



# SAN MANUEL TRIBAL COURT RULES OF COURT

As adopted by the San Manuel Band of Mission Indians

Judiciary Committee on 12/02/2009, amended on 01/04/2010, 04/10/2017, and Title 4 amended  
01/07/2019

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## **Title 1: General Rules**

### **1.1 San Manuel Rules of Court**

These Rules are entitled the San Manuel Rules of Court.

### **1.2 Authority**

The Rules in the San Manuel Rules of Court are adopted by the Judiciary Committee of the San Manuel Band of Mission Indians under the authority of Section 22.1.16 of the San Manuel Judicial Code.

### **1.3 Construction**

#### **(a) Liberal construction**

The Rules and standards of the San Manuel Rules of Court must be liberally construed to ensure the just and speedy determination of the proceedings that they govern.

#### **(b) Interaction with Tribal law**

Nothing contained in these Rules shall be construed to repeal or limit any provisions contained in Tribal law, and these Rules shall be read in such a manner as to achieve uniformity in interpretation with applicable Tribal law.

### **1.4 Definitions**

In these Rules:

"Conformed copy" as it relates to documents filed with the Court, means a copy of an original document filed with the Court that has been stamped as "filed" by the Court clerk;

"Counsel" or "legal counsel" means an attorney, lay advocate or advocate admitted to practice before the Tribal Court;

"Court" or "Tribal Court" means the San Manuel Tribal Court and refers to either the Trial Court or the Appellate Court as provided by context;

"Court Day" shall mean Monday, Tuesday, Wednesday, Thursday, and Friday, excluding any legal holiday observed by the Tribe;

"Day" means calendar day unless otherwise indicated;

"General Council" means the General Council of the San Manuel Band of Mission Indians;

"Holiday" shall mean Saturday, Sunday and any legal holiday observed by the Tribe;

"Judiciary Committee" means the three-member Committee established under section 22.1.12 of the Judicial Code;

"Tribal law" means the Tribe's Articles of Association, any duly enacted ordinance, code or regulation of the Tribe, actions of the Tribe by referendum or resolution, common law of the Tribal Court and the customs, traditions and generally accepted practices of the Tribe; and

"Tribe" means the San Manuel Band of Mission Indians.

### **1.5 Computation of time**

The time in which any act provided by these Rules is to be performed is computed by excluding the first day and including the last, unless the last day is a Holiday, and then it is also excluded. Unless otherwise provided by Tribal law, if the last day for the performance of any act that is required by these Rules to be performed within a specific period of time falls on a Holiday, the period is extended to and includes the next Court Day. If the time period is under seven (7) days, Holidays shall not be counted.

### **1.6 Extension or shortening of time**

Unless otherwise provided by Tribal law or these Rules, the Court may, for good cause shown, extend or shorten the time within which a party must perform any act under the Rules.

### **1.7 Court Holidays**

The Court shall observe tribal government Holidays. When a Holiday specified falls on a Saturday, the Courts will observe the Holiday on the preceding Friday. When a Holiday falls on a Sunday, the Courts will observe the Holiday on the following Monday. A listing of the current Holidays can be found on the Tribal Court's website.

### **1.8 Time of filing; filing by mail; filing by facsimile transmission or other means**

#### **(a) Time of Filing**

Unless otherwise provided, a document is deemed filed on the date it is received and stamped accordingly by the Court clerk, and during the Court's business hours.

#### **(b) Filing by Mail**

Filing may be done by mail addressed to the Court clerk, but shall not be deemed to be timely filed unless received by the Court clerk by the filing deadline. When filing by mail, the party filing the document must include two (2) copies and a self-addressed envelope with sufficient postage for return of the conformed copies.

#### **(c) Filing by Facsimile**

Filing may be done by facsimile, but shall not be deemed to be timely filed unless received by the Court clerk by the filing deadline. A party must use a fax cover sheet and must cause the transmitting fax machine to print a transmission record of each filing. In the event of an error in transmission, if the filing party produces evidence that the transmission occurred on the date and time represented by the filing party, the pleading will be deemed to have been transmitted as of the date so represented.

**(d) Electronic Filing**

Except as may be otherwise provided in these Court Rules, any pleading, document or other paper to be filed with the Court may be filed by electronic mail in accordance with this section.

- (1) Parties filing by electronic mail ("email") shall affix a physical signature to the document and submit it with any attachments or exhibits in .PDF format. Such submissions shall be directed to [tribalcourtfilings@sanmanuel.com](mailto:tribalcourtfilings@sanmanuel.com) with the case number and the party submitting the document in the subject line.
  - (A) Such emails shall be from a valid email address identified in the document as the filing party's email address of record.
  - (B) The filing party shall obtain and maintain in its records a transmission record of the submission from the applicable email software program.
- (2) Upon receipt, the Court clerk shall deliver written confirmation to the filing party of the date and time the email was received, and shall record the filing date as of the date of the email.
- (3) Applicable filing fees for documents filed electronically shall be delivered to the Court within five (5) Court Days of the written confirmation provided by the Court clerk.
- (4) Electronic filings may be submitted at any time, however, they will be recorded and received only during the Court hours of 9 A.M. to 5 P.M., Monday through Friday. Electronic filings received after these hours shall be deemed to have been received as of the next Court Day.
- (5) Pleadings, including their exhibits and attachments thereto, must be electronically transmitted in the form and format required under these Court Rules. Pleadings containing defects will not be deemed to have been filed as of the electronic transmission receipt date, and will be rejected in the same manner as if the pleading was physically delivered to the Court for filing.

- (6) In the event of an equipment malfunction or a transmission failure originating from any source other than the filing party, if the filing party produces evidence generated by the transmitting email program that the electronic transmission occurred on the date and time represented by the filing party, the pleading will be deemed to have been transmitted as of the date so represented.
- (7) Nothing herein shall be construed to modify the filing deadlines and applicable time periods set forth in Tribal law or these Court Rules.

## **1.9 Service**

### **(a) Service on a party or attorney**

Whenever a document is required to be served on a party, the service must be made on the party's counsel of record appearing in the tribal proceeding if the party is represented; if not, to the party.

### **(b) "Serve and file"**

As used in these Rules, unless Tribal law or a Rule provides for a different method for filing or service, a requirement to "serve and file" a document means that a copy of the document must be served on the counsel for each party separately represented, on each self-represented party, and on any other person or entity when required by statute, Rule, or Court order, and that the document and a proof of service of the document must be filed with the Court.

### **(c) "Proof of service"**

As used in these Rules, "proof of service" means a declaration stating that service has been made as provided in (a) and (b). If the proof of service names counsel for separately represented parties, it must also state which party or parties each counsel served is representing. If not, the proof of service must state the self represented party.

## **1.10 Forms**

### **(a) Adoption**

The Chief Judge may adopt forms for mandatory or optional use by the parties. Forms shall be considered mandatory unless the form bears the words "Optional Form" on the bottom right corner of the first page.

### **(b) Proofs of Service**

Proofs of service are incorporated within some forms solely for the convenience of the parties. A party may use an included proof of service or any other proper proof of service.

### **1.11 Citations/Copies of cases**

Citations to cases and other authorities in all documents filed in the Courts must be in the style established by the most recent version of The Bluebook: A Uniform System of Citation. Copies of cases and other authorities cited in the pleadings must be provided to the Court attached to the pleadings containing the citations.

### **1.12 Contempt of Court**

- (a)** Intentional and unjustifiable behavior by any person, which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding of the Court, or which obstructs, or interferes with the administration of justice by the Court, including disobedience or resistance to, or interference with, any lawful summons, subpoena, process, order, Rule, term of probation, sentence, decree, or command of the Court, including failure to appear for a Court date, shall constitute contempt of Court.
- (b)** When contempt of Court is committed in the presence of the Court it may be addressed summarily by the Court. In such case, an order shall be made reciting the facts and law constituting the contempt, finding the person to have committed contempt, and prescribing the consequence.
- (c)** When it appears to the Court that a contempt has been committed out of the presence of the Court, the Court may issue a summons to the person alleged to have committed contempt directing him/her to appear at a time and place designated for hearing on the matter.
- (d)** A person found to have committed contempt of Court may be sanctioned with a fine not to exceed five thousand dollars (\$5,000.00).

### **1.13 Perjury**

- (a)** A person who knowingly gives false testimony when under oath in a proceeding before the Court commits perjury. Any person who, in any Court-related proceeding or document filed with this Court, declares or certifies under penalty of perjury and willfully states as true any material matter which he or she knows to be false commits perjury.
- (b)** In the event of perjury, the Court may take any necessary action to reconsider issues of fact or law previously decided or under dispute in the pending matter.
- (c)** A person who commits perjury may be subject to a fine not to exceed five thousand dollars (\$5,000.00).

#### **1.14 Behavior in Court**

The Chief Judge may adopt, publish and enforce Rules, not inconsistent with Tribal law or these Rules, for governing the behavior of all persons appearing before, attending proceedings or visiting the Tribal Court.

#### **1.15 Severability**

If any part of these Rules or their application to any person or circumstance is held invalid, the remainder of the Rules or their application to other persons or circumstances is not affected.

#### **1.16 Sanctions for Rules violations**

##### **(a) Sanctions**

In addition to any other sanctions permitted by law or these Rules, the Court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the Court or an aggrieved person, or both, for failure without good cause to comply with the applicable Rules. For the purposes of this Rule, "person" means a party, a party's counsel, a witness, and any individual or entity whose consent is necessary for the disposition of the case. If a failure to comply with an applicable Rule is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.

##### **(b) Notice and Procedure**

- (1) Sanctions must not be imposed under this Rule except on noticed motion by the party seeking sanctions or on the Court's own motion after the Court has provided notice and an opportunity to be heard. A party's motion for sanctions must:
  - (A) State the applicable Rule that has been violated;
  - (B) Describe the specific conduct that is alleged to have violated the Rule; and
  - (C) Identify the counsel, law firm, party, witness, or other person against whom sanctions are sought.
- (2) The Court on its own motion may issue an order to show cause that must:
  - (A) State the applicable Rule that has been violated;
  - (B) Describe the specific conduct that appears to have violated the Rule; and



- (C) Direct the counsel, law firm, advocate, party, witness, or other person to show cause why the sanctions should not be imposed against them for violation of the Rule.

**(c) Award of expenses**

In addition to the sanctions awardable under subsection (a) of this Rule, the Court may order the person who has violated an applicable Rule to pay to the party aggrieved by the violation that party's reasonable expenses, including reasonable attorney's fees and costs, incurred in connection with the motion for sanctions or the order to show cause.

**(d) Order**

An order imposing sanctions must be in writing and must recite in detail the conduct or circumstances justifying the order.

## **Title 2: Trial Court Rules**

### **2.1 Title**

The Rules in this title shall be referred to as the Trial Court Rules.

### **2.2 Application**

The Trial Court Rules apply to all cases in the Trial Court unless otherwise specified by Tribal law or another Rule of the San Manuel Rules of Court.

### **2.3 Definitions**

- (a) As used in the Trial Court Rules, unless the context or subject matter otherwise requires, "Court" means the Trial Court of the San Manuel Tribal Court.
- (b) "Papers" includes all documents, except exhibits and copies of exhibits, that are offered for filing in any case, but does not include court forms.
- (c) "Public" means San Manuel Tribal Members and individuals with written authorization to access Court records from the San Manuel General Council, San Manuel Business Committee, San Manuel Judiciary Committee or San Manuel Tribal Chairperson in accordance with section 22.4.3 of the San Manuel Judicial Code.
- (d) "Record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the Court; and "written" and "writing" include other methods equivalent in legibility to typewriting.

### **2.4 Papers and Forms to be filed**

#### **(a) Rules prescribe form and format**

The Rules in this title prescribe the form and format of papers to be filed in the Court.

#### **(b) Use of recycled paper**

Parties are encouraged to use recycled paper for original papers and Court forms filed with the Court and all other copies of papers, documents and exhibits filed with the Court or served on other parties.

#### **(c) One-sided paper**

On papers, only one side of each page may be used.

**(d) Quality, color, and size of paper**

All papers must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight, 8 inches by 11 inches.

**(e) Printing type size**

All papers must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing in type not smaller than 12 points.

**(f) Type style**

The typeface must be essentially equivalent to Courier, Times New Roman, or Arial.

**(g) Color of print**

The color of print must be black or blue-black

**(h) Margins**

The left margin of each page must be at least one inch from the left edge of the paper and the right margin at least 1/2 inch from the right edge of the paper.

