for more on joinder.

#### **2.4.11 Separate Trial**

The ICSC, sua sponte, or on motion of one of the parties, may order a separate trial for any counterclaim, cross-claim, or third party claim if the presiding judge finds severance would serve the interests of justice by:

- (A) Avoiding prejudice,
- (B) Expediting the actions, or
- (C) Increasing judicial economy.

### ***Section 2.5 General Rules Regarding Complaints, Answers and Motions***

#### **2.5.01 Submission on only Legitimate Claims and Information**

By submitting the complaint, answer, motion, or other paper with the ICSC, the party certifies to the best of his knowledge, and after a reasonable degree of inquiry given the circumstances of the case,

- (A) The party is not submitting the item for any improper purpose, such as harassing the adverse party, delaying the proceedings, or increasing the costs of the proceedings.
- (B) The claims, defenses, and other legal contentions arise from existing law or a reasonable extension of existing law.
- (C) The party reasonably believes the factual contentions have substantial evidentiary support, or the factual contentions will have substantial evidentiary support once the party has a reasonable opportunity to investigate or conduct discovery.
- (D) A denial of a factual contention is based upon existing evidence, a lack of relevant information that is reasonably obtainable, or a reasonable belief.

### **2.5.02 Pleadings Liberally Construed**

All pleadings shall be liberally construed in order to attain substantial justice for the parties. The ICSC shall disregard any immaterial errors or defects in the pleadings that do not affect the substantial rights of the adverse party.

### **2.5.03 Motions**

A motion is a procedural device that allows the moving party to bring a matter before the ICSC for decision. Examples of motions are a motion for summary judgment or a motion to compel discovery. Whenever possible, motions must be typed or written and filed with the ICSC prior to the beginning of the trial. However, the ICSC may allow an oral motion during the trial if the motion substantially serves the interests of justice.

### **2.5.04 Motions and other Papers**

The parties must type or write a motion, or other paper, on 8 ½ by 11-inch white-opaque paper. If the motion is written, the ICSC will accept the motion only if it is free of defacing marks, such as erasures, white out, and crossed out words, and its quality permits photocopying. If the motion is typed, the preparing party must double-space the text, except for quotations and footnotes, which the preparing party may leave single-spaced.

### **2.5.05 Signing of Motion**

The moving party, or his attorney, must personally sign, in his respective legal name, every motion he files with the court, except if:

- (A) The plaintiff is a partnership. Then, any one of the partners may sign the motion.
- (B) The plaintiff is a corporation. Then any full-time employee with personal knowledge of the facts of the claim may sign the motion.

Beneath the signature, the signing party must include his or her printed name, telephone number, and mailing address. If the moving party's attorney submits the motion, he must include the name and address of his law firm, his title, his bar number(s) and its/their accompanying jurisdiction(s), and a statement certifying that he has the authority to practice law in the ICSC's jurisdiction.

### **2.5.06 Contents of Motion**

The motion shall explicitly state what court order the moving party desires and the reason(s) why the presiding judge should grant the moving party's request. In addition to the motion, the moving party is encouraged to submit a memorandum of legal authority in support of the motion to aid the ICSC in its decision.

### **2.6.07 Service of the Motion**

The moving party shall serve the adverse party with a copy of any motion he files with the ICSC. At the time of filing, the moving party shall provide the Court Clerk with a proof of service (*described in 2.2.10*), stating that the moving party mailed or otherwise delivered the motion to the adverse party, or an affidavit stating that the moving party intends to serve the adverse party with the motion within three (3) business days of its filing.

### **2.5.08 Opposition**

The adverse party shall have fourteen (14) days from the date of service to respond to the motion. If the motion is served less than fourteen (14) days before the trial date and the adverse party does not reasonably believe the time preceding the trial is sufficient to answer the motion, the adverse party may:

- (A) File a motion for a continuance with the ICSC, so the adverse party may have more time to respond to motion, or
- (B) File a motion to not answer with the ICSC, asking that the ICSC set aside the response requirement and allow the party to respond to the motion at the trial.

### **2.5.09 When Accepted**

Aside from motions listed in *2.4.08(A-B)*, or otherwise allowed by the ICSC or the Rules of Court, the timeframe for filing motions with the ICSC is from ten (10) days after the filing of the answer till five (5) days before the date of the trial.

### **2.5.10 Limitations**

The ICSC shall not limit a party's ability to file pretrial motions unless the ICSC finds that the party is abusing the process by filing frivolous, repetitive, or substantially merit less motions.

### **2.5.11 Hearings**

The ICSC will not hold a hearing on a motion unless the hearing is requested by one of the parties and granted by the ICSC, or the ICSC orders the hearing sua sponte. If granted, the ICSC shall schedule the hearing for the soonest practicable date and time, but not less than five (5) days before the date of the trial. If the party requests a hearing less than ten (10) days before the date of the trial, the ICSC may schedule the hearing so it immediately precedes the trial.



## ***Section 2.6 Specific Types of Motions***

### **2.6.01 Coverage**

This section does not cover the full list of motions that a party may submit to the ICSC. Under *Section II of the Preamble*, the ICSC reserves the right to supplement this section with other motions that exist under the Federal or California Rules of Civil procedure.

### **2.6.02 Motion to Dismiss for Lack of Subject Matter Jurisdiction**

If the ICSC determines sua sponte, or upon motion by one of the parties, at any point in the proceedings, that it lacks subject matter jurisdiction, the ICSC must dismiss the action.

### **2.6.03 Motion to Dismiss for Lack of Personal Jurisdiction**

Before the filing of the defendant's answer, or along with the answer, the defendant may file a motion with the ICSC requesting that the ICSC dismiss the action because it does not have personal jurisdiction over the defendant in one of the ways listed in 2.3.02. The defendant consents to the ICSC's jurisdiction if a motion contesting jurisdiction is not submitted by the time the answer is filed.

