

## Rules of Civil Procedure

### CHAPTER 28. SAN MANUEL RULES OF CIVIL PROCEDURE<sup>1</sup>

#### SMTC 28.1 General Provisions

28.1.1 **Scope.** These rules govern the procedure in the courts of the San Manuel Band of Mission Indians ("Tribal Court" or "Court") in all suits of a civil nature. The San Manuel Rules of Civil Procedure ("Rules of Civil Procedure") are separate and distinct from the San Manuel Rules of Court ("Rules of Court"). The Rules of Civil Procedure are statutory whereas the Rules of Court are promulgated by the San Manuel Judiciary Committee to govern the day to day administration, practice, and procedure of the Court, not inconsistent with statute, and pursuant to the San Manuel Tribal Code ("SMTC") Chapter 22, the San Manuel Judicial Code.

28.1.2 **Purpose.** This chapter is adopted by the San Manuel Band of Mission Indians, a federally recognized Indian tribe ("Tribe"), acting through its General Council in the exercise of its inherent sovereign power to enact laws and otherwise safeguard and provide for the health and welfare of the Tribe and its citizens, pursuant to the San Manuel Articles of Association, Article VI.

28.1.3 **Construction.** These Rules of Civil Procedure shall be liberally construed and administered to secure the just, speedy and inexpensive determination of every action. The Rules of Civil Procedure shall supersede conflicting Rules of Court.

28.1.4 **One Form of Action.** There shall be one form of action known as a "civil action."

28.1.5 **Collateral References.** Compliance with the Federal Rules of Civil Procedure or the California Code of Civil Procedure is not required in Tribal Court proceedings. Any procedure or matter not specifically set forth herein may be handled in accordance with the Federal Rules of Civil Procedure where not in conflict with San Manuel Tribal law or the provisions of this Chapter. Federal or State rules and/or case law may be cited to as persuasive authority where the process or matter furthers fair and efficient court process, but shall not operate to effectively amend this Chapter or as binding precedent in unrelated future cases.

28.1.6 **No Jury Trial.** All civil matters in the Tribal Court shall be heard and determined by a San Manuel Tribal Court Judge ("Judge"). There shall be no jury trials.

#### SMTC 28.2 Commencement of Action; Service of Process; Pleadings; Motions and Orders

##### 28.2.1 Commencement of Action.

(a) **Commencement of a Civil Action.** A civil action is commenced by filing a written complaint with the Clerk of the Court ("Clerk") together with appropriate filing fees pursuant to SMTC 28.2.7.

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<sup>1</sup> Adopted by the General Council on September 26, 2007. Amended on November 8, 2016.

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(b) **Filing with the Court Defined.** All pleadings and documents shall be filed in or with the Office of the Clerk of the Court. Filing at any other location than the Office of the Clerk of the Court is of no force or effect.

(c) **Summons.** Upon filing the complaint, the Clerk will issue a summons to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(d) **Time.**

(1) **Computation.**

(a) "Holiday" shall mean Saturday, Sunday and any legal holiday observed by the Tribe.

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

(c) In computing any period of time set forth herein, "day" shall mean calendar day, unless specifically stated otherwise.

(d) The day upon which the period is to commence shall not be counted, and the last day of the period shall be counted. If the time period is under seven (7) days, Holidays shall not be counted.

(e) Any period which would otherwise end on a Holiday will be deemed to end on the next Court Day.

(2) **Enlargement.** The Court for good cause may enlarge the prescribed period of time within which any required act may be done.

(3) **Service by Mail.** Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time.

### 28.2.2 Service of Process.

The plaintiff is responsible for service of summons and complaint. The plaintiff shall cause to be personally served on the defendant(s) a copy of the summons and complaint and shall instruct the person serving the summons and complaint on the defendant(s) to fill out a proper proof of service. The original proof of service shall be filed with the Clerk after service.

(a) **Effective Service.** The proof of service must be returned to the Clerk within sixty (60) days of its issuance or the action will be dismissed as a non-suit. The Court may extend that time an additional thirty (30) days upon a showing of good cause by the plaintiff. Such service may be made by means of certified mail, return receipt requested, only where personal service is not possible or where the defendant resides outside the exterior boundaries of the San Manuel Indian Reservation.

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(b) **Publication.** Upon a showing by the plaintiff to the Court that diligent efforts were made to serve the complaint on the defendant and that for sufficient reasons service could not be made, the Judge may allow service to be made by prominently posting copies of the notice and complaint in two public places, as defined in the Rules of Court, on the Reservation for three (3) weeks and in a newspaper of general circulation in the vicinity of the Reservation for three (3) weeks. In such case the deadline for return of proof of service shall be not less than thirty (30) days from the date of first publication.