**(i) Spacing and number of lines**

The spacing and numbering of lines on a page must be as follows:

- (1) The lines on each page must be one and one-half spaced or double-spaced and numbered consecutively;
- (2) Descriptions of real property may be single-spaced;
- (3) Footnotes, quotations, and printed forms of corporate surety bonds and undertakings may be single-spaced and have unnumbered lines if they comply generally with the space requirements of Rule 4.4; and
- (4) Line numbers must be placed at the left margin and separated from the text of the paper by a vertical column of space at least 1/5 inch wide or a single or double vertical line. Each line number must be aligned with a line of type, or the line numbers must be evenly spaced vertically on the page. Line numbers must be

consecutively numbered, beginning with the number 1 on each page. There must be at least three line numbers for every vertical inch on the page;

**(j) Page number**

Each page must be numbered consecutively at the bottom unless a Rule provides otherwise for a particular type of document.

**(k) Footer**

- (1) Except for exhibits, each paper filed with the Court must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line.
- (2) The footer must contain the title of the paper (examples: "Tribe's Motion for Dismissal," or "Complaint") or some clear and concise abbreviation.
- (3) The title of the paper in the footer must be in at least 10-point type.

**(l) Format of first page**

The first page of each paper must be in the following form:

- (1) In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address (if available), and Tribal Bar membership number of the attorney or advocate for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail.
- (2) In the first 2 inches of space between lines 1 and 7 to the right of the center of the page, a blank space for the use of the Court clerk.
- (3) On line 8, at or below 3 1/3 inches from the top of the paper, the title of the Court.
- (4) Below the title of the Court, in the space to the left of the center of the page, the title of the case. In the title of the case on each initial complaint or cross-complaint, the name of each party must commence on a separate line beginning at the left margin of the page. On any subsequent pleading or paper, it is sufficient to provide a short title of the case stating the name of the first party on each side, with appropriate indication of other parties, and stating that a counterclaim, cross claim or third party claim is involved (e.g., "and Related Cross Claim"), if applicable.

- (5) To the right of and opposite the title, the number of the case.
- (6) Below the number of the case, the nature of the paper and, on all complaints and petitions, the character of the action or proceeding. In a case having multiple parties, any answer, response, or opposition must specifically identify the complaining, propounding, or moving party and the complaint, motion, or other matter being answered or opposed.
- (7) Below the nature of the paper or the character of the action or proceeding, the name of the judge to which the case is assigned.
- (8) On the complaint, petition, or application filed in a civil case, below the character of the action or proceeding, the amount demanded in the complaint, petition, or application, stated as follows: "Amount demanded is less than \$7,500" or "Amount demanded is \$7,500 or more."

**(m) Separate causes of action, counts, and defenses**

Each separately stated cause of action, count, or defense must specifically state:

- (1) Its number (e.g., "first cause of action");
- (2) Its nature (e.g., "for fraud");
- (3) The party asserting it if more than one party is represented on the pleading (e.g., "by plaintiff Jones"); and
- (4) The party or parties to whom it is directed (e.g., "against defendant Smith").

**(n) Binding**

Each paper or form must consist entirely of original pages without riders and must be firmly bound together at the top.

**(o) Exhibits**

Exhibits may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to typewritten material in legibility and permanency of image.

**(p) Hole punching**

Each paper and form presented for filing must contain two pre-punched normal-sized holes, centered 2 inches apart and 5/8 inch from the top of the paper.

**(q) Changes on face of paper**

Any addition, deletion, or interlineations to a paper must be initialed by the Court clerk at the time of filing.

**(r) Conformed copies of papers**

All copies of papers served must conform to the original papers filed, including the numbering of lines, pagination, additions, deletions, and interlineations.

**(s) Acceptance of papers for filing**

- (1) The Court clerk must not accept for filing or file any papers that do not comply with the Rules in this Title, except the Court clerk must not reject a paper for filing solely on the ground that:
  - (A) It is handwritten or hand-printed; or
  - (B) The handwriting or hand printing on the paper is in a color other than black or blue-black.
- (2) The Court clerk must not reject a paper for filing solely on the ground that it does not contain an attorney's, advocate's or a party' s fax number or e-mail address on the first page.
- (3) For good cause shown by the party filing papers, the Court may permit the filing of papers that do not comply with the Rules in this Title.

**(t) Filing of Court forms**

- (1) A party or counsel who files a form certifies by filing the form that it is a true copy of the form.
- (2) If a form is longer than one page, the form may be printed on sheets printed only on one side even if the original has two sides to a sheet.
- (3) If a form is filed on a sheet printed on two sides, the reverse side must be rotated 180 degrees (printed head to foot).
- (4) The Court clerk must not reject for filing or refuse to file a Court form solely on the ground that:
  - (A) It is completed in handwritten or hand-printed characters; or

- (B) The handwriting or hand-printing is a color other than blue-black or black.

## **2.5 Interpreters**

### **(a) Appointment of interpreters**

- (1) The Court may appoint interpreters to interpret for a party or witness.
- (2) Except as provided in this Rule, an interpreter appointed by the Court must hold a valid certificate as a certified court interpreter issued by a recognized certification entity. If a certified interpreter cannot be found after reasonable search efforts, the Court may for good cause appoint an interpreter who does not hold a court interpreter certificate if the Court finds that the interpreter is qualified to interpret the proceeding.
- (3) The minute order or docket must record the information below for each proceeding requiring the appointment of an interpreter:
  - (A) The name of the interpreter;
  - (B) The language to be interpreted;
  - (C) Whether the interpreter is certified to interpret in the language to be interpreted;
  - (D) Whether the interpreter is certified to interpret in the language to be interpreted; and
  - (E) In the case of a noncertified interpreter, the Court's finding good cause exists for the Court to appoint a noncertified interpreter and the Court's finding that the interpreter is qualified to interpret in the proceeding.

### **(b) Professional conduct for interpreters**

An interpreter must accurately and completely represent his or her certifications, training, and relevant experience.

- (1) An interpreter must use his or her best skills and judgment to interpret accurately without embellishing, omitting, or editing. When interpreting for a party, the interpreter must interpret everything that is said during the entire proceedings. When interpreting for a witness, the interpreter must interpret everything that is said during the witness's testimony.

- (2) An interpreter must be impartial and unbiased and must refrain from conduct that may give an appearance of bias. An interpreter must disclose to the judge and to all parties any actual or apparent conflict of interest. Any condition that interferes with the objectivity of an interpreter is a conflict of interest. A conflict may exist if the interpreter is acquainted with or related to any witness or party to the action or if the interpreter has an interest in the outcome of the case. An interpreter must not engage in conduct creating the appearance of bias, prejudice, or partiality. An interpreter must not make statements to any person about the merits of the case until the litigation has concluded.
- (3) An interpreter must not disclose privileged communications between counsel and client to any person.
- (4) An interpreter must not give legal advice to parties and witnesses, nor recommend specific attorneys, law firms or advocates.
- (5) An interpreter must maintain an impartial, professional relationship with all Court officers, counsel, parties, and witnesses.
- (6) Interpreters are encouraged, through continuing education, to maintain and improve their interpreting skills and knowledge of procedures used by the Courts. An interpreter should seek to elevate the standards of performance of the interpreting profession.
- (7) An interpreter must assess at all times his or her ability to perform interpreting services. If an interpreter has any reservation about his or her ability to satisfy an assignment competently, the interpreter must immediately disclose that reservation to the Court or other appropriate authority.
- (8) An interpreter must report to the Court or other appropriate authority any effort to impede the interpreter's compliance with the law, this Rule, or any other official policy governing Court interpreting and legal translating.

## **2.6 Modified Rules of Discovery**

### **(a) Amount of claim**

For claims of recovery under seven thousand five hundred (\$7,500.00), the Court may, at its discretion, or upon motion, use these modified Rules of discovery.

### **(b) Scope and method**

The parties are encouraged to make voluntary exchanges of information and to settle all cases prior to trial.



- (1) Upon motion and at the discretion of the Court each party may obtain discovery by one or more of the following methods: requests for admission; written interrogatories; production of documents or things; and permission to enter upon land or property for inspection and for other purposes. No additional methods of discovery shall be permitted.
- (2) The motion must be served on the opposing party. The Court shall Rule on the motion without a hearing.
- (3) A party shall move the Court for a discovery order within ten (10) days after the summons and complaint is served but not thereafter.

**(c) Timing; sanctions and sequence of discovery**

A party may not seek discovery from any source, unless the Court upon motion grants permission to proceed. Failure to obtain a discovery order may result in sanctions, including dismissal of the case. Methods of discovery may be used in any sequence and the fact that a party is conducting discovery shall not operate to delay another party's discovery.

**(d) Interrogatories**

Any party may serve upon any other party written interrogatories not exceeding ten (10) in number, including sub-parts, to be answered by the party served or if the party served is a tribal entity or a public or private corporation or a partnership or association, by officer or agent, who shall furnish such information as is available to the party. A party served shall answer written interrogatories within five (5) days.

**(e) Production of documents/Entry upon land for inspection**

- (1) A party may serve on any other party a request to produce or permit inspection of any designated documents that contain matters related to the claims or defenses at issue that are in the custody or control of the party upon whom the request is served;
- (2) A party may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party being served for the purpose of inspection.
- (3) The request shall set forth the items or property to be inspected. The request shall specify a reasonable time, place and manner of making the

inspection but no inspection shall take place within the five (5) days prior to trial.

- (4) The request shall be limited to no more than five (5) documents or one (1) designated parcel of land or other property for the purpose of inspection.
- (5) The party upon whom the request is served may object within five (5) days after the service of the request. The objection shall specify the reason for such objection. Once an objection is served on the requesting party, the Court shall Rule on the matter without a hearing within three (3) days.

**(f) Failure to cooperate in discovery; Sanctions**

Upon motion, the discovering party may move for an order compelling the requested discovery. If the Court grants the motion and the compelled party fails to respond, the failure may be considered a contempt of Court.

**(g) Limits to discovery**

Upon motion, the party upon whom the discovery request is served may move to restrict unreasonable discovery. The Court shall rule on the motion without a hearing.

**(h) Interest of Justice**

At any time during discovery, the Court, on its own initiative and in the interest of justice, may restrict discovery, including but not limited to, the number of interrogatories or documents to be inspected or may prohibit inspection of land or other property.

## **Title 3: Disorderly Conduct Rules**

### **3.1 Filing of the petition**

A proceeding in Tribal Court to determine whether a person has committed an act of disorderly conduct in violation of the San Manuel Disorderly Conduct Ordinance is commenced by the filing of a petition by an enrolled member of the Tribe that is eighteen (18) years of age or older or by the Tribe's Legal Department acting on behalf of the Tribe.

### **3.2 Form of petition; summons; appearance; service Form**

A disorderly conduct petition must be filed on the Tribal Court's Disorderly Conduct Petition form. The petition must contain the information requested in the form and be verified by the petitioner.

#### **(a) Summons**

The petitioner must also file a Summons (Disorderly Conduct Petition) form with the Disorderly Conduct Petition. The Court clerk will assign and fill in the case number, the hearing date and time, and execute the Summons.

#### **(b) Appearance**

An Appearance form must be filed by the petitioner at the time the Disorderly Conduct Petition is filed.

#### **(c) Original and copies**

The original of documents referred to in paragraphs (a), (b) and (c) will, if properly completed, be stamped "filed" by the Court clerk and must be retained in the Court file. The petitioner must present two copies of each at the time of filing, and the Court clerk will stamp these "filed" and return the copies to the petitioner, so that the petitioner will have one set of copies for his/her records and one set of copies for service on the respondent.

#### **(d) Service**

The petitioner must serve the following documents on the respondent: (1) a copy of the Summons; (2) a copy of the Disorderly Conduct Petition with all attachments attached; (3) a copy of the petitioner's Appearance; (4) a blank copy of the Response to Disorderly Conduct Petition form; and (5) a blank Appearance. Service must be by personal service by a non-party who is at least eighteen (18) years of age. The date on which personal delivery is made should be handwritten on the face of the Summons at the time of delivery.

As an alternative to personal service, the filed papers may be served by certified mail, return receipt requested, but only when personal service is not possible or where the defendant resides outside the exterior boundaries of the San Manuel Indian Reservation. When claiming that personal service is not possible, the petitioner must show that a good faith effort was made to personally serve the respondent.

**(e) Proof of Service**

Proof of service of same must be filed no later than sixty (60) days after the date of issuance of the Summons by the Court Clerk. Failure to file the proof of service by this deadline will result in dismissal of the petition. The Court may extend this time for an additional thirty (30) days, but only upon a showing of good cause.

**3.3 Response; failure to file or appear**

**(a) Response and Appearance**

To respond to a Disorderly Conduct Petition, a respondent must file and serve a Response to Disorderly Conduct form and an Appearance form no later than twenty (20) days after the respondent was served with the Summons. Service may be by mail.

**(b) Failure to Respond or Appear**

If the respondent fails to file a response and/or appear at the hearing, the Court may enter a default judgment against the respondent.

