

## James E. Mountain, Jr.

Shareholder | Portland Office

Jim Mountain defends his clients against government regulation, sanctions, and assessments. His practice emphasizes appellate law and administrative, regulatory law.

Jim regularly defends licensed professionals—doctors, pharmacists, psychologists, architects, geologists, accountants, lawyers – and even judges in proceedings before their licensing boards or regulatory bodies and, particularly, in the appellate courts.



He frequently serves the firm's clients in the Supreme Courts and Courts of Appeal of the United States, the State of Oregon, and the State of Washington. He represents the clients' business, professional, and personal interests before the various administrative agencies and trial courts of the federal, state, and local governments.

Jim's practice often requires that he work closely with the client's general counsel or trial lawyer on appellate court matters. He has developed strong and long-lasting relationships with other lawyers. Jim regularly provides appellate consulting services to other lawyers and their clients, including assistance with their preparation of written briefs and oral arguments. Jim frequently serves as an expert witness regarding awards of attorney fees.

### Background

Jim formerly served as the State of Oregon's chief appellate lawyer, its Solicitor General. He also held the number two job in the Oregon Department of Justice as the Deputy Attorney General with responsibility to manage one of the state's largest law firms. With over 40 years of experience, Jim has briefed and argued hundreds of cases before state and federal appellate courts. Jim is also intimately familiar with the administrative law and regulatory functions of the executive branches of state and federal government.

### Career Highlights

In professional licensing and discipline matters, Jim is recognized by the Oregon appellate courts as a proponent of cutting edge administrative law and constitutional law issues. Jim's blend of administrative law and appellate expertise secured an award to his client of the amount of the attorney fees the client incurred in successfully defending against an administrative tax assessment. Jim's personally most satisfying appellate court victory was his securing a life-saving medical operation for a child over the parents' religious objections in expedited proceedings in the Oregon Court of Appeals and Supreme Court.

### Professional Recognition

- Named "Lawyer of the Year" in Portland, OR for administrative/regulatory law – **Best Lawyers**, 2014, 2017 & 2019
- American Academy of Appellate Lawyers** – inducted September 2008
- Recognized in ***The Best Lawyers in America***® for administrative/regulatory law and appellate practice – every year since 2006
- Listed in **Super Lawyers**® for appellate practice every year since 2006
- Listed as one of the **top appellate lawyers in Portland** by *Portland Monthly Magazine*
- AV® Preeminent™ 5.0 out of 5.0 Peer Review Rated with **Martindale-Hubbell**®

### Contact Information

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### Portland Office

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### Practice Emphasis

[Appellate Law](#)

[Business and Commercial Litigation](#)

[Civil Rights and Other Tort Claim  
Defense and Litigation](#)

[Ethics in Government](#)

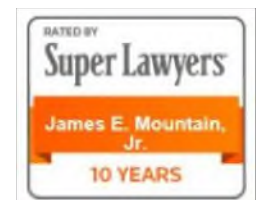
[Government Law and Legislative  
Affairs](#)

[Legal and Judicial Ethics](#)

[Oregon Public Records Law](#)

[Regulatory \(Administrative\) Law and  
Proceedings](#)

### Professional Recognition



## Admissions & Memberships

Jim is a member of the Oregon State Bar (Appellate Practice and Administrative Law Sections), the Washington State Bar (Appellate Practice and Administrative Law Sections), the American Bar Association (Administrative and Regulatory Law and Litigation Sections) and the Multnomah Bar and Marion County Bar Associations. Jim is a past president of the Marion County Bar Association. Jim formerly served on the Oregon Law Institute Board of Directors including two terms as its President. Jim served as Chair of the Oregon State Bar Administrative Law Section, Executive Committee and as the Chair of the Board of Directors of Central Catholic High School, his *alma mater*.

Jim has actively participated in many professional associations. He has served on the Judicial Administration Committee and the Continuing Legal Education Committee of the Oregon State Bar. He served on the OSB Board of Bar Examiners as well as the board of directors of the Marion County Bar Association and Marion/Polk Legal Aid Service. Jim recently served on the Oregon Trial Court Judicial Resources Committee, by appointment of the Chief Justice of the Oregon Supreme Court. He currently serves by appointment by the President of the Oregon State Bar, on the Attorney General's Advisory Committee on Administrative Rules.

