



## **DISORDERLY CONDUCT INFORMATION**

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

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

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

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

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

Tribal Members, and any person who has significant ties to a resident of Tribal Lands such that said person has regular and ongoing access to Tribal Lands and/or receives benefits from the Tribe, may be the subject of a disorderly conduct action. A Tribal member may also be the subject of a disorderly conduct action for an act of disorderly conduct committed by his or her child, if the child is under the age of 18, or by a guest of the member, when the act is committed in the presence of, or with the knowledge of, the member.

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

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

A disorderly conduct action may be started by: 1) any Tribal member who is at least 18 years of age; or 2) by the Tribe's legal counsel on behalf of the Tribe.

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

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

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

## HOW IS AN ACTION FOR DISORDERLY CONDUCT STARTED?

A disorderly conduct action is started by filing the following forms in the San Manuel Tribal Court:

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

All of these forms are available at the Tribal Court from the Court Clerk or on its webpage at <https://www.sanmanuel-nsn.gov/Tribal-Government/Tribal-Court>

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

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

## HOW DOES THE PETITIONER NOTIFY THE RESPONDENT?

Once the petition and other forms are filed with the Tribal Court, the petitioner must then serve these documents on the respondent. Service is effectuated by someone over the age of 18, other than the petitioner, as follows:

**Personal Service:** Personally delivering a copy of the filed papers to the respondent.

**Service by Mail:** When the respondent lives outside the boundaries of the San Manuel Indian Reservation, or where personal service is not possible, service may be achieved by certified mail, return receipt requested.

**Substitute Service:** If service cannot be achieved by personal service or by mail, the Judge may allow service by publication.

When serving the respondent, the petitioner must provide a copy of the Disorderly Conduct information packet, the Petition, the Summons, the Appearance, and the following blank forms:

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

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

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

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

To respond to a Disorderly Conduct Petition, the respondent must complete the blank **Response to Disorderly Conduct Petition** and the **Appearance** forms that were served on him or her. Once these two forms are completed, the respondent must have another person, who is over the age of 18, serve the Response to Disorderly Conduct Petition and the Appearance in the same manner as described above (by personal delivery, mail or publication) on the petitioner or, if the petitioner has one, on his/her attorney or advocate. **The person who serves the Response to a Disorderly Conduct Petition and the Appearance must sign a Proof of Service that must be filed with the Court no later than 20-days after the respondent was served with the Disorderly Conduct Petition .** The Response and Appearance must also be filed within this time frame.

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

If the respondent fails to answer a Disorderly Conduct Petition, a default judgment may be entered against the respondent. If the respondent answers/responds to the Disorderly Conduct Petition, but fails to attend the hearing, a default judgment may be entered against the respondent. A default judgment may include the relief demanded in the petition, and may include any of the sanctions the Court is authorized to impose.

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

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

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

No, but it is a good idea. The petitioner or respondent may also choose to be represented by an advocate or lay advocate. The Court Clerk is prohibited from providing the parties with a referral to a specific attorney, advocate or lay advocate.

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

Yes, the petitioner and respondent can bring witnesses or documents that support their case. Please consult the Tribe's Rules of Evidence for guidance.

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

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

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

At the conclusion of the case, the Court will generally issue a judgment against the respondent or dismiss the Disorderly Conduct Petition. A judgment may include orders imposing various obligations on the respondent. These sanctions are authorized by sections 8.6.1 - 8.6.3, and 8.6.5 of the San Manuel Disorderly Conduct Ordinance and include:

1. A minimum fine of \$1,000 and up to \$2,500, subject to doubling;
2. Barring the respondent from participating in Tribal Events, using designated Tribal Facilities, or entering areas of Tribal Lands;
3. Community service;
4. Parenting classes;
5. Anger management;
6. Drug or alcohol abuse treatment and counseling;
7. Educational assistance through the San Manuel Education Department;
8. Mental health counseling;
9. Other activities or programs designed to address the respondent's underlying activity;
10. Other reasonable obligations.

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

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

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

Either the petitioner or respondent may appeal the Trial Court's decision to the Appellate Court. An appeal is commenced by filing a **Notice of Appeal** with the Trial Court within 20 days of the decision. A Notice of Appeal form can be obtained from the Court Clerk.

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

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