



# Legal Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2120 • (907) 714-2379 Fax

Charlie Pierce  
Borough Mayor

## LITIGATION STATUS REPORT

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

**THRU:** Charlie Pierce, Mayor *gab*

**FROM:** Colette Thompson, Borough Attorney *CT*  
Sean Kelley, Deputy Borough Attorney *SK*

**DATE:** October 10, 2019

**RE:** Litigation Status Report – Quarter Ending 9/30/19

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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. Mediation has been scheduled for November 13, 2019. Trial call is currently set for November 6, 2019 with trial scheduled for the week of November 18, 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. Discovery is in process. The parties have filed cross-motions for summary judgment on the question of the applicable statute of limitations and oral arguments were heard on July 11, 2019. No decision has been issued to date. 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. At the pretrial scheduling conference held on June 25, 2019, trial call was scheduled for July 8, 2020 and trial for the week of July 20, 2020.

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 a motion for summary judgment. Oral argument on the motion for summary judgment is scheduled for December 3, 2019.

5. *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. This amount will be reduced by the borough's share of attorney fees. 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. On June 10, 2019, we received notice that the court judgments officially became final. The borough submitted a payment request and payments are now expected within the month of October, 2019.

7. Diamond Willow Homeowner's Association v. Kenai Peninsula Borough and Consolidated Development & Management, LLC, Case No. 3KN-19-00355CI. 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. Appellant, Diamond Willow Homeowner's Association, filed an appeal of the hearing officer's decision on April 18, 2019, in the Kenai Superior Court. Appellee, Consolidated Development & Management LLC filed a motion to dismiss the appeal which appellant opposed. The borough did not oppose the motion to dismiss. Briefing has been completed by all parties. The court's decision is now pending.

8. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. This case was filed against a school district employee for the reimbursement of substantial health care costs paid by the health care plan ("Plan"). The Plan requires that employees who receive medical care paid by the Plan, for injuries caused by a third party, must reimburse the Plan for any recovery received from the party at fault. Reimbursement is owed because the employee received enough insurance funds from the party who caused the injuries to fully reimburse the Plan for its cost. Mr. Fischer has failed to pay the amount owed. Discovery is in process.

9. Back v. Kenai Peninsula Borough and Charlie Pierce, Case No. 3KN-19-00385CI. This is an administrative appeal to the superior court of the assessor's determination that Mr. Back's property is taxable. There is a pending motion to dismiss filed by the borough.

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., 2019-01. Appellant appealed a planning commission decision approving applicant's material site conditional land use permit. Parties of record have filed their opening briefs. A hearing before the hearing officer is set for October 30, 2019.