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## Education

Jim received his JD from Northwestern School of Law at Lewis & Clark College in 1975. At Lewis & Clark Law School, he received the American Jurisprudence Award in Labor Law (1974) and served as Associate Editor of the *Law Review*. He received a BA degree in History from the University of Oregon in 1970.

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## Publication

- Editor and Chapter Co-Author, Oregon Administrative Law Treatise, Oregon State Bar Publications (2016 Supplement), and Chapter 13, Judicial Review of Administrative Decisions (2016 Supplement)
- "Introduction to Litigating a Contested Case," OLI Administrative Law CLE (November 2015)
- "From the Chair," Administrative Law Newsletter, Oregon State Bar Administrative Law Section (Winter 2013)
- "Postdecision Matters in the Court of Appeals," Appeal and Review: The Basics, Oregon State Bar Continuing Legal Education Treatise, chapter co-author (2010 edition)
- "Just Give Me A Declaratory Ruling," Administrative Law Newsletter, Oregon State Bar Administrative Law Section (Summer 2010)
- "The Promise of Megdahl Revoked; Coffey v. Board of Geologist Examiners," Administrative Law Newsletter, Oregon State Bar Administrative Law Section (Spring 2011)
- "The Office of Attorney General: Powers and Duties," National Association of Attorneys General, Editorial Committee Member and Contributing Author (1988); author and co-author of chapters entitled "Common Law Powers of the Attorney General; Origin and Development of the Office; State Administrative Law; Institutional Litigation"; and "Open Meetings and Public Records"
- "Post-Conviction Procedures," *Criminal Law*, Oregon State Bar Continuing Legal Education, co-author with Paul DeMuniz (1986)
- "Attorney Fees Under Administrative Procedures Act," *Administrative Law*, Oregon State Bar Continuing Legal Education, co-author with Richard Wasserman (1985)
- "Criminal Law Newsletter," Editor and Publisher (1979 – 1980)

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## Presentations

- Speaker/Presenter, National Association of Hearings Officials Annual Development Conference, "Challenging the Hearing's Official's Evidentiary Expertise," (September 2016)
- "Challenging Administrative Rules," Legal Aid and Oregon Law Centers Ad Law Task Force Training Session (August 2016)
- "Northwest Administrative Law Institute," co-sponsored by Oregon and Washington Bar Associations Administrative Law Sections, Program Planner (July 2014)
- "Oregon Administrative Law, 2012," Oregon State Bar Administrative Law Section, Program Planner (November 2012)
- "Appellate Tips for Litigators: Planning Trials for Success on Appeal," Oregon Law Institute, Program Planner and Panelist (October 2012)
- "What You Need to Know About Public Records and Open Meetings," Lorman Seminar, Program Planner, Moderator and Panelist (June 2012)

- "Litigation 101: Post Trial Matters," Marion County Bar Legal Education Program, Moderator and Panelist (May 2012)
- "When Public Sector Risk Managers Encounter Administrative Law," PRIMA Annual Conference, Presenter (June 2011)
- "Litigating a State Constitutional Law Case," Panel Moderator, Oregon Law Institute (May 2009)
- "Practice Pointers for Improving Performance at the Hearings Level," Program Planner and Panel Moderator, Oregon Law Institute (February 2009)
- "A Day with the Court of Appeals," Program Planner, Oregon Law Institute (March 2008)
- "Dealing Successfully with State and Local Governments," Program Planner and Panel Moderator, Oregon Law Institute (October 2007)
- "Attorney Fee Awards on Judicial Review of State Agency Actions: Two Tests, Not One," Advanced Administrative Law, Oregon Law Institute (December 2005)
- "The Attorney's Role in Upholding Constitutions," Government Law Spotlight: Upholding Constitutions and Tribal Sovereign Immunity, Oregon State Bar Continuing Legal Education (November 5, 2004)
- "Judgment Day for Litigators," Program Planner and Presenter, Oregon Law Institute (December 2003)
- "Practicing Law in the Oregon Court of Appeals, Writing an Appellate Brief," Oregon Law Institute (2003)
- "Appellate Practice, Practical Consideration – Knowing Your Courts," Oregon State Bar Continuing Legal Education (1995)
- "Appellate Practice", Program Planner, Oregon State Bar Continuing Legal Education (1987)

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## Representative Engagements