### **2.6.04 Motion to Dismiss for Insufficient Summons or Service Process**

Before the filing of the defendant's answer, or along with the answer, the defendant may file a motion with the ICSC requesting that the ICSC dismiss the action without prejudice or quash the process and allow the issuance and service of new process in accordance with these Rules of Court if the defendant believes the summons or the service of process did not comport with the requirements of *Article II, Section 2.2*.

### **2.6.05 Motion to Dismiss for Failure to State a Claim**

Before the filing of the defendant's answer, or along with the answer, the defendant may file a motion with the ICSC requesting that the ICSC dismiss the action because the plaintiff failed to present a legally cognizable claim.

### **2.6.06 Motion to Amend Pleadings**

- (A) **Generally:** a motion to amend a pleading before trial must include a copy of the proposed amendment or the amended pleading, and the moving party must:
- i. Identify the allegations or information the ICSC should remove from the previous pleading with reasonable specificity given the original pleading's layout, such as by page, paragraph, and line number, or

- ii. Identify the allegations or information the Court should include in the previous pleading, and the place where the ICSC should insert the language into the pleading. The moving party shall identify the place in the original pleading with reasonable specificity given the original pleading's layout, such as by page, paragraph, and line number.
- (B) **Supporting Declaration:** A supporting declaration must accompany the motion and specify:
  - i. The effect of the amendment.
  - ii. The reason why the amendment is necessary and proper.
  - iii. When the party became aware of the facts that necessitated the amendment.
  - iv. The reason why the amendment was not made earlier.
- (C) **Changes to the Original Pleading:** A party wishing to amend the pleading must file a motion with the ICSC, and may not make the desired amendment(s) to the original version of the pleadings, or any copy of the pleadings served on the adverse party or filed with the ICSC, unless authorized by the ICSC.
- (D) **Relation Back:** Whenever the claim or defense asserted in the proposed amendment arose out of conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date or the original pleading for purposes of determining whether the amendment satisfies the statute of limitations.
- (E) **Relations Back (Misnomer):** An amendment changing the party against whom a claim is asserted relates back if, within the statutory period for commencing the action against the party to be brought in by amendment, such party;
  - i. Received notice of the institution, or, reasonably, should have been aware of the institution of the action, and
  - ii. Knew or should have known that, "but for" a mistake concerning the identity of the proper party, the plaintiff would have brought the action against the party listed in the amendment.

#### **2.6.07 Motion to make more Definite and Certain**

Before responding to a pleading, the responding party, or the ICSC upon its own initiative, may file a motion requesting that the adverse party make the pleadings

more definite and certain when the allegations in the pleadings are so indefinite or uncertain that the precise nature of the charge, defense, or reply is not apparent.

If the motion is granted, the party responsible for filing the indefinite or uncertain pleading must comply with the court order within ten (10) days of service of the order or the ICSC may strike the indefinite or uncertain pleading or make another order it deems just.

#### **2.6.08 Motion to Strike**

Before responding to a pleading, the responding party, or the ICSC upon its own initiative, may file a motion requesting that the ICSC strike from the pleading:

- (A) Any sham, frivolous, or irrelevant pleading or defense, or
- (B) Any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading.

#### **2.6.09 Motion for Judgment on the Pleadings**

Once the complaint and answer are filed with the ICSC, but within such time as not to delay the trial, any party may move for judgment on the pleadings. The ICSC shall hear and determine the motion for judgment on the pleadings before the start of trial, unless the court defers the hearing until the state of the trial.

#### **2.6.10 Motion for Summary Judgment**

- (A) **Generally:** A party may move for summary judgment by filing a motion contending that there is no genuine issue of material fact and the party is entitled to judgment as a matter of law, or the defendant has a complete, legally cognizable defense to the plaintiff's legal claim. The party must file (with the court) and serve (on the adverse party) the motion for summary judgment at least fifteen (15) days before the date of the trial. The receiving party shall have fourteen (14) days to respond to the motion and file an opposition motion with the ICSC. If the ICSC receives the opposition motion less than three (3) days before the scheduled trial date, the presiding judge may choose to address the motion at the opening of the first day of the trial.
- (B) **Contents of Summary Judgment Motion:** The motion for summary judgment shall contain a list of all the material facts the moving party contends are undisputed, along with a list of evidence that supports the moving party's position. The moving party may only include evidence that either party has previously submitted with the ICSC, or the moving party presents in the motion for summary judgment if the evidence would be admissible at trial under the general principles of the Federal Rules of

Evidence.

- (C) **Contents of Opposition Motion:** Motions in opposition shall address each of the material facts the moving party contends are undisputed and, for each, state whether the moving party's claim is accurate or inaccurate, the evidence that supports the responding party, and the evidentiary reasons why the ICSC should deny the motion and allow the case to proceed to trial. An opposition motion may not contain a new summary judgment motions against the moving party. If the responding party wishes to move for summary judgment, it must comply with the provisions of *Subsection A*.
- (D) **Affidavits:** A party may file a supporting or opposing affidavit if it is:
- i. Based upon the affiant's personal knowledge,
  - ii. The ICSC would admit the contents of the affidavit at trial under the general principles of the Federal Rules of Evidence, and
  - iii. The affiant indicates he is competent and willing to testify at trial if the ICSC so requests.
- (E) **When Granted:** The ICSC shall grant the motion for summary judgment in favor of the moving party if the submitted papers show there is no genuine issue of material fact. The ICSC shall consider all evidence previously submitted, referenced, or presented in the motions, and any reasonable inferences derived there from. If the evidence and the reasonable inferences both support and oppose the motion for summary judgment, the ICSC shall deny the motion.
- (F) **Summary Adjudication:** A party may move for summary adjudication if:
- i. It relates to one or more causes of action, affirmative defenses, or monetary claims.
  - ii. It is submitted in the same manner as a motion for summary judgment as detailed under *Subsection A*.
  - iii. It completely disposes of a cause of action, affirmative defense, or a claim for damages.
- (G) **Determination:** The ICSC may deny a motion for summary judgment or summary adjudication by written order, or by oral order at the time of trial so long as the oral order indicates the material facts that are still in dispute and keep the action a live controversy. Similarly, the ICSC may grant a motion for summary judgment by written order, or by oral order at the time of trial so long as the oral order indicates the presiding judge's reasons for

believing there is no genuine issue of material fact and the party is entitled to judgment as a matter of law, and the evidence the presiding judge relied on when formulating his decision.

