

Kenai Peninsula Borough

Legal Department

LITIGATION STATUS REPORT

TO: Peter Ribbens, KPB Assembly President
Members, KPB Assembly
Zen Kelly, KPBSD Board of Education President
Members, KPBSD Board of Education

THRU: Peter A. Micciche, Mayor *PM*
Clayton Holland, KPBSD Superintendent *CH*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: October 2, 2025

RE: Litigation Status Report – 3rd Quarter 2025

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, which name the KPB and/or School District as parties.

- A. Administrative Appeals. The following is a summary of open or recently resolved administrative appeals from Planning Commission decisions:
1. None.
- B. Alaska Superior Court cases. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the KPB:
1. *Furie Operating Alaska, LLC. v. State of Alaska, Department of Revenue, and State Assessment Review Board, Case No. 3AN-21-06462CI*. The owner of oil and gas production property appealed the State Assessment Review Board's decision upholding the tax assessment of the property performed by the State of Alaska, Department of Revenue pursuant to AS 43.56. A non-jury trial was held the week of July 24, 2023. The court issued its decision on May 16, 2024, denying Furie's appeal and upholding the State of Alaska, Department of Revenue's tax assessment. An award in favor of the KPB was entered for attorney fees and costs. Furie has appealed the case to the Supreme Court. The KPB filed a notice of non-participation in the Supreme Court case. The amended final judgment in this case awards the KPB \$122,714.25 in attorneys' fees and \$41,271.89 in costs.
 2. *Jennifer Harvey-Kindred, et al. v. Kenai Peninsula Borough, Kenai Peninsula Borough School District, 3AN-23-08723CI*. This matter involves a lawsuit against KPB and KPBSD alleging that Plaintiffs' various medical ailments were caused by alleged exposure to toxic

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mold in KPBSD schools from 2004-2020. Discovery is ongoing. Trial is currently scheduled for the week of December 1, 2025, before Anchorage Superior Court Judge Crosby.

3. David Yragui, v. Kenai Peninsula Borough, 3KN-24-00123CI. Plaintiff, David Yragui, filed suit for damages to property and for defamation related to his unpermitted activities within KPB rights-of-way (Mary Jeanne Yragui was originally included as a Plaintiff but was subsequently dismissed from the case.) Trial is scheduled for the week of November 3, 2025. Plaintiff filed for declaratory judgment, which the court denied. The Plaintiff has amended his Complaint three times. Discovery is ongoing.
4. 2FishAlaska v. Kenai Peninsula Borough, 3KN-24-00905CI. This owner of real property appealed the denial of charitable purpose exemption application. Briefing has been completed and the parties await the court's decision.
5. Kenai Peninsula Borough School District v. Fischer, Case No. S-18687 (Trial Court Case No. 3KN-19-00185CI). This appeal to the Alaska Supreme Court arises from a subrogation case filed against a School District employee to recover substantial health care costs paid by the health care plan. The Supreme Court upheld summary judgment in favor of the School District on breach of contract grounds but determined a genuine dispute of material fact remained regarding damages and remanded this case to the Superior Court on the limited issue of determining if some of the costs included in the damage determination were not subject to subrogation. The court granted the School District's request for a deposit of the judgment funds into a constructive trust. On June 18, 2025, judgment funds in the amount of \$367,676.83 were deposited in the court's trust registry pending its ruling on remand. Trial is scheduled for the week of February 2, 2026.
6. Haybeck v. KPBSD; Peninsula Art Guild, Case No. 3KN-24-00951CI. This case relates to an alleged slip-and-fall injury at Kenai Central High School during the annual Winter Arts & Crafts fair hosted by the Peninsula Art Guild. The KPBSD is represented by the Farley & Graves law firm. After a meeting of the parties, the court issued its order scheduling pretrial deadlines and setting trial call for January 7, 2026. Discovery is ongoing.
7. Harvath v. KP, Kelley and Steinhage, Case No. 3KN-25-00734CI. The Harvath plaintiffs filed a quiet title complaint alleging they are entitled to use KP land to access their property. The complaint named the KP and, for reasons unknown, its attorneys relating to actions taken in their official capacity as KP attorneys in defending a land dispute against the plaintiffs. The case was originally filed in the Anchorage Superior Court and transferred to the Kenai Superior Court on August 20, 2025 at the request of the KP. Numerous motions are currently pending, including KP's motion to dismiss attorneys Kelley and Steinhage and seeking sanctions against plaintiffs' attorney for the filing of frivolous claims and attempting in bad faith to bar KP's attorneys from entering an appearance in the case. Briefing has been completed on the pending motions and anticipate a hearing will be scheduled to address the status of the case and pending motions.

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8. Parker v. Schultz and KPB, Case No. 3KN-25-00706CI. This complaint alleges the wrongful discharge of Ms. Parker, a firefighter with Kachemak Emergency Service Area (KESA). KPB has responded to the complaint. The court has scheduled a pretrial conference for November 18, 2025 to establish pretrial deadlines and schedule a trial date. Discovery is currently ongoing.
9. Diamond Willow Homeowners Association v. KPB, Case No. 3KN-25-00502CI. This is an appeal from the Office of Administrative Hearing's decision upholding the decision of the Planning Commission to grant modification of a conditional land use permit for an existing gravel pit. KPB has filed a notice of non-participation, and no future dates have been set as of the date of this report.

C. Alaska Supreme Court cases.

1. Beachcomber v. Kenai Peninsula Borough Planning Commission, Case Nos. S-19091 & S-19092 (Consolidated) (Trial Court Case Nos. 3KN-20-00034CI & 3KN-23-00004CI). This is an appeal of the April 4, 2024, decision issued by Superior Court Judge Joanis affirming OAH's decision in Case No. 2022-04 PCA, *Bilben, et al. v. KPB PC, Beachcomber LLC, et al*, which upheld the KPB Planning Commission's denial of Beachcomber, LLC's CLUP and dismissing Beachcomber's appeal. Judge Joanis' April 4, 2024, decision also constituted a final decision in case 3KN-20-00034CI that was before Judge Gist. The Supreme Court issued an order on July 8, 2024, consolidating Beachcomber's appeals for the purposes of briefing, consideration and decision. Due to claims of constitutional defects in the process, KPB is participating on appeal. All parties have submitted briefs and await the Court's decision.

D. U.S. District Court cases.

1. Nicholas Conner v. Kenai Peninsula Borough; Mayor Peter Micciche, Case No. 3:35-cv-00054-HRH. Plaintiff filed this complaint on March 19, 2025, alleging his constitutional right to film public officials in public spaces was violated and asks the court to permanently enjoin application of KPB Ordinance 2024-27, and declare the ordinance unconstitutional, and for costs and attorney fees. The court granted KPB's partial motion to dismiss – dismissing Count I and Count IV to the extent it seeks relief based on the claim that KPB Ordinance 2024-07 is an unconstitutional bill of attainder. KPB filed a motion to dismiss the remaining counts, the motion is now fully briefed, and the parties await the court's decision.