### 28.2.3 Pleadings.

There shall be a complaint and an answer; plus a responsive pleading shall be allowed whenever, by crossclaim, counterclaim or otherwise, a claim against a party is first stated, unless the Court shall otherwise order. The Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

(a) **Claims for Relief.** A pleading shall set forth a claim for affirmative relief and shall contain:

(1) A short, plain statement of the ground upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;

(2) A short, plain statement of the claim showing that the party is entitled to relief; and

(3) A demand for judgment stating the relief to which the party considers himself entitled. Such claim for relief can be in the alternative or several types of relief.

(b) **Defenses and Denials.** A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed, the claims of the adverse party shall be deemed denied.

(c) **General Content of Claims and Defenses.** Each statement or averment in a pleading shall be simply, concisely and directly stated but may be in alternative or hypothetical form, need not be consistent with one another and may be based on legal or equitable grounds or both.

(d) **Affirmative Defenses.** Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party mistakenly designates a defense as a counterclaim or vice versa, the court may treat the pleading as if it had been properly designated, if justice so requires.

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### (e) **Defenses and Objections.**

(1) When presented, a defendant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon him to answer or respond to the claim by way of pleading, unless the Court for good cause orders otherwise.

(2) **Motions.** Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until ten (10) days after the disposition of the motion by the Court. A reply to the response shall be served and filed by the moving party not less than five (5) days preceding the noticed or continued date of hearing, unless the Court for good cause orders otherwise.

### (f) **Counterclaim, Crossclaim or Third-Party Claim.**

(1) **Counterclaim.** A party against whom a claim is made may assert in his answer any claims he has against the opposing party and both claims shall be resolved at trial. A party must counterclaim against an opposing party when the claim arises out of the same transaction or occurrence that is the subject of the opposing party's claim and does not require the presence of third parties of whom the Court cannot acquire jurisdiction.

(2) **Crossclaim.** A party against whom a claim is made may assert any claim he has against a co-party and have such claim resolved at trial.

(3) **Amendment by Leave of Court.** When a pleader fails to make a counterclaim or crossclaim, the pleader may by leave of court set up the counterclaim or crossclaim by amendment, see SMTC 28.2.3(g).

(4) **Third-Party Claim.** A party against whom a claim is made may complain against a third-party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

### (g) **Amended and Supplemental Pleadings.**

(1) **Amendment before Trial.** A party may amend his pleadings once before the opposing party has replied or, if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date may be rescheduled if necessary. Other amendments shall be allowed only upon motion and order of the court.

(2) **At Trial.** When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings, at the Court's discretion and upon motion of the party.

(h) **Construction of Pleadings.** The Court shall construe all pleadings so as to do substantial justice.

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### (i) **Pleading Special Matters.**

(1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court.

(2) Fraud, Mistake, Condition of the Mind. In all pleadings of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other conditions of the mind of a person may be averred generally.

(3) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to plead generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(4) Official Document or Act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with San Manuel Tribal law.

(5) Judgment. In pleading a judgment or decision of a foreign court, judicial or quasi-judicial tribunal or of a board or officer, it is sufficient to aver the judgment or decision without setting forth the matter showing jurisdiction to render it.

(6) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(7) Special Damage. When items of special damages are claimed, they shall be specifically stated.

(j) **Discretion to Strike**. The Court may, upon motion, or at any time in its discretion and upon terms it deems proper:

- (1) Strike out any irrelevant, false, or improper matter inserted in any pleading; or
- (2) Strike out all or any part of any pleading not drawn or filed in conformity with these rules.

(k) **Statute of Limitations**. Except where applicable tribal law provides otherwise, no complaint shall be filed in a civil action unless the event shall have occurred within a three year period prior to the date of the filing of the complaint.

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### 28.2.4 Motions and Orders.

#### (a) Motions and Orders.

(1) **Motions.** An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial and shall set forth the relief or order sought and the grounds therefore stated with particularity.

(2) **Orders.** An order includes every direction of the Court whether included in a judgment or not and may be made with or without a notice to adverse parties and may be vacated or modified with or without notice.

(3) **Service of Motion and Orders.** A proof of service must be filed with the notice of motion stating that copies of the same were mailed or delivered to the opposing party.

#### (b) Hearings on Motions and Orders.

(1) A motion hearing is a pretrial proceeding and takes place when a party has asked the court to order that something be done in connection with a pending case. Hearings on motions are not automatic and may be requested by either party or ordered by the Court. Hearings will be set when oral argument would be helpful to the Court.

(2) Motions may be filed for the purposes of, but are not limited to:

(a) add or eliminate parties or causes of action;

(b) to amend pleadings;

(c) to prepare or simplify a case for trial; or

(d) to request judgment as a matter of law in the absence of material, disputed issues of fact pursuant to SMTC 28.3.3.

