

# WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES MARCH 2017

The cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol. This calendar includes cases that originated in the following counties:

Chippewa  
Waukesha

## **WEDNESDAY, MARCH 15, 2017**

9:45 a.m.	15AP1989	Tracie L. Flug v. Labor and Industry Review Commission
10:45 a.m.	15AP89-D	Office of Lawyer Regulation v. Mark Alan Ruppelt

In addition to the cases listed above, the following case is assigned for decision by the court on the last date of oral argument based upon the submission of briefs without oral argument:

16AP1776-BA Charles A. Nichols v. Board of Bar Examiners

**Note:** The Supreme Court calendar may change between the time you receive these synopses and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. If your news organization is interested in providing any camera coverage of Supreme Court argument in Madison, contact media coordinator Rick Blum at (608) 271-4321. Summaries provided are not complete analyses of the issues presented.

**Wisconsin Supreme Court**  
**9:45 a.m.**  
**Wednesday, March 15, 2017**

2015AP1989

Flug v. LIRC

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District III

**Circuit Court:** Chippewa County, Judge James M. Isaacson, reversed and remanded

**Long caption:** Tracie L. Flug, Plaintiff-Appellant-RESPONDENT, v. Labor and Industry Review Commission, Wal-Mart Associates, Inc. and New Hampshire Insurance Company c/o Claims Management, Inc., Defendants-Respondents-PETITIONERS

**Issues presented:** This case involves the interpretation of Wis. Stat. § 102.42(1m), which addresses liability for unnecessary treatment in workers compensation cases. The Supreme Court reviews issues presented by both the Labor and Industry Review Commission (LIRC), and Wal-Mart Associates, Inc. and New Hampshire Insurance Company (collectively referred to as “Wal-Mart”). As posed by the parties:

LIRC:

Does Wis. Stat. § 102.42(1m) require a worker’s compensation claimant to prove that invasive treatment she underwent was related to a compensable work injury?

Wal-Mart:

Does Wis. Stat. § 102.42(1m) apply to invasive treatment that is not related to the employee’s work injury, regardless of whether the treatment is medically necessary, or does it only apply to invasive treatment that is related to a work injury and determined to be medically unnecessary?

**Some background:** In February 2013, Tracie Flug was employed by Wal-Mart as a department supervisor in one of its stores. Some of her work involved overhead work scanning stock. She developed a severe sudden pain in her right upper back that went down the posterior shoulder and arm to the wrists.

Flug was examined by several physicians to address pain in her neck, shoulder and arm, as well as some numbness at times in her wrist and fingers of one hand. There was some question as to whether the condition was related to work or a pre-existing condition.

Flug had medical imaging tests performed and received a steroid shot, which she said did not improve her condition. She was referred for surgery – an anterior cervical discectomy with fusion/fixation at the C5-C6 and C6-C7 levels – which was performed on June 4, 2013.

Approximately one month after the surgery, Flug reported she was “doing excellent” and was feeling “almost 100%.” Flug returned to work on July 17, 2013, with a 20-pound lifting restriction. That restriction was increased to 30 pounds in August 2013 and was eliminated in November 2013.

Wal-Mart initially paid Flug worker’s compensation benefits. However, Wal-Mart’s worker’s compensation carrier retained a physician to conduct an independent review of Flug’s medical records. A claims manager concluded that Flug “had reached end of healing for your work related injury prior to surgery on 6/4/13...” Flug was allowed no permanent partial disability, and medical and disability payments stopped.

In August 2013, Flug filed a hearing application with the Worker's Compensation Division of the Department of Workforce Development. She sought medical expenses, temporary total disability benefits from June 22, 2013 through Aug. 8, 2013, and permanent partial disability benefits.

The LIRC denied her claim, determining that Flug failed to prove that the surgery was necessary to treat her neck and shoulder strain. The surgery was, instead, performed to fix a pre-existing condition. The circuit court affirmed; the Court of Appeals reversed, narrowing the issues now before the Supreme Court.

