



# Legal Department

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Charlie Pierce  
Borough Mayor

## LITIGATION STATUS REPORT

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**TO:** Wayne Ogle Assembly President  
Penny Vadla, President, Board of Education  
Members, Kenai Peninsula Borough Assembly  
Members, Kenai Peninsula Borough School District

**THRU:** Charlie Pierce, Mayor *CP*

**FROM:** *CT* Colette Thompson, Borough Attorney  
*HM* Holly Montague, Deputy Borough Attorney

**DATE:** April 4, 2019

**RE:** Litigation Status Report – Quarter Ending 3/31/19

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This report includes brief descriptions of pending non-routine court cases, as well as administrative appeals and code compliance enforcement actions set for hearing before the administrative hearing officer.

A. Following is a summary of the non-routine litigation in which the borough and school district are involved. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the borough:

1. Walden v. Kenai Peninsula Borough School District – Case No. 3KN-17-00741Cl. A former student, Trevor Walden, brought suit against the school district for personal injuries allegedly suffered during a weightlifting class at Soldotna High School on February 25, 2015. Trial call is set for May 8, 2019 with trial scheduled for the week of May 20, 2019.
2. John Does 1–3 v. Kenai Peninsula Borough School District – Case No. 3KN-18-00155Cl. Three former students sued the school district, the Kenai Peninsula Hockey Association and former coach Bradley Elliott for

damages stemming from alleged sexual abuse of minors, alleged negligent hiring and alleged vicarious liability. In April, 2018, the court granted an unopposed motion for a protective order filed by Mr. Elliott. Following court approval of a discovery stipulation, discovery is in process. The parties have filed cross-motions for summary judgment on the question of the applicable statute of limitations. Trial is currently scheduled to begin the week of April 6, 2020.

3. Halstead v. Jeremy T. Anderson and Kenai Peninsula School District, Case No. 3KN-18-00744CI. Plaintiff has sued Mr. Anderson and the Kenai Peninsula Borough School District for damages relating to Mr. Anderson's alleged sexual abuse of her as a minor. The complaint against the school district claims it failed to protect her from Mr. Anderson and seeks damages and actual attorney fees. The district has filed an answer and discovery is in process. The parties filed a joint notice of available trial dates requesting the court set trial for the week of May 18—22, 2020, or later, based on the court's availability. Trial has not yet been scheduled.

4. Kinneen v. Kenai Peninsula Borough, Case No. 3HO-18-00243CI. Mr. Kinneen filed a lawsuit to invalidate a counter permit issued by the planning department for a material site. He also requested injunctive relief to prohibit operations in the pit by permittee, Beachcomber, LLC. The borough has filed an answer and motion for summary judgment. Oral argument on the motion for summary judgment has been requested.

5. Sandra Brown v. Kenai Peninsula Borough and Charlie Pierce, 3KN-19-00067CI. Ms. Brown filed a lawsuit against the borough and Mayor Pierce for damages relating to alleged employment discrimination and other employment-related claims. A pretrial scheduling conference was held on March 26, 2019. The pretrial scheduling order setting the trial date and all pretrial deadlines is pending issuance by the court.

6. Kane County, Utah v. The United States of America, Case Nos. 17-739C; 17-1991C. This is a class action lawsuit for the underpayment of PILT funds for fiscal years 2015-2017, in which the borough is a party. The court entered judgment for the plaintiffs in the amount of \$16,322,574 on November 16, 2018 and allocated a total of \$112,175 to the borough for underpayment of PILT monies for the years of 2015 and 2016 and \$6,294 for

2017. The U.S. has filed notices of appeals of the court's judgments. The US filed for a 59-day time extension to May 17 in which to file its opening briefs. The Court of Appeals granted the government's motion on March 26, 2019.

B. Following are recently resolved or open cases for matters enforced pursuant to KPB 21.50, Violations and Enforcement, which were set for hearing before an administrative hearing officer:

1. Case No. 2018-19. A material site was operated in violation of its material site permit by destroying the required buffer area of the pit. An enforcement agreement was entered. Time has passed for compliance with the enforcement agreement and further enforcement action is being pursued.

C. Following are open administrative appeals from Planning Commission decisions:

1. Case No. 2018-02. An applicant filed an appeal from the Planning Commission's denial of a material site. The case has been briefed and heard and the hearing officer remanded the case to the Planning Commission. The matter was heard at the March 25<sup>th</sup> Planning Commission meeting and the hearing was continued until the May 28, 2019 Planning Commission meeting.

2. Case No. 2018-04. An appeal of an approved plat was filed and a hearing held before the administrative hearing officer on March 1, 2019. On March 20, 2019 the hearing officer issued a decision upholding the plat approval. Appellants may file an appeal to the superior court within 30 days of the decision.