(3) A scheduled motions hearing may be automatically continued if the Judge before whom it was to be heard is unable to hear it on the day specified and no other Judge is available to hear it.

(c) **Civil Action Prerequisite to Order in Civil Matters.** No order in any civil matter shall issue unless a civil action has been commenced as provided in SMTC 28.2.1(a).

### 28.2.5 Notice of Hearings and Trials.

Notice of hearings and trials is to be provided at least five (5) days in advance if the parties are personally served and ten (10) days if notice is delivered by mail. When a time limit is counted from the time that notice is delivered to a person by mail, it shall be presumed that delivery takes place five (5) days after notice is mailed.

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### 28.2.6 Court Discretion.

The Court may change time periods set forth in this Chapter for good cause shown, with the exception of the statute of limitations period as provided in SMTC 28.2.3(k).

### 28.2.7 Filing Fee.

The filing fee for commencement of a civil action shall be no less than Two Hundred Dollars (\$200.00) and shall conform to the schedule of fees catalogued in the Rules of Court. The Tribe shall not be required to pay any filing fees to the Court.

Upon request, the Judge may waive Court fees and costs for a party who is unable to pay Court fees and costs.

## **SMTC 28.3 Parties; Intervention; Summary Judgment; Pretrial Proceedings;**

### 28.3.1 Parties.

(a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

(b) **Guardian Ad Litem.** When an infant or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

(c) **Joinder of Parties.** To the greatest extent possible given the limited jurisdiction of the Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

(d) **Substitution of Parties.** If a party dies or becomes incompetent or transfers his interest or is succeeded in some official capacity, a substitute party may be joined or substituted as justice requires.

### 28.3.2 Intervention.

A person may intervene and be treated in all respects as a party to an action in cases in which he has an interest that may be affected or where there is a question of law or fact common to a claim that he is litigating. The Tribe may intervene on its own motion in any proceeding in which the jurisdiction of the Court to adjudicate a matter before it has been formally called into question; but such participation in the proceeding pursuant to said intervention shall be limited to the issue of jurisdiction.

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### 28.3.3 Summary Judgment.

(a) **Timing; Notice and Hearings on Motions for Summary Judgment.** Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after sixty (60) days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance at the Court with or without notice and upon good cause shown may direct. Any motion for summary judgment shall be heard no later than thirty (30) days before the date of trial, unless the Court for good cause shown orders otherwise. Notice of the motion and supporting papers shall be served on all other parties to the action at least twenty-eight (28) days before the time appointed for hearing. However, if the notice is served by mail, the required twenty-eight (28) day period shall be increased by ten (10) days if the place of the address is outside the State of California but within the United States.

(b) **Supporting Evidence for Motions for Summary Judgment.** The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall be taken. The supporting papers shall include a separate statement setting forth, plainly and concisely, all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may, in the Court's discretion, constitute a sufficient ground for denial of the motion.

(c) **Opposition to Motions for Summary Judgment.** Opposition to the motion shall be served and filed not less than fourteen (14) days preceding the noticed or continued date of hearing, unless the Court, for good cause, orders otherwise. Where appropriate, the opposition shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken. Opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the Court's discretion, for granting the motion.

(d) **Reply to Opposition.** A reply to the opposition shall be served and filed by the moving party not less than five (5) days preceding the noticed or continued date of hearing, unless the Court, for good cause, orders otherwise.

(e) **Standard of Proof.** The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact, the Court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the Court and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the Court based on inferences reasonably deducible from the evidence, if

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contradicted by other inferences or evidence, which raise a triable issue as to any material facts.

(f) **Affidavits and Declarations.** Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence and shall show affirmatively that the affiant is competent to testify to the matter stated in the affidavits or declarations. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(g) **Summary Adjudication.** A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages or one or more issues of duty, if that party contends that the cause of action has no merit or that there are no affirmative defenses thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or there is no merit to a claim for damages, or that a party either owed or did not owe a duty to a plaintiff(s). A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(h) **Determination of Triable Controversies or Issues of Fact.** Upon the denial of a motion for summary judgment, on the ground there is a triable issue as to one or more material facts, the Court shall, by written order, specify one or more material facts raised by the motion as to which the Court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the Court shall, by written or oral order specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion which indicates that no triable issue exists. The Court shall also state its reasons for any other determination. The Court shall record this determination by written order.

