



## **DISORDERLY CONDUCT INFORMATION**

This document explains what a disorderly conduct proceeding is, the procedure for initiating a disorderly conduct action in the San Manuel Tribal Court, the procedure for answering a disorderly conduct petition and the potential consequences of such an action.

**Disclaimer:** This information sheet is provided for general information only. As each person's case is different, this information is not intended to constitute legal advice about a specific case. The San Manuel Tribal Court tries to ensure that the information it presents is current, however, the law is ever-changing. The most recent changes may not always be reflected in the Tribal Court's information sheets, forms or other publications. For these reasons, this information sheet does not replace the specialized advice of lawyers and other experts.

### **WHAT IS DISORDERLY CONDUCT?**

Disorderly conduct can be described as behavior that endangers the safety, welfare or property of the Tribe, Tribal members, other residents of the San Manuel Reservation or persons who patronize Tribal facilities or attend Tribal events. The specific conduct that constitutes disorderly conduct under San Manuel tribal law is set forth in section 8.2.2 of the San Manuel Disorderly Conduct Ordinance. The list is included here as Attachment "A".

### **WHO CAN BE THE SUBJECT OF A DISORDERLY CONDUCT ACTION?**

Any person who commits an act of disorderly conduct may be the subject of a disorderly conduct action. A Tribal member may also be the subject of a disorderly conduct action for an act of disorderly conduct committed by his or her child, if the child is under the age of 18, or by a guest of the member (including a spouse or other person residing with the member), when the act is committed in the presence of, or with the knowledge of, the member.

A person who is the subject of a disorderly conduct action is known as the "respondent".

## **WHO CAN START A DISORDERLY CONDUCT ACTION?**

A disorderly conduct action may be started by: 1) any Tribal member who is at least 21 years of age; or 2) by the Tribe's legal counsel on behalf of the Tribe.

A person who starts a disorderly conduct action is known as the "petitioner".

## **WHEN CAN A DISORDERLY CONDUCT ACTION BE STARTED?**

A disorderly conduct action must be commenced within 90 days of the alleged act of disorderly conduct or within 90 days of the petitioner learning of the incident. In no case may a disorderly conduct action be commenced more than one year after the incident.

## **HOW IS AN ACTION FOR DISORDERLY CONDUCT STARTED?**

A disorderly conduct action is started by filing a **Disorderly Conduct Petition** in the San Manuel Tribal Court. Other paperwork must also be filed. Specifically, the following forms must be completed in order to begin a disorderly conduct action:

- 1. Disorderly Conduct Petition**
- 2. Summons (Disorderly Conduct)**
- 3. Appearance**

All of these forms are available at the Tribal Court from the Court Clerk or on its webpage at [www.sanmanuel-nsn.gov/court.php](http://www.sanmanuel-nsn.gov/court.php).

After the forms are completed, the original and two copies must be delivered to the filing window at the Court Clerk's office.

The Clerk will: (1) assign a case number to the petition; (2) fill in the case number, hearing date and time on the Summons, the Petition and the Appearance forms; (3) execute the Summons; and (4) stamp the originals and copies as "filed". The Clerk will keep the original forms and will return the copies of each to the petitioner. (One set of the copies is for the petitioner to keep and the other set is for the petitioner to provide to the respondent.)

## **HOW DOES THE PETITIONER NOTIFY THE RESPONDENT?**

Once the petition and other forms are filed, the next step is service. In the case of the Summons, Disorderly Conduct Petition and Appearance, service refers to someone over the age of 18, other than the petitioner, personally delivering a copy of the filed papers to the respondent. The date on which personal delivery is made should be written on the face of the Summons at the time of delivery.

When the respondent cannot be personally served, the filed papers may be served substitute service by leaving a copy of them at the respondent's place of work during

normal business hours or at the respondent's residence, with a person who is at least 18 years of age, and then mailing a copy of the filed documents to the respondent at the address where the documents were left. The mailing must be done on the same day and be by certified mail, return receipt requested.

When the respondent lives outside the boundaries of the San Manuel Indian Reservation, personal service is not mandatory. Service may be achieved by certified mail, return receipt requested. However, personal service may be useful in avoiding a claim of lack of service by a respondent.

To achieve service, the respondent must be provided with a copy of the Summons, the Disorderly Conduct Petition, the Appearance, and the following blank forms:

- 4. Response to Disorderly Conduct Petition**
- 5. Appearance**

Service must be achieved no later than 60 days after the date the Court Clerk issued the Summons. Service of a Summons by personal delivery to the respondent is deemed complete on the day of delivery. Service of a Summons by mail is deemed complete on the 3<sup>rd</sup> day after mailing.

