



Kevin J. Jacoby

Shareholder

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Overview

Kevin Jacoby is regarded statewide as the litigator who repeatedly saves Oregon businesses in industries with stifling regulatory environments. Influential industry organizations recently lauded Kevin as an advocate because of his reputable business-protection record, such as drafting and winning the 2023 Aspergillus lawsuit against the Oregon Health Authority and Oregon Liquor and Cannabis Commission, which saved the businesses of many Oregon farmers. Kevin champions the revelation of public injustices and is relied upon by industry leaders and the community to accurately illuminate important policy issues through his opinion editorials. Oregon news outlets like Willamette Week and Portland Business Journal continuously turn to his legal expertise regarding administrative and legal developments as it relates to Oregon's government regulated industries.

Kevin's crisis management skills and vivid knowledge of Oregon law has impressed historically noted judicial figures during trial and on appeal, and has cemented him as the go-to-lawyer for businesses who are facing imminent harm by public or private actors. In 2023 he represented claimants to bank accounts that law enforcement had seized, containing over \$60,000, and sought civil forfeiture. Kevin's litigation strategy resulted in the release of all seized bank accounts by challenging both the evidentiary basis and the government's legal theory for their seizure and awarding an additional \$35,000 for attorney fees to the client. In 2019, Kevin successfully challenged OLCC's efforts to ban cannabis vaping products that contained non-cannabis flavor additives, providing another win at a crucial time.

Kevin strongly advocates for Oregon's community on all ends of the spectrum, from small farmers struggling to make ends meet to larger distributors and vertically integrated companies seeking to maintain their market share in today's challenging environment. In addition to his legal work, Kevin is credited for long-standing client relationships and conducting authentic, transparent service on behalf of his clients with a proven track record of results. Born and raised in Bellingham, Washington, Kevin is a life-long resident of the Pacific Northwest and has lived and worked in Oregon for the last 22 years. Kevin credits these roots as fueling his dedication for defending the people of Oregon, his home, and ensuring that their rights are respected by state agencies and in the courtroom.

Practice Emphasis

- Agriculture
- Water Rights
- Oregon Liquor Law
- Car Dealership License Issues
- Appeals
- Administrative Litigation
- Compliance and Government Investigations
- General Counsel
- Civil Litigation
- Business Disputes and Commercial Litigation
- Cannabis Law
- Labor and Employment

How I Serve Clients

The intersection between business and state and local regulatory bodies can be intimidating. I approach regulatory issues faced by my clients first by laying out all of their potential options so my clients can make an informed business decision on how to proceed. That means getting to know my client's business on an integral level in order to fully understand my client's perspective and their business needs in order to demystify the investigation or adjudication process, and letting them know what legal tools are available to them to get the results they need. In cases that can't be settled, either because the agency or other party will not accept a compromise or because my client has a potentially meritorious defense, I advise my clients as to the projected costs of taking the matter to a trial or administrative hearing and, if necessary, appeals beyond that. I approach all of my cases with an eye toward how appellate courts have considered the same or similar issues in the past and how their approach may evolve in the future.

Admissions

- Oregon State Bar

Professional Recognition

- Global Top 200 Cannabis Lawyer (2024-2025)
- America's Top 50 Lawyers (2024)
- Selected to Super Lawyers® for Cannabis Law, Business Litigation, Administrative Law, Appellate, Civil Litigation: Plaintiff, Civil Litigation: Defense, Employment & Labor: Employer (2024)

Professional Memberships

- Special Litigation Counsel, Cannabis Industry Association of Oregon (CIAO), 2023

Education

- J.D., Willamette University College of Law (2006)
- B.A. (Anthropology), Portland State University (2003)

Publications & Presentations

- Oregon Regulator Liquor Scandal Should Alarm Cannabis Consumers, Law360, 2023.
- *Operation Table Rock & Law Enforcement*, Willamette University College of Law, November 10, 2022.
- Aspergillus Testing and the Landscape of Cannabis Regulation, Willamette University College of Law, October 19, 2023.