### NOTABLE APPEALS

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- *Oregon School Boards Association v. Department of Revenue*, 2016 WL 5888932 (Or. Tax Regular Div.). Obtained Tax Court's reversal of denial of property tax exemption for public corporation/governmental association on basis of reasoning developed in Oregon Supreme Court opinion in *Pacific States Marine Fisheries Commission v. Department of Revenue*, below.
- *Pfizer v. Oregon Department of Justice*, 254 Or App 144, 294 P.3d 496 (2012). Worked with company's national and local counsel to obtain favorable ruling that pharmaceutical company records confidentially disclosed to State in trade practice litigation are exempt from public disclosure under the Oregon Public Records Law.
- *Port of Portland v Center for Environmental Health*, 238 Or App 404, 243 P.3d 102 (2010). On a matter of first impression in Oregon appellate courts, the Court of Appeals ruled that a public body's joint-defense agreement was exempt from disclosure under the Oregon Public Records law as a privileged record of an attorney-client communication.
- *Coffey v. Board of Geology Examiners*, 348 Or 494, 235 P.3d 678 (2010). Obtained Oregon Supreme Court review of regulatory agency revocation of professional license and the high court's re-examination of a prior decision arguably requiring administrative agency to publish criteria for imposing disciplinary sanction prior to enforcement of administrative code of conduct.
- *Pacific States Marine Fisheries Commission v. Department of Revenue*, 346 Or 117, 206 P.3d 1037 (2009). On appeal from Oregon Tax Court to Oregon Supreme Court, presented question of special legal status of a multistate compact agency, a regional governmental body authorized by Congress, in context of Oregon state statutes exempting public corporations from local property tax.
- *Williams v. Philip Morris, Inc.* 344 Or 45, 176 P.3d 1255 (2008). On remand from United States Supreme Court's decision reshaping federal constitutional law limiting awards of punitive damages, addressed issue of state appellate procedure and practice.
- *Logan v. D.W. Sivers Co.*, 343 Or 339, 169 P3d 1255 (2007), 207 Or App 231, 141 P3d 589 (2006). On appeal to the Oregon Court of Appeals and on review by the Oregon Supreme Court the appellate courts recognized that a temporary exclusive dealing provision in an otherwise unenforceable letter of intent to purchase and sell commercial property stated a contractual promise that was breached by a sale of the property to a third party during the term of the exclusive dealing provision.
- *Mims v. City of Eugene*, 2005 WL 1865555 (9th Cir. 2005). On appeal to the Ninth Circuit Court of Appeals, the court confirmed reasonableness of City's riot control measures.
- *Nobl Park, LLC of Vancouver v. Shell Oil Co.*, 122 Wash App 838, 95 P3d 1265 (2004), rev den, 154 Wash 2d 1027, 120 P3d 577 (2005). Represented construction company in successfully persuading Washington Supreme Court to let stand a Washington Court of Appeals decision to exclude economic damages in a construction defect claim from coverage under the Washington Products Liability Act.
- *Permapost Products Co. v. Osmose Wood Preserving, Inc.*, 200 Or App 699, 116 P3d 909 (2005). Successfully defended manufacturer on appeal in products liability case applying the statute of limitations on an action for breach of an express warranty.
- *Kaib's Roving R.Ph. Agency v. Employment Dept.*, 338 Or 433, 111 P3d 739 (2005). On review of a decision of the Court of Appeals, the Oregon Supreme Court ruled that under the Administrative Procedures Act, a reviewing court shall allow a business its attorney fees and costs if the court finds that a state agency "acted without a

reasonable basis in fact or in law;” and contrary to the Court of Appeals’ reading, the APA goes beyond merely allowing a court discretion to award fees but, instead, requires the court to award fees under the circumstances described.