After service has been completed, a **Proof of Service of Summons (Disorderly Conduct)** must be completed by the person who served the papers. The Proof of Service of Summons (Disorderly Conduct) form must be filed at the filing window in the Clerk's office by delivering the completed original and two copies no later than 60 days after the date the Court Clerk issued the Summons. The petitioner is responsible for mailing one of the copies of the Proof of Service to the respondent prior to the hearing.

Failure to serve and file the Proof of Service of Summons within the 60-day period will result in the Petition being dismissed, unless the petitioner is able to demonstrate good cause for requiring a continuance of up to 30 days.

## **HOW DOES THE RESPONDENT ANSWER A DISORDERLY CONDUCT PETITION?**

To respond to a Disorderly Conduct Petition, the respondent must complete the blank **Response to Disorderly Conduct Petition** and **Appearance** forms that were served on him or her.

Once these two forms are completed, the respondent must have another person, who is over the age of 18, serve the Response to Disorderly Conduct Petition and the Appearance by mail on the petitioner and, if the petitioner has one, his/her attorney or advocate. The person who served the petitioner must complete the **Proof of Service included on the last page of the Response to Disorderly Conduct Petition** as well as the **certification of service included on the second page of the Appearance form.**

After the Response and the Appearance have been served, the original and two copies of the Response and the Appearance must be delivered to the filing window in the Clerk's office.

The Response must be served and filed no later than 20 days after the respondent was served with the Disorderly Conduct Petition.

### **WHAT IF THE RESPONDENT FAILS TO ANSWER A DISORDERLY CONDUCT PETITION AND TO ATTEND THE HEARING?**

If the respondent fails to answer a Disorderly Conduct Petition and attend the hearing, the Court will enter a default judgment against the respondent, unless the Petition or related filings are deficient in some way or the petitioner does not show up for the hearing. A default judgment amounts to a finding that the respondent did commit the act(s) of disorderly conduct alleged in the petition and may include any of the sanctions the Court is authorized to impose.

### **WHAT IF THE PETITIONER FAILS TO SHOW UP FOR THE HEARING?**

If the petitioner does not show up for the hearing, the Court will likely dismiss the petition.

### **DOES THE PETITIONER OR RESPONDENT NEED A LAWYER?**

No, but it is a good idea. The petitioner or respondent may also choose to be represented by an advocate or lay advocate.

The Court Clerk is prohibited from providing the parties with a referral to a specific attorney, advocate or lay advocate. The Clerk may provide a list of the attorneys and advocates admitted to practice before the Tribal Court or with the phone number(s) of local bar association's lawyer referral service, however these are provided as a courtesy only and without any warranty or representation as to the level of experience of, or quality of service provided by, the attorneys or lay advocates on the Tribal Court bar admission list or attorneys the local bar association may refer the parties to.

### **CAN THE PETITIONER OR RESPONDENT BRING WITNESSES OR OTHER EVIDENCE TO THE HEARING?**

Yes, the petitioner and respondent can bring witnesses or documents that support their case. If the petitioner or respondent plan to submit written statements from witnesses, they will still need to have the witness attend the hearing in case the other party wishes to cross-examine the witness.

## **WHAT HAPPENS AT THE HEARING?**

At the hearing on a Disorderly Conduct Petition, the Court will provide both the petitioner and the respondent with an opportunity to present evidence and arguments. The petitioner bears the burden of proving that the respondent committed the act(s) of disorderly conduct alleged in the petition by a preponderance of the evidence (this means that the petitioner must produce sufficient evidence to show that it is more likely than not that the respondent committed the alleged act of disorderly conduct). After the parties have had an opportunity to be heard, the Court will make its decision.

## **WHAT CAN THE COURT DO?**

At the conclusion of the case, the Court will generally issue a judgment against the respondent or dismiss the Disorderly Conduct Petition.

A judgment may include orders imposing various obligations on the respondent. These sanctions are authorized by sections 8.6.1 - 8.6.3 of the San Manuel Disorderly Conduct Ordinance and include:

1. A minimum fine of \$10,000 or \$20,000, up to \$100,000;
2. Restitution;
3. Community service;
4. Parenting classes;
5. Anger management;
6. Drug or alcohol abuse treatment and counseling;
7. Educational assistance through the San Manuel Education Department;
8. Mental health counseling;
9. Other activities or programs designed to address the respondent's underlying activity;
10. Other reasonable obligations.