**3.4 Burden of Proof**

The petitioner bears the burden of establishing that the respondent committed the alleged act of disorderly conduct, by a preponderance of the evidence. The Court may, on motion of the respondent or on the Court's own motion, dismiss the petition, with or without prejudice, if the Court, based on all the evidence then before it, finds that the burden of proof is not met.

**3.5 Subpoenas**

On the Court's own motion or at the request of the petitioner or respondent, the Court must issue subpoenas requiring attendance and testimony of witnesses and the production of papers at a hearing. If a witness appears in response to a subpoena, the Court may order the payment of witness fees as a charge in the amount set forth in the Court's Schedule of Fees.

## **TITLE 4**

### **Title 4. Administrative Review Rules**

#### **4.1 Definitions**

- (a) “Administrative Agency” or “Agency” means a Tribal commission or agency having power under Tribal law to make administrative decisions.
- (b) “Administrative Record” means the Agency’s record of the case on appeal, which shall include 1) all documents, papers, requests, and exhibits relied upon by the Agency in making its decision, 2) the written decision of the Agency, 3) proof of service of the written decision to the Petitioner, and 4) if applicable, a certified complete audio recording of the Agency hearing or transcript thereof.
- (c) “Agency decision” means any final decision, order or determination of an Administrative Agency rendered on a particular issue, which affects the legal rights, duties or privileges of a party as set forth in governing law, regulation, or policy.
- (d) “Appellate Court” means the Appellate Court of the San Manuel Tribal Court.
- (e) “Petitioner” is the party who files the appeal.
- (f) “Respondent” is the party who defends against the appeal.
- (g) “Trial Court” means the Trial Court of the San Manuel Tribal Court.

#### **4.2 Scope of Rules**

These Rules govern the procedures in the Trial Court of the San Manuel Tribal Court for judicial review of an Agency decision. To the extent any of these Rules conflict with applicable Tribal law, such Tribal law shall govern.

#### **4.3 Right of Appeal of Agency Decision**

- (a) Only those appeals authorized by Tribal law shall be subject to review by the Trial Court pursuant to these Rules. For purposes of clarity, this Title 4 shall not apply to reviews of decisions of a Tribal agency, department, or instrumentality made pursuant to SMTC Chapter 15 (Gaming Facility Tort Liability Act), Chapter 21 (Gaming Enterprise Workers’ Compensation Act), Chapter 21A (Tribal Workers’ Compensation Act), or any other Tribal law or regulation that contemplates Trial Court review beyond an administrative record.
- (b) The Trial Court shall hear and decide appeals filed under these Rules.
- (c) A person aggrieved by an Agency decision may seek judicial review of the Agency decision as authorized by applicable Tribal law, provided the party has first

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exhausted all Agency remedies as required by Tribal law.

### **4.4 Commencement of Appeal of Agency Decision**

- (a)** Parties may appeal Agency decisions only by filing a Notice of Appeal with the Trial Court and the applicable Agency within the timeframe set out by the applicable Tribal law. Failure to appeal within this time frame renders the Agency decision unappealable.
- (b)** The Notice of Appeal shall, at a minimum, include:
  - (1)** The name, title, address and telephone number of Petitioner or Petitioner's counsel;
  - (2)** The date the Agency decision was served upon Petitioner;
  - (3)** A statement of the Trial Court's jurisdiction;
  - (4)** A concise factual statement of the Agency decision (attachment of a copy of the Agency decision will satisfy this requirement);
  - (5)** The nature of the relief being sought;
  - (6)** A concise statement of the reasons for the appeal; and
  - (7)** The signature of Petitioner or Petitioner's counsel.
- (c)** Failure to provide any of the items described in 4.4(b) shall be grounds for the Trial Court to deny the Notice of Appeal.
- (d)** A Notice of Appeal filed by a *pro se* party shall not be dismissed for informality or defect in form or title so long as it complies with 4.4(b) of these Rules, provided the Notice of Appeal shall be in a legible format.
- (e)** Except as permitted in paragraph (d) above, the Notice of Appeal shall be typewritten or electronically prepared in Times New Roman font, size 12 font, double spaced, on 8.5" x 11" paper with a one-inch margin at the top, bottom and sides of each page.
- (f)** Petitioner shall file with the Trial Court one (1) original and two (2) copies of a Notice of Appeal.
- (g)** Petitioner shall promptly serve a copy of the filed Notice of Appeal on Respondent by personal service or certified mail, and return a completed proof of service to the Court Clerk, within five (5) days of filing the Notice of Appeal with the Court.
- (h)** Respondent may file a written statement challenging the jurisdiction of the Trial Court

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with the Court clerk within five (5) Court Days after receiving a copy of the Notice of Appeal. Failure to challenge jurisdiction in this way does not preclude Respondent from raising a jurisdictional challenge in his/her answer brief.

### 4.5 Fees

All filing fees shall be paid in accordance with the Tribal Court's schedule of Court fees, unless applicable Tribal law provides for an appeal at no cost to Petitioner. If Petitioner is unable to pay a fee due to the Court, a motion to waive the fee may be filed with the Trial Court for its determination within five (5) days of the fee being due and owing.

### 4.6 Acceptance or Denial of Appeal of Agency Decision

- (a) Notice of Acceptance. Upon a preliminary finding of jurisdiction and that the Notice of Appeal is proper, the Trial Court shall issue and promptly serve to the parties, by personal service or certified mail, a written Order accepting an appeal within ten (10) Court Days after the Notice of Appeal is filed.
- (b) Denial of Appeal. If the Trial Court denies an appeal, the Court shall issue and promptly serve to the parties, by personal service or certified mail, a written Order denying the appeal within ten (10) Court Days after the Notice of Appeal is filed. The Order shall include the Trial Court's reasons for denying the appeal on the basis of a finding by the Trial Court that i) it is without jurisdiction to hear the appeal, ii) that the Notice of Appeal has not been properly filed, iii) that the Notice of Appeal has not been properly served upon Respondent within the required timeframe, or iv) the Notice of Appeal raises a claim that has been previously decided by a final decision of the Tribal Court or a binding decision of any other court or forum of competent jurisdiction.

### 4.7 Submission of Administrative Record

- (a) Filing of Administrative Record. Within thirty-five (35) days after the Tribal Court issues and serves upon the parties a written Order accepting the appeal, Respondent shall file with the Trial Court, and serve upon Petitioner through personal service or certified mail, a copy of the Administrative Record. Respondent shall return a completed proof of service to the Court Clerk within five (5) days of executing such service upon Petitioner.
- (b) Redaction of Sensitive Information. Respondent shall redact or exclude all personal identifying information from the Administrative Record, and may redact or exclude other sensitive documents and exhibits from the Administrative Record. However, the Trial Court in its discretion, or upon motion of Petitioner, may review *in camera* unredacted

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records in the interests of justice and issue a determination as to whether redacted information must be disclosed to Petitioner. Upon such determination by the Trial Court, the Court may make the unredacted information available for confidential viewing by Petitioner at the Tribal Court. Respondent may attend such confidential viewing to ensure proper security protocols are followed regarding the handling and display of sensitive information.

### 4.8 Filing and Serving Briefs

- (a) Petitioner Opening Brief. Petitioner shall submit an opening brief to the Trial Court within thirty (30) days after being served with a copy of the Administrative Record. Petitioner shall promptly serve Respondent with a copy of the opening brief by certified mail or personal service, with proof of service filed with the Trial Court, no later than ten (10) days after filing the brief with the Court.
- (b) Respondent Response Brief. Respondent shall file a response brief within twenty (20) days after service of Petitioner's brief. If Petitioner did not submit an opening brief within the time provided by this Rule, or as extended by the Tribal Court, Respondent shall still have the opportunity to file a brief pursuant to this Rule 4.8(b). Respondent shall serve Petitioner with a copy of the filed brief by certified mail or personal service, with proof of service filed with the Trial Court, no later than ten (10) days after filing the brief with the Court.
- (c) Petitioner Reply Brief. Petitioner may file a reply brief, addressing only matters raised in Respondent's response brief, within ten (10) days after service of the Respondent's Response brief. Petitioner shall serve Respondent with a copy of the reply brief by certified mail or personal service, with proof of service filed with the Trial Court, no later than ten (10) days after filing the brief with the Court.

### 4.9 Form and Content of Briefs

- (a) A brief filed by a *pro se* party shall not be dismissed for defect in form or title, provided the brief shall be in a legible format, with page numbers at the bottom center of the page. A *pro se* party may request relief from complying with subsections (c)2 and (c)9 of this Rule 4.9, unless a Court form is available for use by the *pro se* party.
- (b) Except as permitted in subsection (a) above, the brief shall be typewritten or electronically prepared in Times New Roman font, size 12 font, double spaced, on 8.5" x 11" paper with a one-inch margin at the top, bottom and sides of each page.
- (c) Briefs shall include the following:



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- (1) A cover page stating the name of the Court, the numbers assigned to the case by the Trial Court, the Agency from which the appeal is taken, and the name, address and phone number of the party (or their counsel) filing the brief;
- (2) A table of contents with page references, a table of authorities alphabetically arranged (including titles and page numbers), and the location in the brief by page where such authorities are referenced;
- (3) A brief statement of the basis for the Court's jurisdiction, including citations to governing law, regulation, or policy;
- (4) A brief statement of the case, not to exceed five (5) pages, which indicates the nature of the case, the course of the proceedings, and the Agency decision;
- (5) A statement of the facts relevant to the issues presented for review with appropriate references to the Administrative Record;
- (6) An argument in support of the issues presented for review, with citations to authorities and the Administrative Record, addressing all issues raised in Petitioner's Notice of Appeal;
- (7) A short conclusion precisely stating the relief sought, not to exceed one page;
- (8) Copies of all non-Tribal laws, rules, or regulations cited, attached as addenda; and
- (9) Except by permission of the Trial Court, opening and response briefs shall not exceed twenty (20) pages, and reply briefs shall not exceed ten (10) pages.

### **4.10 Oral argument**

- (a) Oral argument is not required, but may be conducted as set forth in this Rule or applicable Tribal law. Any party may request oral argument in writing within fifteen (15) days of the conclusion of the briefing required pursuant to Rule 4.9. The request must be filed with the Court Clerk with proof of service on the other party.
- (b) The Trial Court may grant a party's request for oral argument, or order oral argument upon its own discretion, if the Court finds that oral argument will assist it in making its determination.
- (c) The Trial Court shall issue and serve upon the parties an order denying, accepting, or ordering oral argument within five (5) days of making such determination. An order accepting or ordering oral argument shall set forth the date, time, location, and time allotted to each party for the oral argument.

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- (d) A requesting party may withdraw a request for oral argument in writing and file the request with the Tribal Court, with proof of service on the other party, no later than five (5) Court Days before the date of the scheduled hearing.
- (e) If the Petitioner fails to appear or if neither party appears, the appeal may be dismissed or decided solely on the briefs and the Administrative Record, at the discretion of the Tribal Court Judge or upon motion at the oral argument.

### **4.11 Standard of Review**

- (a) The Trial Court shall hear administrative review cases based on applicable Tribal laws and regulations. However, the Trial Court may look to persuasive authority, in accordance with the San Manuel Judicial Code, Section 22.5.1(b), where Tribal laws and regulations are not sufficiently applicable or determinative of the issue.
- (b) Unless otherwise required by applicable Tribal law, the Trial Court shall limit its review to the Notice of Appeal, the Administrative Record, and the written briefs filed by the parties. The Trial Court shall decide only those issues properly raised in the Notice of Appeal, the Administrative Record, and the written briefs. The Trial Court shall review the Agency decision and set aside any decision, action, findings, or conclusions by the Agency that the Trial Court finds to be arbitrary and capricious or an abuse of discretion. For purposes of these rules, the terms “arbitrary and capricious” and “abuse of discretion” shall be construed to include, but are not limited to, Agency decisions unsupported by substantial evidence or otherwise not in accordance with applicable Tribal or federal law.

### **4.12 Stay of Agency Decision Pending Appeal**

- (a) A stay of the Agency decision for money damages, pending the appeal, shall be deemed automatically granted by operation of Tribal law in any case where the Trial Court has issued a written Order accepting the appeal.
- (b) There shall be no right of a stay of an Agency decision pertaining to a license or permit issued or denied by an Agency.
- (c) A party may request a stay pending the appeal, for anything other than the enforcement of money damages and a licensing decision, by motion to the Tribal Court, which shall include:
  - (1) Name, address, and telephone number of the party requesting the motion;
  - (2) The reasons for the motion;
  - (3) Affidavits or sworn statements supporting the motion;

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- (4) Relevant parts of the record; and
  - (5) Certification of service of the motion on all parties.
- (d) The Tribal Court shall issue an order granting or denying a motion for a stay of the Agency decision pending appeal within five (5) Court Days of the motion being filed.