- *State of Oregon v. Bradly Morris Cunningham, Sr.*, (337 Or 528. 99 P3d 271 (2004).  
The Oregon Supreme Court reversed the Court of Appeals’ reversal of Bradly Cunningham’s conviction for murdering his wife, an attorney. The Oregon Supreme Court adopted the legal position that the State of Oregon presented for conviction, and that Harrang Long presented as a “friend of the court” on behalf of the victim’s law firm. The high court concluded that the trial court correctly had admitted hearsay evidence under an exception to the hearsay rule, and upheld the conviction.
- *Leahy v. City of Gladstone*, 52 Fed Appx 10 (9th Cir 2002). Federal Circuit Court of Appeals for the Ninth Circuit, May 2002. Obtained order vacating large money judgment against client city for alleged taking of property without due process and just compensation.
- *Bocci v. Key Pharmaceuticals, Inc.*, 158 Or App 521, 974 P.2d 758 (1999).  
Settled on remand from United States Supreme Court in *Key Pharmaceuticals, Inc. v. Edwards*, 123 S.C. 1781 (April 21, 2003), a summary reversal of treating physician’s judgment against pharmaceutical manufacturer for \$22.5 million in punitive damages.
- *Haupt v. Dillard*, 17 F.3d 285 (9th Cir. 1994).  
Obtained reinstatement by the Ninth Circuit Court of Appeals of civil claim for damages for criminal defendant who had been acquitted of murder charges after having been deprived of a fair trial.
- *Black v. Dept. of Human Resources*, 301 Or 221, 721 P.2d 451 (1986) and *Smith v. Dept. of Human Resources*, 302 Or 209, 721 P.2d 445 (1986).  
Argued that neither the state Constitution nor federal Constitution religious guarantees required the payment of unemployment insurance benefits to an employee terminated for engaging in religious activity that was illegal under state criminal law; a holding that was affirmed by the United States Supreme Court in *Employment Division v. Smith*, 494 US 872 (1990).
- *Salem College & Academy, Inc. v. Employment Division*, 298 Or 471, 695 P.2d 25 (1985).  
Analyzed whether freedom of religion guarantees of Oregon Constitution barred assessment of unemployment taxes on religious schools.
- *Planned Parenthood Ass’n, Inc. v. Dept of Human Resources*, 297 Or 562, 687 P.2d 785 (1984).  
Assessed whether Equal Privileges and Immunities Clause of Oregon Constitution, article 1, section 20, barred administrative rule limiting reimbursement for abortions
- *Bono v. SAIF*, 298 Or 405, 692 P2d 606 (1984).  
As Solicitor General reasserted Attorney General’s prerogative to represent State Accident Insurance Fund and to defend against claim for interim compensation by person not absent from work.
- *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 639 P.2d 90 (1981).  
Defended Public Employees Collective Bargaining Act against constitutional challenge under municipal Home Rule provisions of the Oregon Constitution.
- *Matter of Jensen*, 54 Or. App. 1, 633 P.2d 1302 (1981).  
Secured a life saving operation for a child over the religiously based objections of her parents on expedited appellate schedule from trial though the Court of Appeals to denial of review by the Oregon Supreme Court.

#### FRIEND OF THE COURT BRIEFS

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- *Outdoor Media Dimensions, Inc. v. State of Oregon*, 331 Or 634, 20 P.3d 180 (2001).  
Amicus Curiae Brief for Oregon Outdoor Advertising Association to Oregon Supreme Court presented argument that commercial speech is protected from governmental regulation by Free Speech Clause of Oregon Constitution, article I, section 8.
- *Metropolitan Life Ins. v. Ward*, 470 US 869 (1985).  
Amicus Curiae Brief of 38 States to United States Supreme Court analyzed state taxes on insurance premiums under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

#### OPINIONS OF OREGON ATTORNEY GENERAL

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- Or. Op. Atty. Gen. OP-6300 (1990).  
Analysis of Indian Gaming Regulatory Act, USC § 2701 et seq.  
In response to question of Oregon Lottery Director.

#### LEGISLATION

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- Limited Liability Partnership (LLP) Legislation  
1999 Oregon Laws, Chapter 322, ORS 673.010 et seq. on behalf of Oregon Society of Certified Public Accountants.
- Limited Liability Company (LLC) Legislation  
1993 Oregon Laws, Chapter 431, ORS 673.010 et seq. on behalf of Oregon Society of Certified Public Accountants.

#### GENERAL COUNSEL

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- General Counsel: *Pacific States Marine Fisheries Commission*, 2002-2015  
An interstate commission composed of representatives of five western states to facilitate inter-jurisdictional fishery

agreements and coordinate grants and studies; representation began July 2003; responsibilities include litigation management, contract administration, and employment law advice and consultation.

- General Counsel: *Perennial Ryegrass Bargaining Association*, 2000-2007

A cooperative corporation established to negotiate the price for ryegrass seed grown by over 140 farms in Oregon, 1999 to 2007; providing general corporate advice and representation to Executive Director and Board of Directors and supervision of litigation.

#### SPECIAL APPOINTMENTS

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- Prosecutor: *State of Oregon v. Gustafson*, 1999  
Prosecution of former Clackamas County District Attorney for Perjury and Misuse of Public Records.
  - Prosecutor: *State of Oregon v. Gortmaker*, 1980  
Prosecution of former Marion County District Attorney for theft.
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