### **2.6.11 Motion for New Trial**

Upon motion by an aggrieved party, the presiding judge may set aside its judgment and grant a new trial on the basis of any of the following grounds:

- (A) Irregularity in the proceedings of the court.
- (B) Misconduct on the part of the prevailing party.
- (C) Accident or surprise that the moving party could not have guarded against by using ordinary prudence.
- (D) The discovery of material evidence that the moving party could not have discovered before trial by using reasonable diligence.
- (E) A judgment that has insufficient evidentiary support or is against the law.
- (F) Prejudicial error that affected the outcome of the trial, which the moving party objected to.

## **Article III. Private Action – Joinder of Parties**

### ***Section 3.1 General Rules***

#### **3.1.01 Persons the ICSC shall join**

The ICSC shall join any party who is subject to service of process if the ICSC cannot grant complete relief in that party's absence, or the party claims an interest in the subject matter of the litigation and, in its absence, the party is unable to protect its interest or there is a substantial risk that an existing party may face multiple obligations because of the absent party's claimed interest.

#### **3.1.02 How the ICSC proceeds when Joinder is not feasible**

If the ICSC cannot join a party that meets one of the requirements of *3.1.01*, the ICSC shall determine whether the proceeding should be continued or dismissed. The factors the ICSC will consider when making this decision include:

- (A) The prejudice the existing parties and the absent party will experience if the proceedings continue despite the inability to join the party,

- (B) Actions the ICSC may undertake to lessen or avoid the prejudice,
- (C) The adequacy of the ICSC's decision in light of the party's absence, and
- (D) The availability and convenience of other forums where all parties can be joined.

### **3.1.03 Misjoinder and Nonjoinder of Parties**

Misjoinder of parties is not grounds for dismissal or an action. The ICSC, sua sponte, or another party on its own motion, may add or drop parties at any stage of the action and on such terms that the presiding judge finds equitable.

## ***Section 3.2 Intervention, Impleader, Class Action and other forms of Joinder***

### **3.2.01 Incorporation by Reference**

The ICSC shall adopt rules regarding intervention, impleader, class actions, and other forms of joinder from either the Federal or California Rules of Civil Procedure as the need for such rules arises.

## **Article IV. Private Action – Pretrial Discovery**

### ***Section 4.1 General Rules***

#### **4.1.01 General Rules**

- (A) A party may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party and is reasonably calculated to lead to the discovery of admissible evidence, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter.
- (B) Discovery, except for that listed under *4.1.02*, may not take place until the parties have participated in a pretrial conference as is required by *Article VI*.

#### **4.1.02 Examples of Discovery**

Unless otherwise limited by the ICSC, the permissible forms of discovery include oral and written depositions; written interrogatories; requests for admission; physical or mental examinations; requests to produce documents or articles; and requests to

enter land, or other property, in order to visually inspect, photograph, or conduct some other legitimate purpose previously authorized by the court.

#### 4.1.03 Limitations

- (A) ***In General:*** By order, the ICSC may restrict the use of discovery if it finds:
- i. The discovery sought is unreasonably cumulative or duplicative, or the party can obtain the information in some other way that is more convenient, less expensive, or less burdensome on the requested party.
  - ii. The party seeking discovery has had ample time or opportunity to obtain the sought information.
  - iii. The burden or expense of the discovery outweighs its expected benefit once the totality of the circumstances is taken into account.
- (B) ***Trial Preparation Materials:*** A party may obtain discovery of documents and tangible things that were prepared for, or in anticipation of, trial if the party has a substantial need for the materials in the preparation of its own case and it is unable to obtain the materials through other reasonable means, unless the ICSC determines the information should be protected under the Trial Preparation Materials privilege. *See Subsection D below.*
- (C) ***Trial Preparation - Experts:*** A party may obtain discovery regarding an expert retained by another party who is not expected to appear as a witness if the party shows an exceptional need for the information and the information is not available through other reasonable means.
- i. ***Compensation:*** Unless the payment of compensation would hinder the interests of justice, a party shall pay an expert a reasonable fee for responding to the party's discovery request.
- (D) ***Privilege:*** If a party claims information in its possession is not discoverable by an adverse party because it is privileged or protected under rule 26(b)(3) of the Federal Rules of Civil Procedure (work product/trial preparation materials), the part must file a motion to prohibit discovery with the ICSC so the ICSC may ascertain the genuineness of the party's claim. The motion must expressly describe the information the party claims is protected from discovery.

#### 4.1.04 Protective Orders

Upon a showing of good cause, the ICSC may issue an order protecting a party or person subject to a discovery request from annoyance, embarrassment, oppression, or undue financial burden by ordering:

- (A) That discovery not take place.
- (B) That discovery takes place on the terms and conditions specified by the ICSC.
- (C) That a party conduct discovery in a different manner than it originally requested.
- (D) A reduction in the scope of discovery so certain matters are protected.
- (E) That an ICSC officer conduct discovery instead of the adverse party.
- (F) The sealing of a deposition, which a party may unseal only by obtaining a court order.
- (G) The party's trade secrets and other confidential research, development, and commercial information remain outside the scope of discovery, or protected in a manner determined by the ICSC.
- (H) That the parties simultaneously file specified documents or information enclosed in sealed envelopes, which the parties must open in the manner required by the ICSC.