### **4.13 Decision**

- (a) The Trial Court may dismiss the appeal, affirm the Agency decision being reviewed, reverse the decision in whole or in part, vacate the decision and remand the case back to the Agency for further proceedings, or take any other action as the merits of the case and the interest of justice may require.
- (b) The decision of the Trial Court shall be issued in writing no later than ninety (90) days after the date the Court determines the case is submitted for decision. The decision shall be final, unless applicable Tribal law authorizes further appeal to the Appellate Court.
- (c) The Court Clerk shall serve all parties with a copy of the decision with proof of service within five (5) days of issuing the decision.

### **4.14 Further Appeal**

A party may request review of any final judgment of the Trial Court by appeal to the Appellate Court of the San Manuel Tribal Court if such appeal is authorized by Tribal law. Such appeal shall be governed by applicable Tribal law and the Trial Court Rules of Appellate Procedure, and the Appellate Court's review shall be limited to a review of the Trial Court's record on appeal. Notwithstanding other standards of review set forth in the Tribal Court Rules of Appellate Procedure, the Appellate Court shall review issues of law de novo, but shall review issues of fact only for clear error.

### **4.15 Voluntary Dismissal, Stipulation**

- (a) The Trial Court may issue an order dismissing the appeal on the motion of the Petitioner.
- (b) The Trial Court may issue an order dismissing the appeal upon the filing of a stipulation for dismissal which specifies the terms of the stipulation, and is signed by all the parties.

### **4.16 Rules by Trial Court**

In all matters or cases not provided for by these Rules, the Trial Court may regulate its practice

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in a manner consistent with these Rules, Tribal law and regulation, and Court administrative orders.

### **4.17 Modification of Time**

The Trial Court may modify schedules for good cause shown or as the interests of justice may require, provided the time period to file a Notice of Appeal shall not be modified.

## **Title 5: Rules of Appellate Procedure**

### **5.1 Scope of Rules**

The Rules in this title are the Rules of appellate procedure for the San Manuel Tribal Court's Appellate Court and may be cited as "Appellate Rules". These Rules govern the procedure for appeals to, and proceedings before the Appellate Court.

### **5.2 Jurisdiction; composition of the Court; presiding judge; panel; judges' duties**

- (a) The Appellate Court's jurisdiction is granted expressly by the San Manuel Judicial Code, sections 22.1.4, 22.1.6 and 22.3, the San Manuel Rules of Civil Procedure, section 28.8, and other relevant provisions of San Manuel law and the Rules of Court.
- (b) The Chief Judge of the San Manuel Tribal Court is the chief administrator of both the Trial Court and the Appellate Court.
- (c) The Appellate Court shall consist of three (3) appellate judges. The Appellate Court may also include one or more alternate appellate judges, who shall serve when one of the appellate judges is unavailable or unable to do so. All appellate judges must be duly appointed by the General Council.
- (d) A presiding judge of the Appellate Court shall be selected by the Judiciary Committee from among the three appellate judges. The presiding judge, when selected, shall serve until a new presiding judge is selected.
- (e) A three-member appellate panel shall hear each appeal and decide each appeal by majority vote.
- (f) All appellate judges shall avoid conflicts of interest as provided by the Rules of Judicial Conduct and provide an impartial and independent review of the complete record and file in each case.

### **5.3 Authority of Appellate Court; matters which may be reviewed; advisory opinions**

- (a) The Appellate Court shall decide cases based on the mandatory authorities listed in the San Manuel Judicial Code, section 22.5(a). However, the Appellate Court may look to persuasive authority, in accordance with the San Manuel Judicial Code, section 22.5.1(b), where the authorities listed in section 22.5(a) are not sufficiently applicable or determinative of the issue.
- (b) Stipulations by parties as to jurisdiction shall be void.

Any aggrieved party may request review of any final judgment of the Trial Court by appeal to the Appellate Court of the San Manuel Tribal Court. Such appeal shall be governed by the Trial Court Rules of Appellate Procedure, and the Appellate Court's review shall be limited to a review of the record on appeal. Notwithstanding other standards of review set forth in the Tribal Court Rules of Appellate Procedure, the Appellate Court shall review issues of law de novo, but shall review issues of fact only for clear error.

#### **4.16 Voluntary Dismissal, Stipulation**

- (a)** The Trial Court may issue an order dismissing the appeal on the motion of the Appellant and upon such terms as may be agreed upon by the parties or fixed by the Court.
- (b)** The Trial Court may issue an order dismissing the appeal upon the filing of a stipulation for dismissal which specifies the terms of the stipulation, and is signed by all the parties.

#### **4.17 Rules by Trial Court**

In all matters or cases not provided for by these Rules, the Trial Court may regulate its practice in a manner consistent with these Rules, Tribal law and regulation, and Court administrative orders.

#### **4.18 Modification of Time**

The Trial Court may modify schedules for good cause shown or as the interests of justice may require, provided the time period to file a Notice of Appeal shall not be modified.

- (c) Except in cases where the judgment from which the appeal taken is less than seven thousand five-hundred dollars (\$7,500) or where Tribal law provides that the Trial Court's decision on a matter is not subject to further review, the Appellate Court may review any final judgment, other final order, or judgment on a dispositive motion of the Trial Court.
- (d) The Appellate Court may review other decisions, orders or judgments only as expressly authorized to do so by Tribal law.
- (e) The applicable standards of review are:
  - (1) For errors of law, whether the Trial Court erred as a matter of law in a way that materially affected the outcome of the case; or
  - (2) For errors of fact, whether the judgment is unsupported by the record taken as a whole.

#### **5.4 Scope of or limitations on review**

- (a) The Appellate Court shall limit its review to the record of the Trial Court, issues raised in written briefs or other properly filed documents, relevant authority as referenced in Rule 10.3, and oral arguments presented to the Appellate Court but shall not admit or entertain new evidence, nor shall the Appellate Court hold a *de novo* trial in cases that come before it.
- (b) The Appellate Court may take judicial notice of matters:
  - (1) That are generally known within the territorial jurisdiction of the Trial Court; or
  - (2) That are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

#### **5.5 Counsel; suspension or disbarment; withdrawing from representing a client**

- (a) Counsel shall file an entry of appearance in an appeal at the time of filing of his/her initial pleading in an appeal.
- (b) If the Chief Judge disbars or suspends counsel, the Chief Judge shall forward notice of such disbarment or suspension to the Appellate Court.
- (c) Counsel shall not withdraw from representing a party after filing a Notice of Appeal on behalf of the party or after filing an entry of appearance on behalf of a party to an appeal, unless:
  - (1) A written motion detailing the reasons for withdrawing is filed; and,

- (2) The Appellate Court or the Presiding Judge enters an order allowing the withdrawal.
- (d) A withdrawal shall not be allowed, except in extraordinary circumstances, if the motion is filed after the opening brief has been filed or, in the case of a motion by appellee's counsel, after the appellee's answer brief has been filed.

#### **5.6 Suspension or extension of required time schedules**

- (a) In matters of immediate concern likely to cause irreparable and serious harm to the community or litigants and upon the written request of either party, the Appellate Court may temporarily suspend or extend schedules to expedite the determination of a case.
- (b) Notwithstanding the Appellate Court's authority provided in subsections 1.6 and 10.6(a) of these Rules, the Appellate Court may not extend the time period for filing a Notice of Appeal or request for review set by Tribal law.

#### **5.7 Pleadings; informality; handwritten; place of filing; copies; service of process; proof of service; filing**

- (a) An appeal filed by a *pro se* party shall not be dismissed for informality of form or title so long as it substantially complies with 10.9(e) of these Rules. However, even pleadings filed by a *pro se* party must be typewritten or legibly handwritten in black or blue ink, with page numbers at the bottom of the page.
- (b) Except as permitted in paragraph (a) above, pleadings shall be typewritten or electronically prepared in Times New Roman font, size 13 font, double spaced, on 8.5" x 11" pages with at least one-inch margins at the top, bottom and sides of each page and a page number at the bottom center of each page.
- (c) Pleadings shall be filed with the Trial Court, which shall transmit the required number of copies of documents to the Appellate Court. The Trial Court shall retain originals of pleadings.
- (d) Parties shall file an original, plus four (4) copies.
- (e) Unless otherwise ordered by the Appellate Court, a copy of each document filed shall be served on every party in the manner required by the Trial Court and proof of such service shall be attached to each document presented for filing.
- (f) The four (4) copies of every document filed shall be sent to the Appellate Court within one (1) day after the pleading is filed. Originals shall be retained by the Trial Court.



- (g) Filing may be done by mail addressed to the Court clerk, but shall not be timely unless received by the Court clerk before the time to file it expires, except that a document other than a Notice of Appeal or any other original proceeding (e.g. a writ petition) is timely if delivered to a common carrier that guarantees the document's delivery by the document's due date as shown on the carrier's receipt.

#### **5.8 Fees; required payment**

All filing fees shall be paid to and in accordance with the San Manuel Tribal Court's schedule of fees. If the person filing the appeal or writ is unable to pay the fee, a form to waive the fee may be filed with the Trial Court for its determination.

#### **5.9 Notice of Appeal; where to file; timeliness; consolidated appeals; contents; parties; service; notice to Court of appeals; death of party; counsel appointment; jurisdictional challenges; parties joining**

- (a) An appeal shall be taken by filing a *Notice of Appeal* form with the Trial Court within twenty (20) days of entry of judgment by that same Court.
- (b) If the Notice of Appeal is addressed by mistake to the Appellate Court, it shall be deemed filed on the date and time received by the Court clerk.
- (c) Failure to file a timely Notice of Appeal is jurisdictional, and the Appellate Court shall dismiss the appeal if the notice is filed after the date set by Tribal law.
- (d) If two or more persons are entitled to appeal from a judgment and consolidating their appeals is practicable, they may file a joint appeal or join in an appeal after filing separate timely Notices of Appeal and proceed as one appeal. Appeals may be consolidated by order of the Appellate Court upon its own motion, motion of either party, or stipulation of the parties to several appeals.
- (e) The Notice of Appeal shall include:
  - (1) The names, titles, addresses, and telephone numbers of the party taking the appeal or their counsel, unless the Trial Court determines that including the address or telephone number of any person would place that person in physical jeopardy;
  - (2) The date the adverse ruling was rendered;
  - (3) A concise statement of the order or judgment appealed from; and
  - (4) A brief description of what Trial Court error(s) the appellant is alleging, whether based on issues of fact or law.

- (f) All parties to the proceeding in the Trial Court shall be deemed parties unless the Appellate Court receives written notice from a party to the contrary.
- (g) The Court clerk shall serve a copy of the notice of appeal on all parties by mail within one (1) day.
- (h) The Court clerk shall transmit a copy of the Notice of Appeal to the members of the Appellate Court after noting on each copy the date the Notice of Appeal was filed, and shall serve it within one (1) day after receiving the notice, unless the Trial Court extends the time by order.
- (i) The death of a party or counsel shall not affect the validity of the appeal.
- (j) Any appellee may file a written statement challenging the jurisdiction of the Appellate Court with the Court clerk within fifteen (15) days after receiving a copy of the Notice of Appeal. Failure to challenge jurisdiction in this way does not preclude the appellee from raising a jurisdictional challenge in his/her reply brief.
- (k) In multiple party litigation, if an appellee supports the position of the appellant, that appellee may join the appellant's position by filing an appropriate document within fifteen (15) days.

#### **5.10 Denial of appeal because of jurisdiction**

The Appellate Court shall immediately issue an order denying the appeal if it determines it is without subject matter jurisdiction.

#### **5.11 Certification of the record; duty of lower Court; duty of appellate presiding judge; parties to receive copy of certification**

- (a) The accuracy of the record on appeal shall be certified by the Trial Court Clerk.
- (b) The Court clerk shall transmit by certified mail or its equivalent the complete record and all duly numbered copies of original documents to the members of the Appellate Court within forty-five (45) days of the filing of Notice of Appeal. If the Trial Court is unable to comply with the time limit, it shall request an extension of time from the Appellate Court stating the reasons for the request.
- (c) The presiding judge of the Appellate Court or a designate shall certify that the record of each case referred for appeal includes:
  - (1) Documentation that the appeal was timely filed; and
  - (2) Documentation that other parties were given notice of the appeal.

- (d) The Court clerk shall mail a copy of the certification of the record to the parties.
- (e) If the Trial Court judge who presided over the case is no longer available, the Chief Judge of the Trial Court may certify the record if all parties agree that the record and the statement of evidence and proceedings are correct.

