

## 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.