## ***Section 4.2 Required Discovery***

### **4.2.01 Initial Discovery**

A party shall, without waiting for a formal discovery request, provide the adverse party with the following information:

- (A) The name, address, and telephone number of every individual in the possession of discoverable information who is likely to be favorable to the disclosing party's side.
- (B) A copy of all documents, data compilations, and tangible items that are in the party's possession and, in all likelihood, are relevant to the action. If the tangible item is not capable of being copied, the party must provide a written description of the item, including the location where the item can be found.
- (C) A written claim for damages and a copy of the non-privileged document(s) that the party used to prepare the claim.
- (D) Any insurance agreement that may satisfy part or all of the judgment sought by the defendant.



#### 4.2.02 Expert Witnesses

- (A) **Testimony:** A party must disclose to the adverse party a list of all expert witnesses the party expects to call at trial, along with a written report, which the respective expert witness prepared and signed, containing the expert witness' intended testimony and any data or other information used by the expert witness when he prepared his opinion.
- (B) **Qualifications and Compensation:** For all expert witnesses likely to testify at trial, the party must disclose the expert witness' credentials, the other cases in which the witness testified or was deposed, and the amount of compensation the expert witness will receive for testifying at this trial.

#### 4.2.03 Pretrial Disclosure

At the soonest practicable time following the pretrial conference, the parties must disclose to one another the basic information concerning the witnesses and evidence the party may use at trial, including:

- (A) The name, address, and telephone number of every witness the party intends to call at trial, or may call if the need arises.
- (B) A list of the deposed witnesses who will not appear but who provided testimony the party expects to use during the course of the trial.
- (C) A list of all the evidence the party expects to submit with the ICSC.

#### 4.2.04 Forms of Disclosure

The offering party must ensure that disclosures under this section are:

- (A) Typed or written,
- (B) Comply with *Article II / Section 2.4*,
- (C) Signed by the offering party,
- (D) Promptly filed with the Court, and
- (E) Promptly delivered to the receiving party.

#### 4.2.05 Signing of Disclosures

The offering party, or his attorney of record, shall sign and initial all pretrial disclosures made pursuant to this section. The signature certifies that the party had

reason to believe, and did believe, the disclosures were complete and accurate at the time they were made.

## ***Section 4.3 Additional Discovery***

### **4.3.01 Depositions upon Oral Examination**

A party who participates in the pretrial conference, which is a mandatory meeting between the parties and the presiding judge that is described in greater detail in *Article V*, may take the testimony of any person, including a party:

- (A) *Without Leave of Court:*** A party must conduct a deposition without leave of Court unless the ICSC determines otherwise. Complying with the requirements of *4.3.01(C)*, the requesting party shall provide the adverse party with a written notice of deposition at least ten (10) days prior to the scheduled date for the deposition, or twenty (20) days if the deposing party requires the deponent to produce documents or other evidence, stating the time and place of the deposition and the name and address of all potential deponents.
- (B) *Contents of the Notice:*** The Notice of Deposition shall include all the following;

  - i.** The address of the deposition site.
  - ii.** The date and time of the deposition.
  - iii.** The name and address of all potential deponents.
  - iv.** A reasonably specific statement describing the materials the deposing party requests that the deponent produce.
  - v.** Whether the deposing party will record the deposition by audio or videotape, in addition to the mandatory stenograph recording which the Court Clerk, or other ICSC employee, shall conduct.
- (C) *Scheduling the Deposition:*** The deposing parties shall schedule the deposition on a mutually agreed-upon date that is at least ten (10) days after the date on which the adverse party receives the notice of deposition. However, if the deposing party subpoenas witnesses to produce documents or other evidence at the deposition, the deposing party shall schedule the deposition on a mutually agreed-upon date that is at least twenty (20) days after the date on which the adverse party receives the notice of deposition.
- (D) *By Order of the Court:*** A party may file a motion with the ICSC requesting

that the ICSC allow it to take the deposition of the person, or persons, named in the motion, so long as the party provides the ICSC with the desired deponent's name, the deposition's purpose, and the testimony the requesting party hopes to elicit.

- (E) ***Serving the Notice:*** The requesting party shall serve notice upon each person named in the motion and all parties to the action. The notice shall conform to the requirements of 4.3.01(B).
- (F) ***Conducting the Deposition:*** Unless provided otherwise by the Rules of Court, an officer of the ICSC shall conduct the deposition, and, at the beginning of the deposition, state on the record;
  - i. His or her name;
  - ii. The date, time, and place of the deposition;
  - iii. The deponent's name; and
  - iv. The parties that are present at the deposition.
- (G) ***Evidentiary Rules:*** The officer of the ICSC shall conduct the deposition in accordance with the general principles of the Federal Rules of Evidence, unless otherwise directed by the ICSC.
- (H) ***Non-participation:*** If a party is unable to attend the deposition, the party may provide the officer of the ICSC with a list of questions it would like the officer of the ICSC to ask the deponent. The absent party shall serve the list of questions on the adverse parties a reasonable amount of time prior to the deposition. During the deposition, the officer of the ICSC shall read the questions verbatim and on the record. If the deposing party is not audio or videotaping the deposition, the officer of the ICSC shall record in writing the deponent's answers verbatim.
- (I) ***Submissions to Deponent:*** Once the Court Clerk, or other ICSC employee, records the deponent's testimony by stenograph, the officer of the ICSC shall read back the transcript of the testimony to the parties and ask them if the transcript is a true and correct copy of the deponent's testimony. The office of the ICSC shall then ask the deponent if he would like to make any changes to his testimony; if so, the officer shall record the changes on the transcript along with the deponent's reason(s) for making the changes. The deponent must place his signature alongside each of his requested changes to the transcript within thirty (30) days of the deposition. If the deponent fails to provide his signature(s) within this timeframe, the officer of the ICSC will sign the transcript for the deponent and explain why the deponent failed to sign the transcript, such as his

death, infirmity, absence, or refusal. The ICSC requires the officer of the ICSC to follow these procedures unless the parties and deponent agree to waive portions or all of these requirements.