#### **5.12 Record for appeal; contents; transcription of audio recordings**

- (a) The record for appeal shall include photocopies of each original pleading, motion, order, opinion and final judgment, as well as exhibits filed with the Trial Court, a written transcript or a duplicate of the audio recordings, and docket entries.
- (b) Within fifteen (15) days of the filing of the Notice of Appeal where applicable, the appellant shall file a written request for a full transcript or certified audio recording of the proceedings and pay by certified check or money order the estimated cost of preparation of the record with the Court clerk unless the cost is waived by the Trial Court upon a showing of good cause.
- (c) A party other than the appellant may request a written transcript or certified audio recording if the appellant does not so request and shall so request within thirty (30) days after the filing of the Notice of Appeal. The party making such a request shall pay the cost of preparing the transcript or recording unless waived by the Trial Court upon a showing of good cause.

#### **5.13 Bond; when required; limits; disposition; sureties' agent and liability**

- (a) The Trial Court may require the appellant to deposit a bond with the Trial Court to guarantee the judgment will be enforceable. The security required shall not be greater in value than the amount of the judgment or fine imposed, plus costs.
- (b) For appeals from tax assessments or judgments for taxes owed or for any other remedy provided under any tax ordinance of the Tribe, the provision of security or posting of a bond is governed by section 22.3.6 of the San Manuel Judicial Code.
- (c) After the Appellate Court has issued its opinion, it shall upon the motion of any party or upon its own motion order such disposition of the bond as it deems just and consistent with the San Manuel Rules of Civil Procedure.
- (d) If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits itself to the jurisdiction of the Appellate Court and irrevocably appoints the Court clerk as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The sureties' liability may be enforced on motion.

**5.14 Stay of execution of judgment or injunction pending appeal; motion; Appellate Court motion**

- (a) A stay of execution of judgment for money damages shall be deemed automatically granted by operation of Tribal law in any case where a party has filed a timely Notice of Appeal. Such a judgment shall not be executed upon except to the extent affirmed by the Appellate Court, or in the event that the Appellate Court dismisses the appeal for any reason.
- (b) For appeals from all other judgments or orders, including judgments in family law cases, temporary restraining orders and orders for other equitable relief, a motion for a stay of execution of judgment or injunction pending appeal shall be filed with the Court clerk, and shall include:
  - (1) Name, address, and telephone number of the party requesting the motion;
  - (2) The reasons for the motion;
  - (3) Affidavits or sworn statements supporting the motion;
  - (4) Relevant parts of the record; and
  - (5) Certification of service of the motion on all parties.
- (c) For appeals from tax assessments or judgments for taxes owed or for any other remedy provided under any tax ordinance of the Tribe, a motion for a stay of execution of judgment and the resulting order must also conform with the requirements of section 22.3.6 of the San Manuel Judicial Code.
- (d) The Trial Court judge shall issue an order granting or denying a motion for a stay of execution of judgment or injunction pending appeal within fifteen (15) days of the motion being filed.
- (e) The Trial Court's order may not be appealed.

**5.15A Writs; contents of petition; procedure; time limits; denial without action**

- (a) The Appellate Court has the power to issue a writ of mandamus or prohibition when it is deemed necessary and proper to the complete exercise of its jurisdiction, or to prevent or remedy any act of the Trial Court beyond said Court's jurisdiction, or to cause the Trial Court to act where it unlawfully fails or refuses to act within its jurisdiction.
- (b) A party may file with the Tribal Court a petition for either extraordinary writ directed at the Chief Judge, which shall be forwarded to the Appellate Court within one (1) day after filing. The petition shall include:

- (1) The names or titles, addresses, and telephone numbers of the persons against whom relief is sought unless the Trial Court determines that including the address or telephone number of any person would place that person in physical jeopardy;
  - (2) A statement of the facts necessary to understand the issues presented;
  - (3) A statement of the issues and the relief sought;
  - (4) A statement of the reasons why the writ should issue; and
  - (5) Copies of any order, opinion, final judgment, or parts of the record essential to understanding the petition.
- (c) The petition shall be presented to and reviewed by the presiding judge of the Appellate Court or a designate. If a petition does not comply substantially with the requirements of this Rule, it shall be returned to the petitioner with a statement of the reasons for its return.
- (d) If the petition and exhibits are in order, the presiding judge of the Appellate Court or a designate shall order a copy of the petition and order be served, by certified or registered mail, return receipt requested on the appellee and the appellee's counsel, if any.
- (e) Within three (3) days of receipt of the petition, appellee or appellee's counsel may respond to the petition in writing or may request Oral argument.
- (f) Within seven (7) days after the petition is filed or within four (4) days after receiving appellee's written response or request for Oral Argument, the presiding judge of the Appellate Court or a designate shall determine whether the petition shall be granted or whether Oral Argument is necessary. If Oral Argument is deemed necessary, it shall be held within three (3) days of that determination.
- (g) The denial of a petition for extraordinary writ is not a final decision on the merits of a case.

#### **5.15B Interlocutory Review**

- (a) The Appellate Court may permit interlocutory review of a decision of the Trial Court if:
- (1) The outcome of the case would be conclusively determined by the issue;
  - (2) The matter appealed was collateral to the merits; and
  - (3) The matter was effectively unreviewable if immediate appeal were not allowed.

#### **5.16 Motions; where filed; contents; certification of service; responses; emergencies**

- (a) The Appellate Court has the power to issue orders necessary and proper to the complete exercise of its jurisdiction.
- (b) A party may file a motion not otherwise specified in these Rules with the Court clerk. All motions shall include:
  - (1) A statement of the relief sought;
  - (2) A statement of the grounds for the relief sought; and
  - (3) Arguments and affidavits or other documents in support of the motion.
- (c) The party requesting relief shall file with the Court clerk certification of service of the motion on all parties to the appeal and the Court clerk shall forward copies as required by Rule 10.7.
- (d) Within fifteen (15) days after being served, any party may file with the Court clerk a response to the motion and also shall file certification of service of the response on all parties to the appeal and the Court clerk shall forward copies as required by Rule 10.7.
- (e) The presiding judge of the Appellate Court may determine that a motion requires emergency action and issue a temporary order until the response is received and the Appellate Court can make a final determination.

#### **5.17 Filing and serving briefs; schedule; failure to file**

- (a) Unless the Appellate Court orders otherwise, within thirty (30) days after being served notice indicating that the record on appeal has been filed, the appellant shall file with the Court clerk an opening brief in support of the appeal or a notice to all parties stating that no brief will be filed.
- (b) Unless the Appellate Court orders otherwise, the appellee shall file an answer brief or a notice to all parties stating that no brief will be filed within thirty (30) days of service of appellant's brief or statement with the Court clerk. No additional fee for the filing of appellee's brief shall be charged.
- (c) Unless the Appellate Court orders otherwise, the appellant may file a reply brief within fifteen (15) days after being served a copy of the answer brief with the Court clerk. No other briefs shall be filed except as may be authorized or requested by the Appellate Court.

- (d) The party submitting a brief shall file with the Court clerk a certification of service of the brief upon counsel or, in the absence of counsel, upon the parties to the appeal. Service may be made personally or by mail.
- (e) If the appellant fails to file a brief within the time provided by this Rule, or as extended, the appellee may file a motion for dismissal of the appeal with the Court clerk who shall notify the Appellate Court within one (1) day. If an appellee fails to file a brief, the appellee may not be heard at oral argument except by permission of the Appellate Court.

#### **5.18 Form and content of briefs; *pro se* parties**

- (a) Briefs or statements must comply with Rule 10.7. A *pro se* party may request relief from complying with subsections (b)2, 8, and 9 of this Rule. The request for relief may be included in the *pro se* party's brief or statement.
- (b) Briefs shall include the following:
  - (1) A cover page stating the name of the Court, the numbers assigned to the case by the Trial Court and the Appellate Court, the name, address and phone number of the party (or their counsel) filing the brief, and the names and addresses of all other parties and of counsel where appropriate;
  - (2) A table of contents with page references, a table of cases alphabetically arranged, authorities relied upon including titles and page numbers, and the location in the brief by page where they are referenced;
  - (3) A brief statement of the case, not to exceed one page, which indicates the nature of the case, the course of the proceedings, and disposition in the Court below;
  - (4) A statement of the facts relevant to the issues presented for review with appropriate references to the record;
  - (5) An argument in support of the issues presented for review, with citations to cases, authorities, and the record, addressing all issues raised in appellant's Notice of Appeal; those issues not covered shall be considered as abandoned;
  - (6) A short conclusion precisely stating the relief sought, not to exceed one page;
  - (7) Pages measuring 8½" x 11", double spaced, with 1" margins and consecutively numbered;
  - (8) Parties referred to as appellant and appellee;

- (9) Copies of pertinent laws, Rules or regulations being reviewed attached as addenda, when the law is not Tribal law; and
- (10) Except by permission of the Appellate Court, principal briefs not to exceed twenty (20) pages and reply briefs not to exceed twelve (12) pages, exclusive of the table of contents, the table of citations and attachments.

#### **5.19 Pre-hearing conference and order**

- (a) The Appellate Court may direct the parties and their counsel to appear before the court or participate in a telephone conference call for a pre-hearing conference to consider settlement, simplify issues, or consider any other matters which may expedite the proceedings.
- (b) The Appellate Court shall issue an order that recites the action taken at the conference and the agreements made by the parties. When entered, the order will control all subsequent proceedings unless modified by the Appellate Court to prevent injustice.

#### **5.20 Oral argument; withdrawal of request; order**

- (a) Any party may request oral argument in writing within forty-five (45) days after Notice of Appeal is filed. The request must be filed with the Court clerk with certification of service on the other parties.
- (b) The requesting party may withdraw the request for oral argument and shall do so in writing no later than ten (10) days before the date of the scheduled hearing.
- (c) The Appellate Court shall issue its order setting the date, location, and time allowed to each party for oral argument. Unless the Appellate Court determines that additional time is warranted for good cause, the oral argument hearing shall be scheduled to occur no later than ninety (90) days from the date a Notice of Appeal was filed with the Court clerk and served on the parties to the case. The Appellate Court may designate such time and place for the hearing as it deems appropriate.

#### **5.21 Oral argument hearing; notice; request for postponement or additional time; telephone conference; procedure; failure to appear**

- (a) The Court clerk shall serve copies of the order setting oral argument on all parties as required by Rule 10.7 of these Rules within one (1) day after receiving it.
- (b) A request for postponement of the oral argument or for additional time shall be made by motion filed with the Court clerk at least fifteen (15) days in advance of the date set for hearing. Such requests shall not be granted unless the reasons supporting the request are compelling.



- (c) Oral argument may be ordered by telephone conference if the Appellate Court determines it is appropriate.
- (d) The presiding judge of the Appellate Panel shall determine the time allowed for oral argument.
- (e) At the hearing, the parties to the appeal may present any arguments raised in the briefs. The appellant shall begin the argument and may request a portion of the allocated time be reserved for rebuttal.
- (f) If appellant fails to appear or if neither party appears, the appeal may be dismissed or decided on the briefs and record on appeal.

## **5.22 Decision; content and form of judgment**

- (a) The Appellate Court may affirm the judgment or order as entered or modify it, reverse the decision in whole or in part, vacate the judgment or order and remand the case back to the Trial Court for further proceedings, or dismiss the case for failure of the appellate to comply with Court procedures or otherwise in the interest of justice, by majority vote.
- (b) The decision of the Appellate Court shall be issued in writing and shall be final, unless the Appellate Court determines that circumstances allow for an oral ruling from the bench after a recess at the conclusion of oral argument, in which case such decision shall be final at the time it is made and shall be followed by a written decision at a later date.
- (c) The Court clerk shall serve all parties with a copy of the opinion and judgment and file an affidavit of service.

## **5.23 Entry of judgment**

The Court clerk shall prepare and file the judgment following receipt of the opinion of the Appellate Court. Filing the judgment with the Appellate Court or a ruling from the bench constitutes entry of the judgment.

## **5.24 Costs of appeal; request for fees and costs**

- (a) The costs for appeal include preparing the transcript or recording, copying the record, serving notice, the premium paid for an appeal bond, and the fee paid for filing the appeal. All travel and per diem costs shall be borne by the litigants.
- (b) No later than fifteen (15) days after appeal judgment is filed, the prevailing party may file with the Court clerk a request for attorney fees and/or costs, which shall be served upon all parties.

- (c) The Appellate Court may determine and award attorney fees and costs to the prevailing party at its discretion, provided that the Court does not have jurisdiction to award any costs or attorney's fees against the Tribe, unless the Tribe has expressly waived its sovereign immunity for such awards.

#### **5.25 Voluntary dismissal; stipulation; motion**

- (a) The Appellate Court may issue an order dismissing the appeal on the motion of the appellant and upon such terms as may be agreed upon by the parties or fixed by the Court.
- (b) The Appellate Court may issue an order dismissing the appeal upon the filing of a stipulation for dismissal which specifies the terms as to payment of costs and fees due and is signed by all parties.

#### **5.26 Substitution of personal representative for a party**

The personal representative of a party who dies, is dissolved or leaves office during the proceedings may be substituted for the party upon motion.