(i) **No Attribution of Fault at Trial.** In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(j) **Appeal of Summary Judgment.** A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of an order pursuant to this section except the entry of summary judgment, a party may within ten (10) days after service upon him or her of a written notice of entry of the order, petition the San Manuel Court of Appeal for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five (5) days if the place of address is within the San Manuel Indian Reservation or the State of California. If the notice is served by mail, the initial period within which to file the petition shall be increased by ten (10) days if the place of address is outside the State of California. If the notice is served by facsimile transmission, express mail or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two (2) days. The Court may, for good cause shown and

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prior to the expiration of the initial period, extend the time for one additional period not to exceed ten (10) days.

(k) **Case Not Fully Adjudicated on Motion.** If on motion, under this Section, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts are actually and in good faith contested. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specific shall be deemed established and the trial shall be conducted accordingly.

(l) **Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary judgment is made and supported as provided in this Section, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(m) **When Affidavits are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(n) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable attorney's fees and any offending party or attorney may be adjudged guilty of contempt.

### 28.3.4 Pretrial Proceedings.

(a) **Pretrial Conference Hearings Defined.** The purpose of a conference hearing is to simplify the issues, eliminate frivolous claims or defenses, to discourage wasteful pretrial activities and to improve the quality of trial through preparation by discussing such things as settlement prospects, facts and issues not in dispute, evidence to be presented, and appropriate witnesses. Pretrial conferences are also necessary for planning for discovery. To encourage honest discussion, nothing said at a conference hearing shall be admitted in evidence. Conference hearings may, in the exercise of the Court's discretion, on request of a party or on the Court's own motion, be held off the record.

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(b) **Pretrial Conferences Hearing; Discovery Plan.** Conference hearings may be scheduled on a written request of one or more parties or on the Court's own initiative. If discovery is sought by any party, a pretrial conference is required for the purpose of developing a discovery plan. If such a hearing is scheduled, the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, as soon as practicable and at least fourteen (14) days before a scheduling conference is held.

(1) No formal discovery, including discovery from non-parties, shall be initiated by any party until after the meet and confer session pursuant to SMTC 28.3.4(b)(2), except by stipulation by all named plaintiffs and all named defendants who have been served or upon order of the Court.

(2) Unless otherwise ordered, no later than seventy-five (75) days after service of the summons and complaint upon all named defendants, lead trial counsel shall meet in person and confer for the purposes specified in this Section.

(c) **Required Disclosures.**

(1) **Initial Disclosures.** A party shall, without awaiting a discovery request, provide to the other parties:

(a) the name, address, and telephone number of each individual likely to have discoverable information relevant to the disputed facts;

(b) a copy of or a description and location of, all documents, data compilations and tangible things in the possession, custody or control of the party that are relevant to the disputed facts alleged with particularity in the pleadings;

(c) a computation of any damages claimed and making available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based; and

(d) any insurance agreement which may be used to satisfy part of a judgment which may be entered in the action.

(2) **Disclosure of Expert Testimony.** A party shall disclose to other parties the identity of any person who may be used at trial to present expert testimony and:

(a) with respect to a witness who is retained or specially employed to provide expert testimony, this disclosure shall be accompanied by a written report prepared and signed by the witness, containing a complete statement of all opinions to be expressed and the basis and reasons therefore; the data and other information considered by the witness in forming the opinions; any exhibits to be used to summarize or in support of the opinions; the qualifications of the witness; the compensation to be paid for the study and the testimony; and a list of any other cases in which the witness testified as an expert.

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(b) these disclosures shall be made at the times and in the sequence directed by the court.

(3) **Pretrial Disclosure.** A party shall provide to the other parties the following information regarding the evidence that it may present at trial:

(a) the name, address, and telephone number of each witness separately identifying those which the party expects to present and those which the party may call if the need arises;

(b) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and a transcript of the pertinent portions of the deposition testimony;

(c) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(4) **Form of Disclosure; Filing.** All disclosures under this subsection shall be made in writing, signed, served and promptly filed with the Court.

(5) **Signing.** Every initial or pretrial disclosure made pursuant to SMTC 28.3.4 shall be signed by the party, spokesperson or attorney of record. The signature constitutes a certification that to the best of signer's knowledge, information and belief formed after reasonable inquiry, the disclosure is complete and correct as of the time it is made.

### **SMTC 28.4 Discovery**

28.4.1 **Modified Rules of Discovery.** For claims for recovery under Seven Thousand Five Hundred Dollars (\$7,500.00), the Court may, at its discretion, or upon motion, use the modified rules of discovery, as set out in the Rules of Court.

28.4.2 **Scope of Discovery.** In general, parties may obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the pending action, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information need not be admissible at trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney or of any privileged matter.