If the Court dismisses the petition, the dismissal may be with or without prejudice. "With prejudice" means the petitioner will not be able to re-file the petition. "Without prejudice" means the petitioner can choose to re-file the petition (provided the petition is still filed within the mandatory timeframe discussed above).

If the petition is dismissed, the petitioner may under certain circumstances be ordered to pay the respondent's lawyer's or advocate's fees and costs (for example, if the petition was frivolous).

## **WHAT IF THE PETITIONER OR RESPONDENT DISAGREES WITH THE OUTCOME?**

Either the petitioner or respondent may appeal the Trial Court's decision to the Appellate Court. An appeal is commenced by filing a **Notice of Appeal** with the Trial Court within 20 days of the decision. A Notice of Appeal form can be obtained from the Court Clerk or from the Court's webpage at [www.sanmanuel-nsn.gov/court.php](http://www.sanmanuel-nsn.gov/court.php).

The party filing the appeal must demonstrate: 1) that the Trial Court erred as a matter of law in a way or that materially affected the outcome of the case; or 2) that the judgment is unsupported by the documents filed with the Trial Court or the information presented at the hearing.

A decision of the Appellate Court is final, not subject to further review.

## ATTACHMENT A

8.2.2 "Disorderly Conduct" shall mean any of the following acts that have been committed by any person where indicated:

- (a) Assault on Tribal Lands or at Tribal Events;
- (b) Battery on Tribal Lands or at Tribal Events;
- (c) Loitering in any Tribal Facility or at any Tribal Event, provided that standing or sitting in the facility or attending the event during business hours in areas designated for visitor or patron use in a manner consistent with such intended use shall not be deemed to be loitering;
- (d) Disrupting the conduct of any official or intended use of a facility on Tribal Lands or at Tribal Events, including disrupting the conduct of any business enterprise (including but not limited to the conduct of any gaming activity), government function, or other tribally or privately authorized controlled and intended use of the facility, or the function or duties of any employee or other person who is attempting to carry out such functions or duties within the facility, without the express permission of the Tribe or the owner or lawful occupier of the facility;
- (e) Harassing, threatening, intimidating or disrupting the peace of any resident, employee, official, visitor, guest, patron or other person anywhere on Tribal Lands or at Tribal Events;
- (f) Carrying, displaying or discharging any firearm anywhere on Tribal Lands or at Tribal Events in violation of Tribal policy with respect to firearms, including but not limited to any policy embodied in a Tribal ordinance, policy, or resolution, and except as may be authorized to a member of the Tribe's Department of Public Safety;
- (g) Littering on any Common Area or within any Tribal Facility, or as to any residence on Tribal Lands, in view of any Common Area;
- (h) Disturbing the peace of anyone on Tribal Lands or at Tribal Events, including causing or producing unduly loud noises such as by discharge of firearms, fireworks, vehicular operation, the breaking of bottles or other glass, amplified sound, and the like, provided that causing or producing unduly loud sounds pursuant to an activity for which a permit has been obtained in accordance with Tribal policies and procedures shall not be deemed to be disturbing the peace;
- (i) Consuming alcohol or illegal drugs, or offering such substances to others, on Tribal Lands or at Tribal Events, except with respect to the lawful consumption or sale of alcoholic beverages in accordance with applicable law; and except within a personal residence;

- (j) Possessing, selling, offering or using, or assisting any other person to possess, sell, offer or use, anywhere on Tribal Lands or at Tribal Events, any drug or narcotic except as permitted by applicable law;
- (k) Being under the influence of alcohol or drugs, or engaging in any disruptive or intoxicated-like conduct typically associated with such influence, in any Tribal Facility, or Common Area and at Tribal Events;
- (l) Applying or assisting others in the application of graffiti to, or defacing, any property on Tribal Lands that is visible to others from any Common Area or from within any Tribal Facility, without the permission of the Tribe;
- (m) Damaging or destroying, wherever situated, any Tribal property or, on Tribal Lands or at Tribal Events, the property of others, without permission to do so, excluding any activities related to generally accepted San Manuel cultural practices;
- (n) Speeding or engaging in the reckless or unauthorized operation of a motor vehicle in any Common Area;
- (o) Engaging in conduct or behavior on Tribal Lands or at Tribal Events which could endanger the safety of others;
- (p) Engaging in any conduct or behavior anywhere which defames the Tribe or its Members, is intended to damage a business or governmental activity of the Tribe, or that otherwise causes injury to the Tribe's business or government.