#### **5.27 Rules by Appellate Court**

In all matters or cases not provided for by these Rules, the Appellate Court may regulate its practice in a manner consistent with these Rules and the administrative orders of the San Manuel Tribal Court.

#### **5.28 Facsimile; transmission of documents; responsibility of transmitting party; hard copy required**

- (a) The Court clerk may transmit documents by facsimile or other electronic transmission to Appellate Court judges after the documents have been properly filed.
- (b) The Appellate Court may transmit documents by facsimile or other electronic transmission and such documents shall have the full force and effect of the original documents on the date of transmission.
- (c) Hard copies of documents shall be mailed following transmission by facsimile or other electronic transmission.
- (d) It is the obligation of the sending party to confirm that the documents were properly sent and received.

#### **5.29 Judicial Signatures**

A judge may, by telephone or email, authorize the Court clerk to affix his or her signature to any document that requires it.

## **Title 6: Rules of Attorney and Advocate Admission and Conduct**

### **6.1 Introduction**

- (a) The Rules in this Title govern the admission and practice of law by attorneys, lay advocates and advocates (collectively referred to in these Rules as "counsel") before the Tribal Court, including both the Trial Court and the Appellate Court (the "Court"), and their professional conduct as officers of the Court. Any counsel admitted to, or engaging in the practice of law before the Court shall be subject to the Court's supervision and disciplinary jurisdiction and these Rules. These Rules are intended to provide appropriate standards for counsel with respect to their practice of law including, but not limited to their relationship with clients, the general public, other members of the legal profession, the Court and agencies of the Tribe.
- (b) A proceeding brought against counsel under these Rules shall be deemed as an inquiry to determine the fitness of an officer of the Court to continue in their capacity as counsel. The purpose of such proceeding is to protect the public and the Court from counsel who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties. Further, these Rules are intended to provide for a just determination of complaints alleging misconduct on the part of counsel and misunderstandings between counsel and their clients. These Rules shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense, delay and inconvenience.

### **6.2 Admission to Practice**

#### **(a) Unauthorized Practice**

With the exception of certain matters engaged in alternative dispute resolution, no person shall undertake legal representation of a matter within the jurisdiction of the Court without first being admitted to practice before said Court by becoming a member of the San Manuel Tribal Bar. No member of the San Manuel Tribal Bar shall aid any person or entity in the unauthorized practice of law.

#### **(b) Qualifications for Admission to the Tribal Bar**

- (1) Attorneys. An attorney who is admitted to practice in the State of California or before a court of the United States is eligible for admission to practice before the Court so long as such attorney:

  - (A) Completes and files, with the applicable fee, an application for admission to practice, and a renewal thereof on an annual basis;

- (B) Certifies that he or she is familiar with the San Manuel Judicial Code, the San Manuel Formal Rules of Evidence, the San Manuel Rules of Civil Procedure, the San Manuel Rules of Court and the basic principles of federal Indian law;
  - (C) Has not been convicted in any court of a felony; and
  - (D) Makes an oath to act as an officer of the Court, to uphold Tribal laws and the San Manuel Rules of Court, to conform to the highest standards of ethical conduct required of him or her by the Court.
- (2) Lay Advocates. A member of the Tribe, at least 21 years old, who is not an attorney, may be admitted to practice before the Court so long as such Tribal Member:
- (A) Completes and files, with the applicable fee, an application for admission to practice, and a renewal thereof on an annual basis;
  - (B) Certifies that he or she possesses good moral character and moral fitness to represent individuals before the Court and provides two supporting affidavits from individuals familiar with his or her background, integrity, honesty, moral character, judgment, courtesy and self-reliance;
  - (C) Certifies that he or she is familiar with the San Manuel Judicial Code, the San Manuel Formal Rules of Evidence, the San Manuel Rules of Civil Procedure, the San Manuel Rules of Court and the basic principles of federal Indian law;
  - (D) Has not been convicted in any court of a felony; and
  - (E) Makes an oath to act as an officer of the Court, to uphold Tribal laws and the San Manuel Rules of Court, to conform to the highest standards of ethical conduct required of him or her by the Court.
- (3) Advocate. The Chief Judge, in his or her discretion, may admit an attorney admitted to practice in another state other than California, so long as such person:
- (A) Completes and files, with the applicable fee, an application for admission to practice, and a renewal thereof on an annual basis;
  - (B) Is in good standing in all jurisdictions in which the attorney is admitted to practice;

- (C) Certifies that he or she is familiar with the San Manuel Judicial Code, the San Manuel Formal Rules of Evidence, the San Manuel Rules of Civil Procedure, the San Manuel Rules of Court, and the basic principles of federal Indian law;
- (D) Has not been convicted in any court of a felony; and
- (E) Makes an oath to act as an officer of the Court, to uphold Tribal laws and Court Rules, and conform to the highest standards of ethical conduct required of him or her by the Court.

**(c) Admission Form and Fee**

The form to be used for applications for admission to the San Manuel Tribal Bar, and any renewal thereof, and the annual bar fee shall be approved by the Judiciary Committee.

**(d) Misstatements on Admission**

In connection with a person's application for admission to the San Manuel Tribal Bar, such person shall not make any statement which the person knows or should know is false and misleading, nor shall the person fail to disclose any fact or information which the person knows or should know is material to such application. Violation of this provision is grounds for disbarment.

**(e) Admission Decision**

The Chief Judge shall admit counsel to the San Manuel Bar. Attorney applicants will be admitted if they meet the eligibility requirements set forth in paragraph (b)(1) of this Rule. Lay advocate and advocate applicants may be admitted, at the discretion of the Chief Judge, if they meet the eligibility requirements set forth in paragraphs (b)(2) and (b)(3) respectively. The Chief Judge has the discretion to admit a lay advocate subject to such terms and conditions as the Chief Judge deems appropriate under the circumstances.

**(f) Term of Admission and Renewal**

Admission to the San Manuel Tribal Bar is for a term of one (1) calendar year. Counsel who fails to submit a renewal application by February 1 of each calendar year following initial admission, or fails to pay the applicable annual Bar fee by said date, will be deemed to have voluntarily resigned from the San Manuel Tribal Bar and will not be eligible to practice in the Court until he or she is re-admitted by the Chief Judge after submitting a renewal application and the applicable fee.

**(g) Subject to Rules**

All counsel admitted to practice pursuant to this Rule shall be subject to the Rules in this Title.

### **6.3 Rules of Conduct**

#### **(a) Definitions**

The following definitions apply to this Title:

- (1) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances, traditions and customs.
- (2) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.
- (3) "Counsel" means an attorney, lay advocate or other advocate admitted to practice in the Court.
- (4) "Firm" or "law firm" denotes an attorney or attorneys in a private firm, attorneys employed in the legal department of a corporation or other organization and attorneys employed in legal services organization or for public or tribal agencies.
- (5) "Fraud" or "fraudulent" denotes conduct having the purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.
- (6) "Knowingly," "known," "should have known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (7) "Partner" denotes a member of a partnership or a shareholder in a law firm organized as a professional corporation.
- (8) "Reasonable" or "reasonably" when used in relation to conduct by counsel denotes the conduct of a reasonably prudent and competent counsel.
- (9) "Reasonable belief" or "reasonably believes" when used in reference to counsel denotes that counsel believes the matter in question and that the circumstances are such that the belief is reasonable.
- (10) "Reasonably should know" when used in reference to counsel denotes that counsel of reasonable prudence and competence would ascertain the matter in question.

- (11) "Substantial" when used in reference to degree or extent denotes a material of clear and weighty importance.

**(b) Competence**

- (1) Counsel shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (3), (4) and (5) below, and shall consult with the client as to the means by which they are pursued. Counsel shall abide by a client's decision whether to accept an offer of settlement of a matter.
- (2) Counsel's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (3) Counsel may limit the objectives of the representation if the client consents after consultation.
- (4) Counsel shall not advise a client to engage, or assist a client, in conduct that counsel knows is criminal or fraudulent, but counsel may discuss the legal consequences or any proposed course of conduct with a client and may support or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
- (5) When counsel knows that a client expects assistance not permitted by the Rules of professional conduct or other law, counsel shall consult with the client regarding the relevant limitations on counsel's conduct.
- (6) Counsel shall provide competent representation to a client. Counsel shall not:
  - (A) Handle a legal matter which he or she knows or should know that he or she is not competent to handle without associating with counsel who is competent to handle it;
  - (B) Handle a legal matter without preparation adequate in the circumstances;  
or
  - (C) Neglect a legal matter entrusted to the counsel.

**(c) Diligence**

Counsel shall act with reasonable diligence and promptness in representing a client.

**(d) Communication**



Counsel shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Counsel shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**(e) Confidentiality of Information**

- (1) Counsel shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are implicitly authorized in order to carry out the representation, and except as stated in paragraphs (2), (3), and (4) below.
- (2) Counsel shall reveal such information to the extent counsel reasonably believes necessary to prevent the client from committing a criminal act that counsel believe is likely to result in death or substantial bodily harm.
- (3) Counsel may reveal such information to the extent counsel reasonably believes necessary to:
  - (A) Prevent the client from committing a criminal act that counsel believes is likely to result in substantial injury to the financial property or interest or property of another; and
  - (B) Rectify the consequences of a client's criminal or fraudulent act in the commission of which counsel's services had been used.
- (4) Counsel may reveal such information to establish a claim or defense on behalf of counsel in a controversy between counsel and the client, to establish a defense to a criminal charge or civil claim against counsel based upon conduct in which the client was involved, or to respond to allegation in any proceeding concerning counsel's representation of the client.
- (5) Counsel shall exercise reasonable care to prevent employees, associates and others whose services are utilized by counsel from disclosing or using confidences or secrets of a client, except that counsel may reveal information allowed by paragraphs (2), (3) and (4) above through an employee.

**(f) Conflict of Interest**

- (1) Counsel shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (A) Counsel reasonably believes the representations will not adversely affect the relationship with the other client; and
  - (B) Each client consents, in writing, after consultation.
- (2) Counsel shall not represent a client if the representation of that client may be materially limited by counsel's responsibilities to another client or to a third person, or by counsel's own interests, unless:
  - (A) Counsel reasonably believes the representation will not be adversely affected; and
  - (B) The client consents, in writing, after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
- (3) Counsel shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  - (A) The transaction and terms on which counsel acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
  - (B) The client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
  - (C) The client consents in writing thereto.
- (4) Counsel shall not use information relating to representation of a client to the disadvantage of the client unless the client consents, in writing, after consultation.
- (5) Counsel shall not prepare an instrument giving counsel or a person related to counsel as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donor.
- (6) Prior to the conclusion of representation of a client, counsel shall not make or negotiate an agreement giving counsel literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

- (7) Counsel shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
  - (A) Counsel may advance Court costs and expenses of litigation, provided the client remains ultimately responsible for such expenses; and
  - (B) Counsel representing an indigent client may pay Court costs and expenses of litigation on behalf of the client.
- (8) Counsel shall not accept compensation for representing a client from one other than the client unless:
  - (A) The client consents in writing after consultation;
  - (B) There is no interference with counsel's independence of professional judgment or with the client-counsel relationship; and
  - (C) Information relating to representation of a client is protected as required by Rule 2.3(e).
- (9) Counsel who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients unless each client consents in writing after consultation, including disclosure of the existence and nature of all the claims involved and of the participation of each person in the settlement.
- (10) Counsel shall not make an agreement prospectively limiting counsel's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settles a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.
- (11) Counsel related to another counsel as a parent, child, sibling or spouse shall not represent a client in an action where the adverse party is represented by the related counsel, except upon written consent by the client after consultation regarding the relationship.
- (12) Counsel shall not acquire a proprietary interest in the cause of action or subject matter of litigation counsel is conducting for client, except that counsel may:
  - (A) Acquire a lien granted by law to secure counsel's fee or expenses; and

(B) Contract with a client for a reasonable contingent fee in a civil case.

**(g) Conflict of Interest: Former Client**

- (1) Counsel who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents, in writing, after consultation.
- (2) Unless the former client consents after consultation, counsel shall not knowingly represent a person in the same or a substantially related matter in which a firm with which counsel formerly was associated has previously represented a client whose interests are materially adverse to that person, and about whom the lawyer had acquired information protected by paragraph (e) above.
- (3) Counsel who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
  - (A) Use information relating to the representation to the disadvantage of the former client except as permitted or required by these Rules, or when the information has become generally known; or
  - (B) Reveal information relating to the representation except as permitted or required by these Rules.

**(h) Imputed Disqualification: General Rule**

- (1) While counsel is associated in a firm, other counsel of the firm shall not knowingly represent a client when any one of them practicing alone would be prohibited from doing so by these Rules.
- (2) When counsel becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that counsel, or a firm with which counsel was associated, is disqualified under these Rules, unless:
  - (A) Disqualified counsel is screened from any participation in the matter and is apportioned no part of the fee for the matter; and
  - (B) Written notice is promptly given to the presiding judge to enable the judge to ascertain compliance with the provisions of this Rule.