#### **4.3.02 Depositions upon Written Question**

A party may depose any person, including another party, by written questions without leave of Court.

- (A) **Procedure:** The deposing party shall serve a notice of deposition upon the adverse party stating the name and address of the deponent and the name, official title, and address of the deposition's administrator. The deposing party shall serve a copy of the notice of deposition and the written questions on the deposition's administrator. After the deposition administrator conducts and supervises the deposition, the deposition administrator shall certify that the answers are those provided by the deponent, mail a copy of the written questions and answers to the deposing party, and file a copy with the Court Clerk. The deposing party shall inform the adverse party of the deposition's conclusion once the deposing party receives a copy of the questions and answers from the deposition's administrator.

#### **4.3.03 Use of Depositions in Court Proceedings**

A party may use deposition testimony to contradict or impeach a witness who is testifying at trial, or for any other purpose permitted by the Federal Rules of Evidence so long as:

- (A) The witness is deceased,
- (B) The witness is located one hundred (100) miles or more from the place of the trial,
- (C) The witness is unable to attend the trial because of age, infirmity, or imprisonment,
- (D) The witness is not present despite a court ordered subpoena, or
- (E) Upon application to the ICSC and notice to the other parties, other exceptional circumstances exist that warrant the use of the deposition testimony during the trial.

#### **4.3.04 Persons who may conduct Deposition**

Unless directed otherwise by the ICSC:

- (A) An officer of the ICSC, or other person appointed by the ICSC, who has the power to administer oaths and take testimony shall conduct the deposition.
- (B) Certain parties are never permitted to conduct depositions. These parties include relatives, employees, and attorneys of either party; a relative or employee of any attorney involved with the case; or a person with a financial interest in the outcome of the proceedings.
- (C) The parties may agree to take a deposition before any person, at any time or place, upon any notice, and in any manner, so long as each party files a notice of intent to conduct an unconventional deposition with the Court Clerk.

#### **4.3.05 Interrogatories**

Unless directed otherwise by the ICSC:

- (A) A requesting party may serve an adverse party with written interrogatories so long as they do not exceed twenty-five (25) in number, including sub-questions.
- (B) The answering party shall answer each interrogatory separately, completely, and under oath. If the answering party objects to an interrogatory, the answering party shall state his reason for the objection and continue to answer any portion of the question, which the answering party finds unobjectionable.
- (C) The answering party, or his attorney or record, shall sign each answer, thereby certifying that the answering party responded to all the questions truthfully, given the information in his possession, or the information, which was reasonably obtainable at the time he answered the questions.
- (D) The answering party shall serve the answers to the written interrogatories on the requesting party within fifteen (15) days of the service of the interrogatories.

#### **4.3.06 Production of Documents / Entry upon Land for Inspection**

A requesting party may serve an adverse party with a written request asking the adverse party to permit the requesting party, or one of its representatives, to:

- (A) Inspect documents or tangible evidence, so long as the items are within the custody of, or are reasonably obtainable by, the adverse party, and the requesting party disclosed its desired intent to inspect the items during the pretrial conference. The request shall indicate the documents or tangible objects the requesting party seeks with reasonable specificity, and a

reasonable time and place for inspection.

- (B) Enter upon land that is within the control of the requested party so long as the entry is made for the purposes of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon. The request shall specify the time, date, and reason for the entry.
- (C) The adverse party shall provide a response within fifteen (15) days of the service of the request for the production of documents or inspection of land. The response shall state whether the inspection or entry is permitted and, if not, the reasons for the objection(s). The requesting party may seek an order from the ICSC permitting inspection if the adverse party denies its written request.

#### **4.3.07 Physical and Mental Examinations**

When the mental or physical condition of a party, or a person in the custody or under the legal control of the party, is in controversy, the ICSC may order the party to submit to a physical or mental examination by a licensed or certified examiner.

#### **4.3.08 Requests for Admissions**

- (A) ***In General:*** The requesting party may serve an adverse party with a written request asking the adverse party to admit or deny the truth of any factual or legal issue in the pending action, including the genuineness of documents and other tangible objects.
- (B) ***Procedure:*** The total number of requests shall not exceed twenty-five (25). The requesting party shall lay out each request individually. The ICSC considers a matter admitted if the adverse party does not serve the specific answer on the requesting party within fifteen (15) days of receiving the requests for admission. Thus, given this provision of the Rules of Court, the adverse party admits to all matters listed within a request for admission if it fails to serve the response on the requesting party within the fifteen (15) day timeline. When answering, the adverse party must expressly state its objections and provide a detailed explanation for each objection.

If the requested party denies an answer in part, it shall expressly admit the part that is true and deny the remainder, making sure to provide a detailed explanation for the partial objection. If the adverse party cannot answer a request because the information is outside of its control, the adverse party may state this in its' explanation if;

- i. It made a reasonable attempt to obtain the necessary information, and

ii. A reasonable person in the adverse party's position would not have been able to obtain the information through reasonable means.

**(C) *Motions:*** The requesting party may submit a motion with the ICSC asking that the ICSC evaluate the sufficiency of the answers provided by the adverse party. If the ICSC finds that an answer is not sufficient, the adverse party shall amend the answer in a timely manner. If the adverse party fails to do so, the ICSC shall consider the adverse party's failure to respond to the factual or legal issue in question an admission.

**(D) *Failure to Respond:*** The failure to respond to a question is an admission.

**(E) *Effect of Admission:*** An admission conclusively establishes the truth of a factual or legal issue unless the ICSC allows the adverse party an opportunity to amend or withdraw its answer.

## ***Section 4.4 Discovery Procedure***

### **4.4.01 Discovery Procedure**

A party shall serve its discovery request or response directly on the adverse party, and need not file it with the ICSC unless the Rules of Court identify the information as required discovery under *Section 4.2*, or the ICSC orders the party to file the information.