28.4.3 **Methods of Discovery.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

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**28.4.4 Timing and Sequence of Discovery.** A party may not seek discovery from any source before the parties have met and conferred as required by SMTC 28.3.4(b)(2), unless the Court upon motion, for the convenience of the parties and witnesses and in the interests of justice, orders otherwise; methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay another party's discovery.

**28.4.5 Interrogatories.** Any party may serve upon any other party written interrogatories not exceeding twenty-five (25) 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.

### **28.4.6 Depositions Upon Oral Examination.**

(a) A party may take testimony of any person regarding any matter within the scope of SMTC 28.3.4(b), including an opposing party:

(1) **Without Leave of Court.** A person may take testimony without leave of court. The party desiring to take the deposition upon any person shall give at least ten (10) days notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined.

(2) **By Order of Court.**

(a) A person may file a motion seeking an order authorizing the petitioner to take the depositions of the persons to be examined. The petition shall contain the names of the persons to be examined, the facts that the petitioner desires to establish and the substance of the testimony that the petitioner expects to elicit.

(b) The moving party shall then serve a notice upon each person named in the motion and all other parties to the action, along with a copy of the motion for the order described in the motion. A notice by a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition. If a subpoena is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The notice shall state the method by which testimony shall be recorded. The notice shall be served in the manner provided in SMTC 28.2.2, for service of process.

(c) A party may in the party's notice and subpoena name as the deponent a public or private corporation or a partnership or association or a Tribal agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify.

(b) **Examination and Cross-Examination; Record and Oath; Objections.** Examination and cross-examination of witnesses are to be in accordance with SMTC 28, Rules

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of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall record the testimony of the witness. All objections made at the time of the examination shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony to be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope to the party taking the deposition and the party shall transmit them to the officer who shall propound them to the witness and record the answers verbatim.

(c) **Transcript of Recorded Deposition.** Any party may arrange for transcription to be made from the recording of a deposition. The additional record or transcript shall be made at that party's expense unless the court orders otherwise.

(d) **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore; and the deposition may then be used as fully as though signed unless on a motion to suppress unless the court holds that the reasons given for the refusal to sign require rejections of the deposition in whole or in part.

(e) **Certification and Filing by Officer; Exhibits; Copies; Notice of Filing; Preservation of Notes and Tapes of Depositions.**

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Court.

(2) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that:

(a) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals; and

(b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them and return them to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition.

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(c) any party may move for an order that the original be annexed to and returned with the deposition to the Court, pending final disposition of the case.

(3) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(4) The party taking the deposition shall give prompt notice of its filing to all other parties.

(5) The officer shall preserve and retain for a period of ten (10) years all original notes and stenographic tapes taken or recorded by him during the deposition, which shall be retained by the officer in such place and manner as to ensure their availability to the Court or any party upon request.

### 28.4.7 Depositions Upon Written Questions.

A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court or by leave of court. The attendance of witnesses may be compelled by the use of subpoena provided in SMTC 28.5. A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them. Within fourteen (14) days after the notice and written questions are served, a party may serve cross questions upon all other parties. The Court may, for cause shown, enlarge the time.

(a) A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall take the testimony of the witness in response to the questions and to prepare, certify and file or mail the deposition, attached thereto the copy of the notice and the questions received by the officer.

(b) When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

### 28.4.8 Use of Depositions in Court Proceedings.

Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any purpose permitted under SMTC Chapter 27, San Manuel Formal Rules of Evidence.

(a) The deposition may be used by any party for any purpose if the Court finds:

(1) that the witness is dead;

(2) that the witness is not residing or domiciled within the exterior boundaries of the San Manuel Indian Reservation and cannot be compelled to appear, unless it appears that the absence of the witness was procured by the party offering the deposition;

(3) that the party is unable to testify because of age, illness, infirmity or imprisonment;

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(4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(5) upon application and notice that such exceptional circumstance exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

### **28.4.9 Persons Before Whom Depositions May be Taken.**

Depositions shall be taken before a person appointed by the Court. A person so appointed shall be an officer of the Court having power to administer oaths and take testimony. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

### **28.4.10 Stipulations Regarding Discovery Procedure.**

Unless otherwise directed by the Court, the parties may by written stipulation:

(a) provide that depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used like other depositions; and

(b) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the Court.

### **28.4.11 Supplementation of Disclosures and Responses.**

A party who has made a disclosure or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response if the party learns that in some material respect the information disclosed is incomplete or incorrect and if such information has not otherwise been made known to the other parties during the discovery process.

### **28.4.12 Limits to Discovery.**

(a) The Court may limit the number of depositions and interrogatories and the number of requests if:

(1) it determines that the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive;

(2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) the burden or expense of the proposed discovery outweighs its likely benefit.

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(b) The Court may act on its own initiative after reasonable notice or pursuant to a motion.