A decision by the Supreme Court is expected to clarify whether Wis. Stat. § 102.42(1m) requires an employer to pay disability benefits if medical treatment may be unrelated to a compensable work injury, but the employee has a good faith belief that the medical treatment is related to a compensable work injury.

**Wisconsin Supreme Court**  
**10:45 a.m.**  
**Wednesday, March 15, 2017**

*The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation (OLR) investigates, and, if warranted, prosecutes the attorney. A referee – a court-appointed attorney or reserve judge – hears the discipline cases and makes recommendations to the Supreme Court. The lawyer in this case has a practice in Brookfield.*

2015AP89-D

OLR v. Mark A. Ruppelt

**Supreme Court case type:** Lawyer discipline

**Long caption:** Office of Lawyer Regulation v. Mark A. Ruppelt

**Issue presented:** The Supreme Court reviews the referee's factual findings and legal conclusions regarding the misconduct charges against Atty. Mark A. Ruppelt. If it affirms any of the referee's conclusions of professional misconduct, it will determine what would be the appropriate level of discipline.

**Some background:** Ruppelt was admitted to the Wisconsin bar in 1994. His disciplinary history includes a 2014 public reprimand for engaging in improper sexual relations with a client and providing false information to his employer and the Office of Lawyer Regulation (OLR) regarding the nature and timing of his relationship with the client. *See In re Disciplinary Proceedings Against Ruppelt, 2014 WI 53, 354 Wis. 2d 738, 850 N.W.2d 1.*

In the case now being argued before the Supreme Court, the OLR and Ruppelt agree that the Court should impose the 12-month suspension to which they had stipulated, rather than the 15-month suspension recommended by the referee, although the parties have different supporting rationales.

Ruppelt's actions fall into two broad categories of misbehavior, both of which involve the same client, S.J.

According to the parties' stipulation and the referee's report, the first five of 18 counts of alleged misconduct concern Ruppelt's conversion of \$50,000 of S.J.'s funds held in trust. Ruppelt used the money to finance the purchase of a home. Ruppelt later repaid the money to his firm's trust account. When asked by the OLR about the \$50,000 trust account disbursement, Ruppelt testified under oath that the disbursement was for legal fees earned by the firm in S.J.'s criminal and civil cases. This testimony was untrue.

Counts one through five involve alleged violations of SCR 20:1.15(b)(1), SCR 20:8.4(c), SCR 20:1.15(b)(3), and SCR 22:03(6), enforceable via SCR 20:8.4(h).

According to the parties' stipulation and the referee's report, the remaining counts involve Ruppelt's misuse of advanced fees held in trust; his efforts to cover-up this misuse; his dishonest billing practices; and his failure to reasonably consult with his client. Among other things, Ruppelt stipulated to having caused his law firm to disburse large amounts of S.J.'s funds held as advanced fees in the firm's trust account in excess of the amount earned by the firm on S.J.'s cases. Ruppelt also stipulated to having used S.J.'s power of attorney to liquidate

S.J.'s life insurance policy with a value of \$18,779.51, which he then deposited into the law firm's trust account without S.J.'s knowledge.

Counts six through 18 involve alleged violations of SCR 20:8.4(c), SCR 20:1.15(b)(4), SCR 20:1.15(g)(1), 20:1.4(a)(2), SCR 20:1.15(d)(2), SCR 20:3.3(a)(1), SCR 20:3.4(d), SCR 20:1.5(a), and SCR 22:03(6), enforceable via SCR 20:8.4(h).

The referee recommended that Ruppelt be suspended for a period of 15 months. Because the OLR did not request any restitution, the referee recommended none. The referee did, however, recommend that Ruppelt pay the full costs of this proceeding.

Ruppelt argues that case law better supports the parties' agreed upon 12-month suspension than the referee's recommended 15-month suspension. Ruppelt also argues that, in recommending a greater suspension than what the parties agreed upon, the referee found facts that are unsupported by the stipulation. Ruppelt also argues that this court should adopt a policy of awarding deference to the joint recommendations of the parties.