### **4.4.02 Failure to Disclose**

If a party fails to engage in discovery or make a disclosure, the requesting party must, in good faith, attempt to confer with the adverse party and acquire the requested information without ICSC intervention. If the requesting party is unsuccessful in obtaining the information, the requesting party may file a motion with the ICSC to compel disclosure and to impose sanctions.

### **4.4.03 Good Faith Disputes**

If a good faith dispute arises concerning discovery that is not covered by *4.4.02*, the adverse party that received the discovery request shall submit two (2) copies of the discovery request and two (2) copies of a personal statement describing the perceived problem with the Court Clerk so the ICSC may resolve the matter.

### **4.4.04 Supplementing Discovery**

A party that responded to a discovery request is under a duty to supplement or correct its disclosure if it later learns of information that is pertinent to the response, or it

experiences a change in circumstances that makes the prior response either incomplete or incorrect.

#### **4.4.05 Deadline**

Unless otherwise ordered by the ICSC, a requesting party may submit a discovery request with an adverse party at any time following the pretrial conference but no later than twenty (20) days before the date of the trial.

## **Article V. Private Action – Subpoenas**

### ***Section 5.1 Subpoenas***

#### **5.1.01 Issuance by Parties**

A party has the right to compel witnesses, both for and against its side, to appear in court to testify.

#### **5.1.02 Issuance by Court**

Upon a showing of good cause by one of the parties or a Tribal law enforcement officer, the ICSC may issue a subpoena to compel a witness to testify or produce evidence. In addition, the ICSC may issue this subpoena sua sponte. In its discretion, the ICSC may refuse to issue the subpoena if it find:

- (A) The subpoena will place an undue burden on the person possessing the evidence, and
- (B) Its refusal to issue the subpoena will not harm the interests of justice.

#### **5.1.03 Service of Subpoena**

A party may serve process in any manner authorized by 2.2.07 (*except for Subsection F*). Service must occur ten (10) days or more before the witness' appearance. However, the ICSC may grant the witness more time if his residence or principal place of business is in excess of two hundred (200) miles from the ICSC and the witness informs the ICSC in a timely manner that he needs additional time to make the necessary travel arrangements.

#### **5.1.04 Failure to Appear**

The ICSC may hold a witness in contempt of court and order the witness to pay a fine if he fails to comply with the subpoena, so long as the service of process of the



subpoena complied with 5.1.03 and the witness did not offer the ICSC a reasonable justification for failing to appear at least five (5) days before the date of the trial.

#### **5.1.05 Production of Documents**

Unless otherwise provided by the Rules of Court:

- (A) If the ICSC orders a party to produce documents, they party shall produced the documents as they are kept in the ordinary course of business, or organize the documents to correspond to the requesting party's instructions, if such instructions are given.
- (B) If a party withholds information, claiming it is privileged or protected under Federal Rule of Civil Procedure 26(b)(3), the party must file a motion to prohibit discovery with the ICSC, making sure to include a reasonably thorough description of the withheld evidence so the ICSC may determine the genuineness of the party's claim. The party must serve the adverse party with notice of the motion to prohibit discovery, but need not provide the adverse party with the contents of the motion filed with the ICSC.

#### **5.1.06 Quashing of Subpoenas**

Upon a timely motion by the person subpoenaed, the ICSC may quash or modify the subpoena if it:

- (A) Fails to allow a reasonable time for compliance.
- (B) Requires a person who is not a party to the proceeding to travel in excess of two hundred (200) miles from his residence or principal place of business and does not allow a reasonable time for the travel.
- (C) Requires the disclosure of privileged or protected materials.
- (D) Imposes an undue burden on the person subpoenaed.

If the requesting party shows the ICSC that is has a substantial need for the testimony or evidence and it cannot obtain the desired testimony or evidence through other reasonable means, the ICSC, in its discretion, may order the witness to appear or produce the evidence, in the manner set forth in the court order.

#### **5.1.07 Notifying Witness**

The calling party has a duty to notify a subpoenaed witness in a timely manner that his attendance at trial is not required so as to protect the witness from unnecessary

travel, expense, or waste of time. In its discretion, the ICSC may impose sanctions upon the calling party if it fails to substantially comply with this provision.

#### **5.1.08 Witness Fees**

Each witness answering a subpoena is entitled to a fee of fifteen dollars (\$15.00) a day for his services and a travel fee of fifty-five cents (\$0.55) for every mile traveled to and from the ICSC Courthouse. The calling party is responsible for paying these expenses. If the calling party is a Tribal law enforcement officer or the ICSC, the presiding judge must approve the subpoena and the witness' expected compensation before the Court Clerk is permitted to pay such compensation.

## **Article VI. Private Action – Pretrial Conference**

### ***Section 6.1 Pretrial Conference***

#### **6.1.01 Generally**

The pretrial conference is scheduled for ten (10) days after the filing of the answer, or within a reasonable time of this date as is determined by the ICSC.

#### **6.1.02 Purpose**

The purpose of the pretrial conference is to simplify the issues, eliminate frivolous claims or defenses, to discourage inefficient pretrial activities, and to improve the quality of the proceedings by providing a forum to discuss such things as settlement prospects, discovery, and the evidence and witnesses the parties intend to use/call at trial. All statements made during the pretrial conference are privileged and are not admissible at trial.

#### **6.1.03 Discovery**

The pretrial conference is mandatory if either party plans to engage in discovery. If a pretrial conference is set, discovery may not occur until after the pretrial conference occurs so the parties have an opportunity to discuss discovery and provide the ICSC with an outline of their expected discovery requests.

## **Article VII. The Trial**

### ***Section 7.1 Tenets of Trial Procedure***

### **7.1.01 In General**

This Title sets forth the default rules for trial procedure in all civil cases before the ICSC unless the ICSC expressly indicates otherwise. In event of conflict, the rules set forth in this *Article* supersede:

- (A) Tribal law, and
- (B) Any other laws not approved by the ICSC, but must yield to the provisions of the Inter-governmental Agreement.