(c) **Trial Preparation; Materials.** A party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means.

(d) **Trial Preparation; Experts.** A party may depose any person identified as an expert whose opinions may be presented at trial.

(1) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness or upon showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(2) Unless manifest injustice would result, the Court shall require that a party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subsection and pay to the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(e) **Protective Orders.** Upon its own motion or upon motion by a party or by the person from whom discovery is sought and for good cause, the Court on matters relating to a deposition may make an order which justice requires to protect a party or a traditional expert from annoyance, embarrassment, oppression or undue burden or expense. The order shall include one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had under specified terms and conditions including a designation of time and place; and/or

(3) that the disclosure or discovery be limited to a certain method and/or to certain matters.

### 28.4.13 Production of Documents/Entry Upon Land for Inspection.

Any party may serve on any other party a request:

(a) to produce or to permit inspection of any designated documents which contain matters within the scope of SMTC 28.3.4(b), and which are in the custody or control of the party upon whom the request is served;

(b) to permit entry upon designated land or other property in the possession or control of the party being served for the purpose of inspection.

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(1) 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.

(2) The party upon whom the request is served shall serve a written response within thirty (30) days after the service of the request. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection, production and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order with respect to any objection to or other failure to respond to the request or any part thereof or any failure to permit inspection or production as requested.

### 28.4.14 Physical and Mental Examination.

When the mental or physical condition of a party or person is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner.

### 28.4.15 Request for Admission.

A party may serve upon any other party a written request for the admission of the truth of any matters of the pending action (that relate to statements or opinions of fact or of the application of law to fact), including the genuineness of any documents described in the request.

(a) **Content of Answer.** Each matter for which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his counsel. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of this title regarding sanctions, deny the matter or set forth reasons why he cannot admit or deny it.

(b) **Motion and Order; Non-Compliant Answer.** The party who has requested the admissions may move to determine the sufficiency of the answers or objection. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The Court may,

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in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of SMTC 28.4.15 apply to the award of expenses incurred in relation to the motion.

(c) **Failure to Respond.** Should the responding party fail to respond within the time periods specified in section (1) above, all requested information is deemed admitted and the requesting party is not required to move the Court for an order deeming the requested material admitted.

(d) **Effect of Admission.** Any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be promoted thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

### 28.4.16 Failure to Cooperate in Discovery; Sanctions.

If a deponent fails to be sworn or to answer a question after being directed to do so by the Court, the failure may be considered a contempt of court.

(a) **Motion for Order Compelling Discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) **Upon Motion.** The discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request:

(a) if a deponent fails to answer a question propounded or submitted pursuant to SMTC 28.4; or

(b) if a corporation or other entity fails to make a designation pursuant to SMTC 28.4; or

(c) if a party fails to answer an interrogatory submitted pursuant to SMTC 28.4; or

(d) if a party, in response to a request for inspection submitted pursuant to SMTC 28.4, fails to respond to that inspection or fails to permit inspection as requested.

When taking a deposition by oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the Court denies the motion in whole or in part, it may make such protective orders as it would have been empowered to make on a motion made pursuant to this Chapter.

(2) **Evasive or Incomplete Answer.** For purposes of SMTC 28.4.16, an evasive or incomplete answer is to be treated as a failure to answer.

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(3) **Award of Expenses of Motion.** If the motion is granted, the Court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or counsel advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the Court shall, after opportunity for hearing, require the moving party or the counsel advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the Court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) **Failure to Comply with Order.**

(1) **Sanctions by Court; Contempt.** If a deponent fails to be sworn or to answer a question after being directed to do so by the Court, the failure may be considered a contempt of Court.

(2) **Sanctions by Court; Additional Sanctions.** If a party or an officer, director or managing agent of party or a person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made pursuant to SMTC 28.4.16, the Court may issue an order:

(a) that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing matters in evidence;

(c) striking out pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or rendering a judgment by default against the disobedient party;

(d) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination; or

(e) where a party has failed to comply with an order under SMTC 28.4 requiring him to produce another for examination, the Court may issue orders as are listed in SMTC 28.4 (p)(2), unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the orders specified in SMTC 28.4.16(b), or in addition thereto, the Court shall require the party failing to obey the order or the counsel advising him or both to pay the

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reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) **Expenses on Failure to Admit.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under SMTC 28.4 and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, he may apply to the Court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that:

- (1) the request was held objectionable pursuant to SMTC 28.4.14(a);
- (2) the admission sought was of no substantial importance;
- (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter; or
- (4) there was other good reason for the failure to admit.