- (3) When counsel has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated counsel, and not currently represented by the firm, unless:
  - (A) The matter is the same or substantially related to that in which the formerly associated counsel represented the client; and
  - (B) Any counsel remaining in the firm has information protected by these Rules that is material to the matter.
- (4) A disqualification prescribed by this Rule may be waived, in writing, by the affected client.

**(i) Client under a Disability**

- (1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of incompetence, lack of capacity, mental disability or for some other reason, counsel shall, as far as reasonably possible, and maintain a normal attorney-client relationship with the client.
- (2) Counsel may seek the appointment of a guardian or take other protective action with respect to a client only when counsel reasonably believes that the client cannot adequately act in the client's own interest.

**(j) Safekeeping Property**

- (1) Counsel shall hold property of clients or third persons that is in counsel's possession in connection with a representation separate from counsel's own property. All funds of the client paid to a counsel or law firm, other than advances for costs and expenses, shall be deposited in an interest bearing account in one or more identifiable banks, savings and loan associations, or credit unions maintained in the State in which the law firm is situated, and no funds belonging to counsel or the law firm shall be deposited therein except as provided in this Rule. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by counsel and shall be preserved for a period of five years after termination of the representation.
- (2) Upon receiving funds or other property in which a client or third person has an interest, counsel shall promptly notify the client or third person. Except as stated

in this Rule or otherwise permitted by law or by agreement with the client, counsel shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

- (3) When in the course of representation counsel is in possession of property in which both counsel and another person claim interest, the property shall be kept separate by counsel until there is an accounting and severance of their interest. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by counsel until the dispute is resolved.

**(k) Declining or Terminating Representation**

- (1) Except as stated in paragraph (3) below, counsel shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
  - (A) The representation will result in violation of the Rules of professional conduct or other applicable law;
  - (B) Counsel's physical or mental condition materially impairs counsel's ability to represent the client; or
  - (C) Counsel is discharged.
- (2) Except as stated in paragraph (3) below, counsel may withdraw from representing a client if withdrawal can be accomplished without material adverse effect to the interest of the client or if:
  - (A) The client persists in a course of action involving counsel's services that counsel reasonably believes is criminal or fraudulent;
  - (B) The client has used counsel's services to perpetrate a crime or fraud;
  - (C) The client insists upon pursuing an objective that counsel considers repugnant or imprudent;
  - (D) The client fails substantially to fulfill an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled;
  - (E) The representation will result in an unreasonable financial burden on counsel or has been rendered unreasonably difficult by counsel; or

- (F) Other good cause for withdrawal exists, as determined by the presiding judge(s).
- (3) When ordered to do so by the Court, counsel shall continue representation notwithstanding good cause for terminating the representation.
- (4) Upon termination of representation, counsel shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. Counsel may retain papers relating to the client to the extent permitted by applicable law.

**(l) Advisor**

In representing a client, counsel shall exercise independent professional judgment and render candid advice. In rendering advice, counsel may refer not only to law but to other considerations such as moral, economic, social, cultural, religious and political factors that may be relevant to the client's situation.

**(m) Intermediary**

- (1) Counsel may act as intermediary between clients if:
  - (A) Counsel consults with each client concerning the implications of the common representation, including the advantages and risks involved and the effect on the attorney-client privileges, and obtains each client's consent, in writing, to the common representation;
  - (B) Counsel reasonably believes that the matter can be resolved on terms compatible with the client's best interests, that each client will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and
  - (C) Counsel reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities counsel has to any of the clients.
- (2) While acting as intermediary, counsel shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.
- (3) Counsel shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in subparagraph (1) above is no longer satisfied. Upon

withdrawal, counsel shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

**(n) Evaluation for Use by Third Persons**

- (1) Counsel may, for the use of someone other than the client, undertake an evaluation of a matter affecting a client if:
  - (A) Counsel reasonably believes that making the evaluation is compatible with other aspects of counsel's relationship with the client; and
  - (B) The client consents after consultation, in writing.
- (2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is protected under these Rules.

**(o) Meritorious Claims and Contentions**

Counsel shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

**(p) Expediting Litigation**

Counsel shall make reasonable efforts to expedite litigation consistent with the interests of the client.

**(q) Candor toward the Court**

- (1) Counsel shall not knowingly:
  - (A) Make a false statement of material fact or law to the Court;
  - (B) Fail to disclose a material fact to the Court when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
  - (C) Fail to disclose to the Court legal authority in the controlling jurisdiction or principles of federal Indian law known to counsel to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (D) Offer evidence that counsel knows to be false. If counsel has offered material evidence and come to know of its falsity, counsel shall take reasonable remedial measures.



- (2) The duties stated in paragraph (1) above continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 2.3(e).
- (3) Counsel may refuse to offer evidence that counsel reasonably believes is false.
- (4) In an ex parte proceeding, counsel shall inform the Court of all material facts known to counsel which will enable the Court to make an informed decision, whether or not the facts are adverse.

**(r) Fairness to Opposing Party and Counsel**

Counsel shall not:

- (1) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. Counsel shall not advise or assist another person to do any such act;
- (2) Falsify evidence, advise or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (3) Knowingly disobey an obligation under the Rules of Court except for an open refusal based on an assertion that no valid obligation exists;
- (4) In pre-trial procedure, fail to follow scheduling orders, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (5) In trial, allude to any matter that counsel does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant; or
- (6) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  - (A) The person is a relative to the first degree or an employee or other agent of a client; and
  - (B) Counsel reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.
- (7) Present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

**(s) Impartiality and Decorum of the Court**

- (1) Counsel shall not:
  - (A) Seek to influence a judge or other official by means prohibited by law;
  - (B) Communicate ex parte with a judge except as permitted by law; or
  - (C) Engage in conduct intended to disrupt the Court.

**(t) Trial Publicity**

- (1) Counsel and Court personnel shall not make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if counsel knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.
- (2) A statement referred to in paragraph (1) above ordinarily is likely to have a substantial likelihood of materially prejudicing an adjudicative proceeding when the statement relates to:
  - (A) The character, credibility, reputation or criminal record of a party, witness, or the identity of a witness, or the expected testimony of a party or witness;
  - (B) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
  - (C) Information counsel knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
  - (D) The fact that a defendant has been charged with a crime under state or federal law, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until proven guilty.
- (3) Notwithstanding paragraphs (1) and (2) (A-D), counsel involved in the investigation or litigation of a matter may state without elaboration:
  - (A) The general nature of the claim or defense;
  - (B) The information contained in a record available to the general public;

- (C) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;
- (D) The scheduling or result of any step in litigation;
- (E) A request for assistance in obtaining evidence and information necessary thereto; and
- (F) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exist the likelihood of substantial harm to an individual or to the public interest.

**(u) Legal Counsel as Witness**

- (1) Counsel shall not act as an advocate at a trial in which counsel is likely to be a necessary witness except where:
  - (A) The testimony relates to an uncontested issue;
  - (B) The testimony relates to the nature and value of legal services rendered in the case; or
  - (C) Disqualification of counsel would work substantial hardship on the client.

**(v) Truthfulness in Statements to Others**

- (1) In the course of representing a client, counsel shall not knowingly:
  - (A) Make a false statement of material fact or law to a third person; or
  - (B) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 2.3(e).

**(w) Communication with Person Represented by Counsel**

In representing a client, counsel shall not communicate about the subject of the representation with a party counsel knows to be represented by another counsel in the matter, unless counsel has the written consent of the other counsel or is authorized by law to do so.

**(x) Dealing with Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, counsel shall not state or imply that counsel is disinterested, when counsel knows or reasonably should know that the unrepresented person misunderstands counsel's role in the matter. Counsel shall make reasonable efforts to correct the misunderstanding.

**(y) Respect for the Rights of Third Persons**

In representing a client, counsel shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

**(z) Communications Concerning Services**

- (1) Counsel shall not make any false or misleading statement about him or herself or about his or her services. A communication is false or misleading if it:
  - (A) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading (e.g., a lay advocate should disclose that they are not a licensed attorney);
  - (B) Is likely to create an unjustified expectation about the results counsel can achieve, or states or implies that counsel can achieve results by means that violate these Rules, Tribal law or other applicable law; or
  - (C) Compares counsel's services with other counsel's services, unless the comparison can be factually substantiated.

**(aa) Advertising.**

- (1) Counsel shall not initiate personal or live telephone contact, including telemarketing contact, with a prospective client for the purpose of obtaining professional employment, except in the following circumstances:
  - (A) If the prospective client is a close friend, relative, former client or one whom counsel reasonably believes to be a client;
  - (B) Under the auspices of a public or charitable legal services organization; and
  - (C) If the prospective client is a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.

- (2) Counsel shall not contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment if:
  - (A) Counsel knows or reasonably should know that the physical, emotional or mental health of the person is such that the person could not exercise reasonable judgment in employing counsel;
  - (B) It has been made known to counsel that the person does not want to receive communications from counsel;
  - (C) The communication involves coercion, duress, or harassment; or
  - (D) The written communication concerns a specific matter and counsel knows or reasonably should know that the person to whom the communication is directed is represented by counsel in the matter.

**(bb) Fees**

- (1) Counsel shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, counsel of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:
  - (A) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (B) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by counsel;
  - (C) The fee customarily charged in the locality for similar legal services;
  - (D) The amount involved and the results obtained;
  - (E) The time limitations imposed by the client or by the circumstances;
  - (F) The nature and length of the professional relationship with the client;
  - (G) The experience, reputation, and ability of counsel(s) performing the services; and
  - (H) Whether the fee is fixed or contingent.

- (2) When counsel has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
- (3) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (4) below or by applicable law. A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined. Upon conclusion of a contingent-fee matter, counsel shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show the remittance to the client and the method of its determination.
- (4) Counsel shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter.
- (5) A division of a fee between counsel who are not in the same firm may be made only if the client is advised of and does not object to the participation of all counsel involved; and the total fee is reasonable.

**(cc) Disciplinary Matters**

- (1) Counsel in connection with a disciplinary matter shall not:
  - (A) Knowingly make a false statement of material fact; or
  - (B) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 2.3(e).

**(dd) Statements**

Counsel shall not make a statement that counsel knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge or of a candidate for appointment to judicial office.

**(ee) Affirmative Duty to Report**

Counsel has an affirmative duty to report any conviction and any order of discipline pertaining to counsel, from any jurisdiction within thirty (30) days of said conviction or order.

**(ff) Reporting Professional Misconduct**

- (1) Counsel having knowledge that another counsel has committed a violation of these Rules that raises a substantial question as to that counsel's honesty, trustworthiness or fitness as counsel in other respects, shall inform the Chief Judge.
- (2) Counsel having knowledge that a judge has committed a violation of ethical Rules applicable to judges set forth in the Judicial Code, the San Manuel Rules of Court or other Tribal law that raises a substantial question as to the judge's fitness for office shall inform the Judiciary Committee.
- (3) This Rule does not require disclosure of information otherwise protected by Rule 2.3(e).

**(gg) Misconduct**

It is misconduct for counsel to:

- (1) Violate or attempt to violate the Rules in this Title, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) Commit a criminal act that reflects adversely on counsel's honesty, trustworthiness or fitness to serve as counsel in other respects;
- (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (4) Engage in conduct that is prejudicial to the administration of justice;
- (5) State or imply an ability to influence improperly a government agency or official;  
or
- (6) Knowingly assist a judge in conduct that is a violation of the ethical Rules applicable to judges set forth in the Judicial Code, the San Manuel Rules of Court or other Tribal law.

**(hh) Jurisdiction**

Counsel admitted to practice in this jurisdiction are subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere. The Rules in this Title are not intended to preempt or supersede any state authority to discipline counsel for any conduct prohibited by this Title.