### **7.1.02 Procedure**

If reasonably practicable given the existing circumstances, the ICSC shall conduct all hearings and trials regarding the merits of a case in open court. The presiding judge, in his discretion, may conduct all other acts or proceedings in his chambers.

### **7.1.03 Standard of Proof**

In every civil case, the plaintiff has the burden of proving his or her case by a preponderance of the evidence.

### **7.1.04 Applicable Law**

In every civil case, the ICSC shall apply the laws, including the resolutions, ordinances, customs, and codes, of the host Tribe that are valid in light of existing federal law and the Inter-governmental Agreement. In the event applicable Tribal law fails to address the claim, or an issue thereof, the ICSC shall apply, in order of preference:

- (A) The statutory and common law of the United States, or
- (B) The statutory and common law of the state of California.

### **7.1.05 Tribal Customary Law**

In every civil case, the ICSC may use the customs of the Tribe to partially or wholly resolve the complaint. If reasonable doubt arises regarding the legitimacy of the Tribe's customary law, the ICSC may call an impartial Tribal law expert witness to advise the ICSC.

### **7.1.06 Evidentiary Rules**

In every civil case, the Federal Rules of Evidence shall act as an advisory tool, assisting the ICSC in decisions regarding the admission or exclusion of evidence. The ICSC shall use these rules to achieve substantial justice for the parties.

## **Section 7.2 Pretrial Matters**

### **7.2.01 Preliminary Injunctions**

- (A) *Notice:*** A party shall not file a motion for a preliminary injunction unless it provides the adverse party with advance notice of the injunction.
- (B) *Consolidation of the Hearing with Trial on the Merits:*** The ICSC may consolidate a preliminary injunction hearing with the trial of the action. Any evidence the ICSC receives during the preliminary injunction hearing;
  - i.** Becomes part of the record;
  - ii.** Is admissible at the trial on the merits; and thus,
  - iii.** Neither party needs to repeat the evidence at trial for the presiding judge to consider it when formulating his decision.
- (C) *Security:*** As a matter of course, the ICSC shall deny a preliminary injunction unless the applicant provides the ICSC with a security deposit sufficient to cover any reasonably foreseeable costs incurred by the adverse party if wrongfully enjoined or restrained. This security requirement does not apply to actions involving domestic violence.

### **7.2.02 Temporary Restraining Orders**

- (A) *Notice, Hearing, and Duration:*** The ICSC may issue a restraining order against a party that does not have oral or written notice of the restraining order if:
  - i.** It is clearly apparent from the evidence contained in the affidavit or the verified complaint that the applicant will suffer immediate and irreparable injury, loss, or damage before the adverse party or the adverse party's attorney can oppose the restraining order in a hearing before the ICSC, and
  - ii.** The applicant's attorney files a document with the ICSC certifying it has undertaken recent efforts to notify the adverse party of its intention to file an application for a temporary restraining order, and the document contains a substantial quantum of evidence that supports the ICSC's decision to issue the restraining order without first notifying the adverse party.
- (B) *Endorsement:*** Every temporary restraining order the ICSC grants without notice shall bear the date and hour of issuance; define the injury, state why

the injury is irreparable if the ICSC does not issue the restraining order, and why the ICSC felt it was necessary to issue the restraining order without notice; and shall expire according to the terms set forth in the temporary restraining order. The maximum life of a temporary restraining order is ten (10) days from the date of its issuance, but the ICSC may extend the restraining order for a like period if the applicant provides the ICSC with good cause. If the parties and the ICSC consent, the duration of the restraining order may last for a period longer than ten (10) days. In the event the ICSC renews a temporary restraining order, or extends the original order beyond its ten (10) day deadline, the court order shall state the presiding judge's reasons for granting the extension.

- i. When the ICSC issues a temporary restraining order to protect the applicant's health or safety, or the health or safety of the applicant's immediate family, the maximum life of the restraining order is thirty (30) days from the date of its issuance, unless the adverse party consents to a longer restraint or the applicant renews the restraining order by court order. In the event the ICSC renews a temporary restraining order or extends the original order beyond its thirty (30) day deadline, the court order shall state the ICSC's reasons for granting the extension

**(C) *Without Notice:*** When a temporary restraining order is granted without notice to the adverse party, the ICSC will hold a hearing at the earliest practicable time to hear a motion by the applicant party for a preliminary injunction. A preliminary injunction is an order restraining a party from going forward with a course of conduct until the ICSC decides the case, and, in essence, is a restraint that supersedes and replaces the temporary restraining order. The hearing takes precedent over all matters on the ICSC's docket except for older matters relating to the temporary restraining order. When the motion comes to the court's floor for hearing, the applicant that obtained the temporary restraining order shall proceed with its application for a preliminary injunction. If the ICSC order a preliminary injunction, it shall dissolve the temporary restraining order after issuing the preliminary injunction. The ICSC shall grant the preliminary injunction when:

- i. The applicant has a substantial likelihood of success on the merits of the case.
- ii. The applicant faces a substantial threat of irreparable damage or injury if the ICSC does not grant the injunction.
- iii. The balance of harms weighs in favor of the applicant.
- iv. The grant of an injunction would not disserve the public interest.

- (D) **Security Deposit:** The ICSC shall not issue a temporary restraining order or a preliminary injunction unless the applicant provides the Court Clerk with a security deposit, in an amount set by the presiding judge, to cover the damages incurred by the adverse party in the event the temporary restraining order or preliminary injunction is improper and wrongfully restrains or enjoins the adverse party. This security deposit requirement does not apply to actions involving domestic violence.

## ***Section 7.3 Handling of Cases***

### **7.3.01 Alternative Dispute Resolution**

In actions between private parties, any party involved in the case, or the ICSC, either before or during trial, may bring a motion to resolve the case through informal means such as negotiated settlement, mediation, or arbitration.

### **7.3.02 Consolidation of Cases**

The ICSC may, sua sponte, consolidate pending cases that share a common question of law or fact for purposes of judicial efficiency and to avoid unnecessary costs or delays.