Representative Matters

- Successfully represented various cannabis industry stakeholders in a challenge against a testing rule that threatened the economic viability of the industry, and obtained an order staying enforcement of the rule pending judicial review. In response to the court's ruling staying enforcement, the agency repealed the rule. *Cannabis Industry Association of Oregon, et. al v. Oregon Health Authority and Oregon Liquor and Cannabis Commission*, Court of Appeals Case No. A181948, 2022.
- Successfully represented claimants in civil forfeiture proceedings involving bank accounts containing approximately \$60,000 and several parcels of real property, based on allegations that the claimant's tenants had used their hemp license as a cover for illegal cannabis production. The trial court concluded that the government's attempt to seize the bank accounts suffered from a fundamental legal flaw, ordered they be released to the claimants and awarded substantially all of the claimants' attorney fees. The government was then persuaded to abandon its claim for civil forfeiture of the real property and agreed to reimburse the claimants their remaining attorney fees incurred in their defense. *Central Oregon Drug Enforcement Team v. One 202 Southland Dump Trailer, VIN: 2SFKL3360L1048127, et al.*, Jefferson County Case No. 22CV23587, 2023.
- Successfully represented industry stakeholders in a challenge to an OLCC ban on flavored vape products in response to public health concerns. *Herban Industries OR, LLC v. Oregon Liquor Control Commission*, Court of Appeals Case No. A172546, 2019.

Representative Matters Cont.

- Represented an applicant for a recreational cannabis retailer license proposed to be denied by OLCC, resulting in the first contested case under Oregon's recreational cannabis licensing system in which the client prevailed before the ALJ. OLCC entered a final order disagreeing with the ALJ's reasoning, requiring an appeal to the Court of Appeals. Upon submission of the opening brief, OLCC reconsidered its final order and entered a revised final order granting the applicant's application and establishing important OLCC case precedent prohibiting staff from denying a license application based on rules promulgated after the application was submitted. *Jin's, Inc. v. Oregon Liquor Control Commission*, Court of Appeals Case No. A168352, 2019.
- *Iverson's Unlimited, Inc. v. Winco Foods, LLC*, 288 Or App 10, 404 P3d 981 (2017): Represented the plaintiff in the trial court and on appeal involving a claim that the defendant misappropriated the plaintiff's trade secrets in soliciting bids from the plaintiff's competitors for work with the defendant. The trial court granted summary judgment to the defendant, and the plaintiff appealed. Kevin wrote the briefs and argued the case on appeal, arguing that the trial court erred in granting summary judgment. In a reported case, the Court of Appeals agreed, reversing the judgment and remanding the case to the trial court for trial on the merits.
- *Southcentral Association of Neighbors v. City of Salem*, 272 Or App 292, 355 P3d 208 (2015): Part of a legal team in this land use case that represented a neighborhood association that opposed various aspects of Salem Hospital's planned development of the former Oregon School for the Blind site. The City of Salem Hearings Officer rejected the neighborhood association's arguments, and Kevin appealed the Hearings Officer's decision to the Land Use Board of Appeals, which sustained the neighborhood association's arguments and overruled the Hearings Officer's decision. Salem Hospital then appealed LUBA's decision to the Oregon Court of Appeals. Kevin successfully defended LUBA's decision, which required Salem Hospital to amend its development plan.

Representative Matters Cont.

- *Kaib's roving R.Ph. Agency, Inc. v. Smith*, 237 Or App 96, 239 P3d 247 (2010): Assisted in the briefing on this case, which involved a claim of violations of Oregon's Uniform Trade Secrets Act. Before the trial court, the defendant filed a motion for summary judgment arguing that all of the claimed information taken by the defendant, a former contractor of the plaintiff, to start a competing business were not trade secrets. The trial court agreed with the defendant. On appeal, Kevin argued that the determination of whether given information was or was not a trade secret was a question of fact, and that there were genuine issues of material fact for trial. The Court of Appeals agreed, holding in a case of first impression that under Oregon's Uniform Trade Secrets Act, whether given information qualifies as a trade secret is normally a question of fact, and that the trial court's grant of summary judgment was erroneous.

Media Appearances

- Gov. Brown Pardons Past Simple Marijuana Possession Offenses for Over 45,000 Oregonians, KATU News, November 21, 2022.
- Oregon Company Asks Court to Strike Down State Ban on Cannabis Exports. Portland Business Journal, November 22, 2022.
- The State Agency That Oversees Cannabis Had the Tools to Regulate La Mota, but Records Show It Rarely Did, Willamette Week, May 31, 2023.
- An Appeals Court Ruling Says Voters Outlawed Civil Forfeiture, Willamette Week, June 21, 2023.
- Cannabis Producers Ask Courts to Stop new Oregon Testing Rule, Portland Business Journal, August 1, 2023.
- Oregon Court of Appeals Sides with Marijuana Growers Amid Aspergillus Lawsuit, KOIN 6 News, August 25, 2023.
- Oregon Cannabis Scores a Court Win over Aspergillus Testing, Portland Business Journal, August 20, 2023.
- Oregon Suspends Mandate to Test Cannabis for Pathogenic Mold, Oregon Public Broadcasting, September 15, 2023.



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