(d) **Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director or managing agent of a party or a person designated to testify on behalf of a party fails:

- (1) to appear before the officer who is to take his deposition, after being served with proper notice;
- (2) to serve answers or objections to interrogatories, after proper service of the interrogatories; or
- (3) to serve a written response to a request for inspection submitted under SMTC 28.4 after proper service of the request; the Court, upon a party's motion, may make such orders in regard to the failure as are just and among others it may take any action authorized under SMTC 28.4.16(b)(2)(A-C).

In lieu of any order or in addition thereto, the Court shall require the party failing to act or the counsel advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(e) The failure to act described in SMTC 28.4 may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by SMTC 28.4.12(e).

### **SMTC 28.5 Subpoenas**

**28.5.1 Compelling Witnesses to Appear.** Any party shall have the right to compel witnesses to appear in Court to testify on his or her own behalf.

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**28.5.2 Subpoenas to Compel Appearances of Witnesses.** A Judge of the Court shall issue subpoenas for the attendance of witnesses at trial or hearing or at a deposition, for good cause shown, either on his/her own motion or on the request of the officer or any of the parties. The subpoena shall bear the signature of the issuing Judge. Service of such subpoena shall be by a person authorized by the Court for that purpose.

(a) **Contents.** Every subpoena shall state the name of the Court; the title of the action and its civil action number; and commend each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books or documents or tangible things in the possession, custody or control of that person or to produce evidence or permit inspection of the premises, at a time and place therein specified. A command to produce evidence or permit inspection may be joined with a command to appear at trial or hearing or at deposition or may be issued separately.

(b) **Service.** All subpoenas shall be served by enforcement personnel except upon order of the Court. Personal service is preferred. In the event personal service is not possible, a copy shall be left at his/her residence or principal place of business in the care of a person of at least fourteen (14) years of age. The service fee is to be paid by the party requesting service and may be recovered as a cost of litigation.

(c) **Proof of Service.** A proof of service shall be filed with the Court specifying the person served and the date, place and manner of service.

(d) **Failure to Appear; Contempt.** Failure to appear after being properly served with a subpoena is punishable as a contempt of court.

(e) **Fees.** Each witness answering such subpoena shall be entitled to a fee for each day his/her services are required in Court, plus travel to and from the Court, in accordance with a schedule, as set forth in the Rules of Court. The fees and expenses of witnesses in civil actions shall be paid by the party calling them. The Court may order that expenses be paid by the Court.

### **SMTC 28.6 Proceedings Under Seal**

Some proceedings may be conducted under seal or in camera, where required by San Manuel Tribal law or Rules of Court, or by motion or stipulation of the parties.

### **SMTC 28.7 Judgments**

**28.7.1 Judgments – Limited Full Faith and Credit.** The court shall extend full faith and credit to any non-tribal court judgment in favor of the trustee, bondholders or beneficial owners of San Manuel Entertainment Authority Gaming Project and Public Improvement Bonds, Series 2004 A-C, for the duration of the bond term.

**28.7.2 Judgments – Compensation.** Where the injury inflicted was the result of carelessness of the defendant, the judgment shall follow any rules of compensation set out in any tribal laws or sections of this Code pursuant to which the action is brought.

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**28.7.3 Punitive Damages.** Where the injury was willfully and maliciously inflicted, the judgment may award punitive damages to the prevailing party. Punitive damages may be assessed based on provisions of tribal laws.

**28.7.4 Cost of Civil Actions.** The Court may assess reasonable costs of the case against the party or parties against whom judgment is entered.

### **28.7.5 Execution of Judgments.**

(a) **Procedures.** If, after the time for appeal has run, the judgment debtor has not paid the judgment amount in full or is not making payments in the manner agreed to by the parties or ordered by the Court, the Court, upon application of the judgment creditor, shall order the judgment debtor to appear before it and answer under oath regarding his or her personal and real property. The Court shall then determine what property of the judgment debtor is available for execution and order the Department of Public Safety to seize as much of such property as appears to the Court reasonably necessary to pay said judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may impose reasonable sanctions following a hearing on an Order to Show Cause.

(b) **Sale of Property.** The sale of seized property shall be at a public auction conducted by the Department of Public Safety after giving at least thirty (30) days public notice posted in at least three public places on the Reservation, one of which shall be the Community Center. Property shall be sold in a commercially reasonable manner to the highest bidder who shall make payment for the property at the time of the sale. If the sale results in a higher price than the debt, plus expenses of the sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale. After the sale, a sixty (60) day escrow period will be provided for the debtor to comply with the Court's order. Said escrow shall be administered by the Clerk of the Court. After the escrow period expires, the sale shall be final.

(c) **Record of Sale.** A complete and accurate record of any sale pursuant to section 22.6.7(b) shall be kept by the Clerk of the Court, including receipts and descriptions of property and any other information as deemed necessary.