**6.4 Disciplinary Procedures**

**(a) Disciplinary Process**

- (1) Any claimed violation of the Rules in this Title, by counsel, may be reported in writing to the Chief Judge.
- (2) The Chief Judge shall review the complaint and determine whether or not to proceed with the disciplinary process. If the Chief Judge decides to proceed, written notice of such complaint shall be provided to counsel against whom the complaint is filed. Counsel shall have a period of fifteen (15) days from the date of the notice within which to respond to the complaint.
- (3) The Chief Judge, in consultation with one (1) other judge of the Court, shall determine whether or not there is probable cause to believe that a violation of the Rules in this Title has been committed. Such determination shall be made within forty-five (45) days of the date the counsel's response is due. Both the complainant and counsel shall receive written notice of such determination by the Chief Judge, and the reasons therefore.
- (4) When a determination has been made by the Chief Judge to not proceed or a determination has been made that there is no probable cause that a violation of the Rules in this Title has been committed, the matter shall be closed, and shall be sealed until further order of the Court.
- (5) When a determination has been made that there is probable cause that a violation of the Rules in this Title has been committed, the Court shall conduct a hearing with a panel to consist of three (3) judges of the Court, one of said judges having not made the determination of probable cause. The Court shall provide notice of such hearing to all parties to the complaint, setting forth the date, time and place at which the hearing will be conducted. Such hearing shall be closed to the public and subject to the following:
  - (A) Continuances may be granted in the discretion of the Court for good cause shown;
  - (B) Any motions filed in the matter shall be filed no later than seven (7) days in advance of the date upon which the complaint is to be heard;
  - (C) Any oral or documentary evidence may be received by the Court as may be consistent with the San Manuel Rules of Court, the San Manuel Formal Rules of Evidence or the San Manuel Rules of Civil Procedure but the Court shall exclude irrelevant, immaterial or unduly repetitious evidence;
  - (D) When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;



- (E) Documentary evidence may be received in form of copies or excerpts if the original is not readily available. Upon reasonable and timely requests, the parties may be given an opportunity to compare the copy to the original;
  - (F) Parties may be represented by counsel, at their own expense; and
  - (G) Any of the parties or their counsel may conduct direct and cross-examination of witnesses.
- (6) After the close of the hearing, the judicial panel shall render its decision within thirty (30) Court Days. Upon completion of the hearing and rendering of a decision, the matter shall be deemed conclusively determined.
  - (7) The Court shall have the power to take any of the following action with respect to counsel determined to have violated the Rules in this Title after a hearing duly held:
    - (A) Privately reprimand such counsel;
    - (B) Publicly reprimand such counsel;
    - (C) Impose monetary fines against such counsel;
    - (D) Suspend counsel from the San Manuel Tribal Bar for a definite period of time; or
    - (E) Order the disbarment of counsel.
  - (8) For any violation of these Rules occurring before the Court, the judge observing such violation may take immediate action concerning such violation and shall then refer such matter to the Chief Judge in accordance with the procedure set forth herein.
  - (9) The Chief Judge shall transmit a certified copy of the order imposing discipline, except an order of private reprimand, on counsel resulting from the disciplinary proceedings herein to the disciplinary authority of any other jurisdiction in which the disciplined counsel is licensed or authorized to practice.

**(b) Reciprocal Discipline**

- (1) Upon the receipt of a certified copy of an order that counsel admitted to practice before the Court has been subject to discipline in another jurisdiction (including any tribal, state or federal court or any tribal, state or federal administrative body or agency), the Court shall enter an order of notice containing a copy of the order

from the other jurisdiction and directing the respondent counsel to inform the Court within thirty (30) days from service of the order of notice of any claim that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefore. The Court Clerk shall cause this order of notice to be served upon the respondent counsel by registered or certified mail with restricted delivery and return receipt requested.

- (2) In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline to be imposed by the Court may, but need not, be deferred.
- (3) Upon the expiration of thirty (30) days from service of the notice under paragraph (1) above, the Court, after reasonable notice and hearing, may enter such order as the evidence warrants and may impose the identical discipline unless the respondent counsel established, or the Court concludes, that:
  - (A) The procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard;
  - (B) There was significant infirmity of proof establishing the misconduct;
  - (C) Imposition of the same discipline would result in grave injustice; or
  - (D) The misconduct established does not justify discipline under these Rules.

**(c) Conviction of Crimes**

- (1) Upon notice of counsel's conviction of a crime by any jurisdiction, the Court shall, if satisfied that the crime demonstrates unfitness to practice law, enter an order to show cause why counsel should not be immediately suspended from the practice of law, regardless of the pendency of an appeal of the conviction, pending final disposition of any disciplinary proceeding affording the counsel opportunity to be heard, may make such order of suspension as may be advisable in the interest of the tribal community and/or the public, the San Manuel Bar and the Court. The Court may, in its discretion, choose to defer the hearing on the order to show cause until all appeals from the conviction are concluded.
- (2) A certificate of final judgment of conviction of counsel for any crime shall be conclusive evidence of the commission of a crime in any disciplinary proceeding based upon the conviction subject to the provisions of paragraph (3) below.
- (3) Counsel suspended hereunder shall be reinstated immediately upon the filing of a certificate that the underlying conviction for a crime has been reversed or set aside. The reinstatement need not terminate any disciplinary proceeding then pending against counsel.

## **Title 7: RULES OF JUDICIAL CONDUCT**

### **7.1 Scope of Rules**

The Rules of Judicial Conduct establish the standard that governs the conduct of all San Manuel Tribal Court Judges. These Rules are not intended to be an exhaustive guide to judicial conduct and judges should avoid all other activities that could appear improper. These Rules are to be applied consistently with the enacted laws of the San Manuel Band of Mission Indians, Rules of Court, decisional law, and in the context of all relevant circumstances.

### **7.2 Applicability of Rules**

The Rules of Judicial Conduct apply to any person, whether or not an attorney, who is an officer of the San Manuel Tribal Court and is performing judicial functions. A person is an officer of the San Manuel Court if that person is serving in a paid or appointed Court position or has been requested or designated to perform a duty by the Court. This Rule does not apply to plaintiffs, defendants or attorneys who appear before the Court related to a cause of action.

### **7.3 Integrity and Independence of the Judiciary**

- (a) A judge shall uphold the integrity and independence of the judiciary. An independent and honorable judiciary is essential to justice in the tribal community. A tribal judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.
- (b) Judges shall maintain separation between their judicial functions and the functions of the Tribe's governing body, and shall avoid any contact or duty that violates such a separation.
- (c) A judge shall not serve as an elected governmental official of the San Manuel Band of Mission Indians, nor accept appointment to any other tribal position with the San Manuel Band of Mission Indians during the judge's term on the Court.

### **7.4 Impropriety and the Appearance of Impropriety**

- (a) A judge shall respect and comply with the laws of the San Manuel Band of Mission Indians and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary.

- (b) A judge shall not allow family, social, political or other relationships to influence his or her judicial conduct.
- (c) A judge shall not attempt to use the prestige of his or her judicial office to advance the private interests of the judge and/or others nor shall he or she convey the impression that anyone has special influence on him or her as judge; however, a judge may refer to his or her position while engaged in the service of the legal profession so long as the judge makes clear that his or her statements and position are not made as a representative of the Court or the San Manuel Band of Mission Indians.
- (d) A judge shall not testify voluntarily as a character witness in a cause of action before the San Manuel Tribal Court.
- (e) A judge should not allow activity as a member of an organization to cast doubt on the judge's ability to perform the function of the office in a manner consistent with the San Manuel Band of Mission Indians Rules of Judicial Conduct, the laws of the San Manuel Band of Mission Indians, and the Constitutions of the San Manuel Band of Mission Indians and United States. A judge should be particularly cautious with regard to membership activities that discriminate, or appear to discriminate, on the basis of race, gender, or other protected personal characteristic. Nothing in this section should be interpreted to diminish a judge's right to the free exercise of religion.

#### **7.5 Performance of Duties Impartially and Diligently**

- (a) A judge shall perform the duties of the office impartially and diligently. The judicial duties of the judge include all the duties of the office as prescribed by the enacted laws of the San Manuel Band of Mission Indians. In the performance of these duties, the following standards apply:
  - (1) Adjudicative responsibilities:
    - (A) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
    - (B) A judge shall adhere to the laws of the San Manuel Band of Mission Indians. A judge shall not be swayed by partisan interests, public clamor, political pressure, or fear of criticism and shall resist influences on the Court by other tribal officials, governmental officials or any others attempting to improperly influence the judge.
    - (C) A judge shall be patient, dignified and courteous to litigants, witnesses, attorneys, advocates and others with whom he or she deals in his or her

official capacity and should require similar conduct of other persons in Court proceedings and those Court personnel who are subject to the judge's discretion and control.

- (D) A judge shall perform judicial duties without bias or prejudice and shall not permit others subject to the judge's control, to manifest, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others, however, this section does not preclude legitimate advocacy when any of these classifications are issues in a proceeding.
  - (E) A judge shall accord to every person who has a legal interest in a proceeding, or his or her legal counsel, a full right to be heard according to the Tribal law of the San Manuel Band of Mission Indians.
  - (F) A judge shall refrain from all out-of-court or other communications with parties, witnesses, tribal officials, agents or others concerning a pending proceeding unless all parties to the proceedings are present or represented. However, a judge may:
    - (i) Permit ex parte communication for scheduling, administrative, or emergency purposes, but only when circumstances necessitate it and in appropriate circumstances a hearing is scheduled as soon as practical and if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; or
    - (ii) Obtain the written advice of a disinterested expert on federal, state, or Tribal law, custom or tradition.
  - (G) A judge shall maintain order in the Court.
  - (H) A judge shall dispose promptly of the business of the Court.
  - (I) A judge shall not comment publicly on any proceeding pending in Court and shall also prohibit other Court personnel from making such public comment.
- (2) Administrative Responsibilities:
- (A) A judge shall discharge the judge's administrative responsibilities without bias or prejudice and shall maintain professional competence in judicial

administration. A judge should cooperate with other judges and Court officials in the administration of Court business.

- (B) A judge shall diligently discharge the judge's administrative responsibilities in an efficient and expeditious manner.
- (C) A judge shall require his or her staff and Court officials to observe high standards of honesty and diligence.

(3) Disqualification:

- (A) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including instances where:
  - (i) The judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
  - (ii) The judge served as attorney, advocate or personal representative in the matter before the Court within the past twelve months, or a person with whom the judge has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter within the past twelve months;
  - (iii) The judge knows that he or she individually (or any member of the judge's family) has a financial interest in the subject matter in controversy or in a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; and
  - (iv) The judge, his or her spouse, or a person in reasonably close family relationship to either of them, or the spouse of such a person is:
    - (a) A party to the proceeding, or an officer, director, or trustee of a party;
    - (b) Acting as an attorney or advocate in the proceeding;
    - (c) Known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
    - (d) To the judge's knowledge likely to be a material witness in the proceeding.

- (4) Alternative to Disqualification. A judge disqualified by the terms of section 3.5(a) (3) may, instead of withdrawing from the proceeding, disclose on the

record the basis of his disqualification. If based on such disclosure, the parties and attorneys, independently of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that his or her financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and attorneys, shall be incorporated in the record of the proceeding.

#### **7.6 Extra-Judicial Activities**

- (a)** A judge shall conduct all of the judge's extra-judicial activities so that they do not:
  - (1)** Cast reasonable doubt on the judge's capacity to act impartially as a judge;
  - (2)** Demean the judicial office; or
  - (3)** Demean the reputation of the San Manuel Band of Mission Indians or any of its economic enterprises.
- (b)** A judge, who is appointed to serve the San Manuel Tribal Court on a full-time basis, may write, lecture, teach and speak on legal and non-legal subjects, and engage in the arts, sports and other social and recreational activities of the San Manuel Band of Mission Indians or elsewhere if these activities do not interfere with the performance of his or her duties to the San Manuel Band of Mission Indians. Part-time judges are only subject to the restrictions enumerated in section 3.6(a) above.
- (c)** A judge shall not participate in any activity of an organization if it is likely that the organization will be involved in proceedings which would ordinarily come before him or her or will be involved in adversary proceedings in either the San Manuel Tribal Court or the San Manuel Court of Appeals.
- (d)** A judge shall not use or permit the use of the prestige of judicial office for political fund-raising or political party membership solicitation.
- (e)** If a judge is hired as a part time judge, such a tribal judge may accept other employment and participate in the operation of a business, including the practice of law, except that he or she shall not practice law either as a lawyer or an advocate in the San Manuel Tribal Court or the San Manuel Court of Appeals.
- (f)** Except as allowed by the laws of the San Manuel Band of Mission Indians, neither a judge nor a member of his or her family should accept a gift, bequest, favor or loan from anyone which would affect or appear to affect his or her impartiality in judicial proceedings, or on the judge's appearance of fairness.

- (g) A judge may represent the San Manuel Band of Mission Indians on ceremonial occasions or in connection with historical, educational and cultural activities.

### **7.7 Complaint Process**

In the event a complaint is filed against a judge for breach of the Rules of Judicial Conduct, a Review Panel comprised of the members of the Judiciary Committee, the Chief Judge and Presiding Appellate Court Judge shall constitute a tribunal in this matter. However, if the Chief Judge or Presiding Appellate Court Judge is the object of the complaint, another appointed judge shall be selected to serve in his or her stead. The Review Panel shall evaluate the complaint and if the panel determines there is probable cause, it shall set a date for and hold a hearing at which time the Review Panel shall decide whether to recommend the judge's removal. If the Review Panel decides that removal is proper, it shall transmit its recommendation for removal to the General Council.