



KENAI PENINSULA BOROUGH

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**MIKE NAVARRE
BOROUGH MAYOR**

MEMORANDUM

TO: Kelly Cooper, Assembly President
Joe Arness, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District Board of Education

THRU: Mike Navarre, Borough Mayor

FROM: Colette Thompson, Borough Attorney *CT*

COPY: Risk Management Committee

DATE: July 6, 2017

SUBJECT: Litigation Status Report

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. **Hunt v. Kenai Peninsula Borough** – Case No. 3AN-16-10652CI. By this lawsuit the plaintiffs asked the court to declare the borough assembly’s invocation policy violates the Alaska Constitution. They also seek a declaration that the plaintiffs are public interest litigants and request an award of full and reasonable attorneys’ fees and costs as well as nominal damages. The complaint was originally filed in state court. The borough removed it to federal court as it also alleged violations of the U.S. Constitution. Plaintiffs amended their complaint to remove the federal claims and the case was remanded to state court. Trial call is scheduled for February 12, 2018 with trial scheduled for the week of February 26, 2018 in the Anchorage Superior Court, Judge Erin Marston presiding.
2. **Interior Telephone Co. v. Kenai Peninsula Borough** (Case No. U-17-11); and, **Matanuska Telephone Assn. v. Kenai Peninsula Borough** (Case No. U-17-12) – MTA and ITC filed formal complaints and requests for declaratory rulings against the Kenai Peninsula Borough before the Regulatory Commission of Alaska (“RCA”). They sought a ruling that the Kenai Peninsula Borough is responsible to pay third-party costs associated

with delivering their customers' calls from their telecommunication service areas to the Kenai Peninsula Borough's selective routers in Soldotna and Kenai. The borough filed answers and motions to dismiss in both cases. Briefing on the motions to dismiss has been completed by the parties. On April 18, 2017, the RCA published notice that it was dismissing the utilities' formal complaints and requests for declaratory rulings against the borough as they lack jurisdiction to resolve the complaints. The notice further stated that a formal investigation would not be opened by the RCA and a written order would follow. To date, the RCA has not issued a written order.

3. **Dunne v. Kenai Peninsula Borough and Mike Navarre, Mayor** – Case No. 3KN-17-00198CI. Plaintiff assembly member William Dunne filed suit against the borough seeking declaratory and injunctive relief, alleging the borough placed unconstitutional restrictions on his free speech rights. The court denied his request for an expedited preliminary injunction. The borough responded to plaintiff's complaint on March 29, 2017, with its filing of a motion to dismiss the action. Briefing on the motion to dismiss has been completed by all parties and the court scheduled oral argument on plaintiff's motion for July 11, 2017. On July 5, 2017, the parties finalized a negotiated settlement of this case and stipulated that it be dismissed with prejudice.