(d) **Exemption from Execution.** The Court shall not order seizure and sale of property of the judgment debtor, where such an order would impose an immediate and substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor may be subject to execution and not property of his or her family.

## **SMTC 28.8 Appeals**

### **28.8.1 Appeals.**

(a) **Timeframe for Filing of Appeal.** Within twenty (20) days from the entry of a final judgment or judgment on a dispositive motion, a party dissatisfied with the judgment may file a notice of appeal with the Trial Court.

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(b) **Bond May Be Required.** The Trial Court may require the Appellant to post a bond in an amount that will secure the cost of appeal.

(1) **Disposition of Bond.** After the Appellate Court has issued its opinion, it shall, upon the motion of any party, order such disposition of any appeal bond which may have been posted as deemed just and consistent with these rules.

(2) 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 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.

(3) The Court shall not be required to post any bonds.

(c) **Serving the Notice of Appeal.** The Clerk shall serve notice of the filing of a notice of appeal by mailing a copy to each party. The Clerk shall send a copy of the notice to the Court of Appeals.

(d) **Filing Fee.** The filing fee for appeals of Court decisions shall be not less than one hundred and fifty dollars (\$150.00). The Tribe shall not be required to pay any filing fees.

(e) **Costs.** All travel and per diem costs shall be borne by the litigants. Attorney fees and costs incurred to prosecute or defend an appeal may be awarded, at the Court's discretion, to the prevailing party. The Court shall not have jurisdiction at any time, whether it is at the trial court or appellate court level to award any costs or attorney's fees against the Tribe, unless the Tribe has expressly waived its sovereign immunity for such awards.

### 28.8.2 Appeals as of Right.

An appeal by right, as provided by San Manuel law, may be taken only by filing a notice of appeal with the trial court within the time frame specified in SMTTC 28.8.1(a). Failure to appeal within that timeframe shall constitute a waiver of the right to appeal.

#### (a) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(a) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B et. al.," or "all defendants except X";

(b) designate the judgment, order or part thereof being appealed; and

(c) name the court to which the appeal is taken.

(2) An appeal shall not be dismissed for informality of form or title of the notice of appeal or for failure to name a party whose intent to appeal is otherwise clear from the notice.

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(b) **Filing before Entry of Judgment.** A notice of appeal filed after the Court announces a decision or order, but before the entry of the judgment or order is treated as filed on the date of and after the entry.

### **SMTC 28.9 Miscellaneous**

28.9.1 **Savings Clause.** If any provision of this Chapter is declared to be invalid, the remaining provisions shall not be affected.

28.9.2 **Recording of Court Proceedings.** All proceedings before the Court shall be recorded in a manner that accurately preserves the Court's evidentiary and testimonial record. The use of an electronic recording device may be used to record Court proceedings. Prior to any electronic recording device being used, the Court shall ensure that the device is working properly. Upon the application of any party or upon the Court's motion, the Court may authorize the use of a certified court reporter to record an action or proceeding. Any application by a party under this section shall be made by motion no later than twenty (20) days prior to the scheduled date of the hearing. The Court shall have under contract and budgeted for in the Court's budget a certified court reporter ready and able to record court proceedings. The Court in granting or denying a motion for a court reporter must base the decision upon the information presented by the motions, the Court's current understanding of the matter, the potential for witnesses and exhibits, the potential amount of damages and relief requested and the chances of an appeal in order to determine whether both parties interests will be protected by ensuring an accurate evidentiary and testimonial record. The Court shall not require the parties to pay for the use of a court reporter.

28.9.3 **Civil Actions Recorded.** All actions brought pursuant to this Chapter shall be recorded by a certified court reporter. The parties to an action brought pursuant to this Chapter may agree to waive the use of a certified court reporter during any preliminary proceedings and in such case the use of an electronic recording device shall record the preliminary proceedings.

28.9.4 **Requests for Transcripts.** Requests for transcripts of the evidentiary and/or testimonial record shall be submitted to the Clerk. A reasonable fee shall be assessed for transcript requests, in accordance with the Rules of Court.

28.9.5 **Attorney's Fees.** In a civil action, attorney's fees may be awarded to the prevailing party, at the Court's discretion and upon motion by the requesting party.

28.9.6 **Repealer.** Any laws of the Tribe that are inconsistent with the provisions of this Chapter are hereby repealed to the extent that they are in conflict with this Chapter.

28.9.7 **Amendments.** Amendments shall be made in the manner provided for the adoption of tribal ordinances, pursuant to the San Manuel Articles of Association, Article VI.

28.9.8 **Title.** This Chapter shall be known and cited to as the "Rules of Civil Procedure".