### **7.3.03 Separation of Trials**

The ICSC may, sua sponte or upon motion of one of the parties, separate a trial to avoid prejudice to one of the parties, confusion of the issues, or for judicial convenience.

### **7.3.04 Substitution of Parties**

The ICSC may, sua sponte, join a substitute or successor party if an existing party to the action dies, becomes mentally incompetent, or transfers its interest in property or cash that is the subject matter of the case.

## ***Section 7.4 Dismissal of Actions***

### **7.4.01 By Plaintiff**

The plaintiff, even without court order, may dismiss an action any time before the defendant files an answer or a motion for summary judgment.

### **7.4.02 By the Court**

Except as provided in 7.4.01, the plaintiff may not dismiss an action except by court order, which means the ICSC must find that the terms of the dismissal do substantial justice for all the parties involved in the case, including the ICSC. If the defendant files a counterclaim before the ICSC files an order to dismiss, the ICSC shall retain the original

action unless the counterclaim has an independent basis for subject matter jurisdiction.

#### **7.4.03 By the Defendant**

The defendant may file an order for dismissal if the plaintiff fails to prosecute the case in a reasonably expedient manner or comply with the Rules of Civil Procedure or the Rules of the Court. Moreover, the defendant may also move for dismissal by filing one of the motions listed in 2.6.02 - 2.6.05 of these Rules of Court. The ICSC may grant the defendant additional grounds for dismissal by incorporating other motions existing under the California or Federal Rules of Civil Procedure into these Rules of Court. Unless otherwise stated in the court order, a dismissal approved by the ICSC operates as an adjudication of the merits of the case.

### ***Section 7.5 Judgments by the Court***

#### **7.5.01 Bench Trials**

In all cases without a jury, the ICSC shall enter its verdict in open court within fifteen (15) days from the date the parties concluded the presentation of evidence.

#### **7.5.02 Remedies**

In all civil cases, the ICSC's judgment shall consist of a court order awarding monetary damages to the injured party, the forfeiture of expressly identified property or assets to the injured party, or the performance of some other act for the benefit of the injured party.

### ***Section 7.6 Execution***

#### **7.6.01 In General**

A writ of execution enforces an ICSC judgment that awards money or property to the plaintiff. Through the writ, the presiding judge may use a number of remedies to enforce the court's judgment, such as attachment, garnishment of wages, replevin, sequestration, or other equitable remedies.

- (A) *Timeframe:*** Unless provided otherwise by Tribal ordinance or other provisions of these Rules of Court, the ICSC shall not order a writ of execution to enforce the judgment of the proceedings for at least ten (10) days following the entry of the judgment.

### **7.6.02 Seizure of Property**

If the debtor has not paid the judgment or made payment arrangements with the Court Clerk within a reasonable time following the post-judgment ten (10) day waiting period required by 7.5.01, the ICSC shall order the debtor to appear, answer questions under oath regarding the extent of his property holdings, determine which of the debtor's property the Tribal law enforcement may seize without causing a substantial hardship on the debtor, and order the Tribal police to seize that property. The amount of property the Tribal law enforcement may lawfully seize cannot exceed the amount of the debt in the judgment.

### **7.6.03 Sale of Seizure Property**

The Tribal law enforcement shall sell any property seized from the debtor at auction, so long as they provide the public with thirty (30) days advance notice of the proceeding to ensure the auction yields an equitable sales price for the property. The auction shall be open, and the auctioneer shall award the property to the highest bidder so long as he can make payment or arrange for payment at the time of the sale. If the sale price exceeds the amount of the debt, the surplus belongs to the debtor.

### **7.6.04 Limitation on Seizure**

Tribal police may not seize, or offer for sale, property of the debtor if the deprivation of such property will cause a substantial hardship on the debtor or his immediate family. Moreover, certain property is immune from seizure, including property that does not belong to the debtor, property that is not titled in the debtor's name, and property that is culturally significant.

## ***Section 7.7 Appeals***

### **7.7.01 Appeals in Civil Cases**

Inter-Governmental Agreement *Sections 2.5 and 2.6* cover the procedure a party must follow to request a civil appeal.

## ***Section 7.8 Control of the Courtroom***

### **7.8.01 Contempt of Court**

- (A) **General:** The ICSC has the authority to hold persons in civil contempt of court. The contempt of court order is final and carries with it a monetary fine, the amount of which the presiding judge will determine according to gravity of the person's actions. In the presiding judge's discretion, the following may subject a person to a contempt of court holding:



- i. Acting in an inappropriate manner towards the presiding judge while court is in session.
- ii. Disrupting the judicial proceedings through disorderly, boisterous, or violent conduct.
- iii. Disobeying a properly served subpoena or refusing to take an oath or affirmation before testifying.
- iv. Disobeying a lawful court order.
- v. Disobeying a lawful court judgment.
- vi. Engaging in any other act that unreasonable interferes with the court proceedings.

An attorney or other person offering legal or judicial services is potentially subject to a contempt of court order if he engages in negligent, reckless, or intentional misbehavior, or materially misrepresents his position or authority.

- (B) *Procedure:*** If an act listed under 7.4.02 (A) occurs in the presence of the presiding judge, the judge may summarily issue the contempt of court order. Procedurally, the presiding judge shall issue an order of contempt, recite the underlying facts, find the person guilty of contempt, and impose a monetary penalty. If the act occurs outside of the presiding judge's presence, the witness must submit an affidavit with the Court Clerk citing the evidence underlying the suspected violation. Based on the information in the affidavit, the presiding judge will determine whether reasonable cause exists to support the scheduling of a contempt proceeding, and, if so, provide the parties with notice of the proceeding.
- (C) *Fine:*** A contempt of court order may result in a monetary fine up to, but not exceeding, five hundred dollars (\$500). The failure to pay the fine may lead to a subsequent contempt of court order, the garnishment of wages, or the attachment of property.