

# The Legal Pad

PUSATIER SHERMAN ABBOTT & SUGARMAN LLP

Summer 2017

## Attorneys at Law

- Stephen F. Pusatier, Esq.
- Kenneth S. Sherman (1947-1988)
- Richard G. Abbott, Esq.
- Steven R. Sugarman, Esq.
- Keith A. Herald, Esq.
- Audrey Rose Herman, Esq.

## Legal Assistants

- Mary Bongiovanni
- Christa Karet
- Karen Stachura, Controller
- Betsy Stock
- Suzanne A. Wedekindt
- Marianne Montgomery

## INCLUDED AMONG OUR AREAS OF PRACTICE

- Personal Injury
- Auto Accidents
- Medical Malpractice
- Divorce and Family Law
- Mediation
- Social Security and Long Term Disability
- Real Estate Closings
- Criminal Law and DWI
- Business and Corporate Law
- Wills and Estates
- Planning for the Elderly

## Pusatier Sherman Abbott & Sugarman Chosen As One of the Best Law Firms by its Peers



We are proud to be chosen by our peers as one of the best law firms featured in *U.S. News and World Report-2016*. ■

## Abbott Inducted In Sweet Home Hall Of Fame



The Distinguished Alumni Wall of Fame of Sweet Home High School, held a ceremony to honor four inductees including Richard G. Abbott. Richard "Duke" Abbott, class of 1972, was nominated by classmate Dan Herbeck. Richard is a highly regarded attorney who has been active for decades in charitable and community service organizations in the Buffalo area. Tennis has been

an important part of Richard's life since he was young. He starred on tennis teams at Sweet Home and the University at Buffalo and became only the second tennis player to be inducted in to the University's Athletic Hall of Fame in 1997. Herbeck noted many points of Abbott's career, but most notable was the case of J.L. Ivey, a Buffalo man who was wrongly convicted of murder in 1976 and spent five years in prison. Richard has also been very active in raising funds for local charities including Camp Good Days, Brighton Place Library and Hunter's Hope. He has helped raise over \$40,000 for Camp Good Days and Special Times. ■

# Understanding The Divorce Litigation

By Steven R. Sugarman, Esq.

Making a marriage successful is hard work; the more you put into it, the more you tend to get out of it. Yet, some marriages will end in divorce. The following is an outline of the steps an individual will likely go through during the divorce process.

**1.** The person requesting the divorce (the “Plaintiff”) usually hires an attorney.

**2.** The Plaintiff’s attorney usually prepares a document called a “Summons” which is filed in the County Clerk’s Office and delivered to (is “served” upon) the other spouse. The filing and delivery of the Summons starts the divorce lawsuit and gives the New York State Supreme Court the power to act in the matter.

**3.** The spouse receiving the Summons (the “Defendant”) has twenty days to “legally appear”, usually with the help of his or her own attorney. The Defendant is in default if he or she does not legally appear, and in such event, the Plaintiff may conclude the divorce and ask the Judge for various relief without input by the Defendant.

**4.** If the Defendant legally appears, the parties, through their attorneys will exchange financial affidavits that set forth under oath each party’s living expenses, income, assets and liabilities. Tax returns, pay stubs, and other financial documents will also be exchanged. So that the parties can understand the full financial picture, appraisals and other valuations of assets may need to be performed. Sometimes a deposition (also called an examination before trial or “EBT”) is conducted in which each party (and sometimes other witnesses) is questioned under oath at one of the lawyer’s offices about certain facts of the case. This fact-finding part of the case is called the “discovery process.”



**5.** The attorneys carefully explain to their clients throughout the case what their legal rights are. The clients are also advised of all of the financial facts of the case. In consultation with their clients, the attorneys may exchange settlement proposal letters. Various settlement conferences either at court or at one of the attorneys’

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offices may occur. If the settlement conference occurs at court, the Judge’s law clerk (an attorney who works with the Judge) or the Judge may help in the negotiation process. Such in-court settlement conferences usually occur outside the presence of the clients. The negotiations are often more efficient and effective without the interference of the emotional elements of the split-up or the expectations of the clients that their attorneys must assume their anger.

**6.** If the case cannot be settled (or is only partially settled), it proceeds to a trial on the issues still in dispute. The Judge then makes a decision on such issues after hearing the evidence. Those issues that can be resolved by settlement are put into a written agreement.

**7.** Whether the case is settled or goes to a trial, any children of the parties may be appointed a lawyer (“AFC”) if any issues of custody, visitation or child support cannot be agreed upon. The AFC will represent the children in negotiations and at trial.

**8.** These are the general issues that must be resolved in a divorce: custody, visitation, spousal maintenance, equitable distribution of property and debts and attorney’s fees. There are many sub-issues within each of these categories that also must be resolved.

**9.** Once all parts of the divorce lawsuit are resolved, either by negotiated agreement or by the decision of the Court, the parties are still not divorced. The document which ends the lawsuit is called a divorce judgment. Parties are not divorced until this document is actually signed by the Judge. The judgment of divorce typically is

*continued next page*

## Medical Malpractice Case Settled

Stephen F. Pusatier represented a client who sued an emergency room physician for medical malpractice. The case was fought hard by the physician's lawyers. The case went to trial before a Supreme Court Judge and jury. After four days of trial, the case was settled with payment by the doctor's insurance carrier.

Steve Pusatier is an adjunct law professor at the UB Law School. He handles motor vehicle accidents, medical malpractice and other injury cases. ■

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### *Understanding The Divorce Process (continued)*

granted by the Judge between 30 and 60 days after the settlement has been submitted to the Court or after a decision by the Court has been rendered. The judgment can be granted sooner under special circumstances. Any special orders, which are necessary to divide retirement benefits of the parties, are also signed by the Judge after the divorce judgment is signed.

**10.** Any settlement of the parties which is submitted to the Court is usually "incorporated but not merged" into the divorce judgment so that the terms of the agreement actually also become the terms of the Court's judgment. Thus, if anyone violates the terms of the agreement, they are also violating the judgment. Either party may force the appearance of the other party in the future to the Court to account for any violations of the judgment.

The above steps are set forth, at the risk of over simplification, to describe in general the divorce litigation process. The attorneys in our matrimonial department have extensive experience and knowledge in the area of divorce law. We would be happy to answer any of your questions. ■

## Sugarman Voted "Legal Elite"



The Buffalo Law Journal announced the third annual Legal Elite Top 10, a peer-driven selection process which recognizes 10 of the most well-respected attorneys in their areas of expertise. Selection is based solely on nominations by fellow Western New York Attorneys. Steven Sugarman, an attorney, mediator and partner at Pusatier Sherman Abbott & Sugarman LLP; has provided an array of legal services for three decades. He is a first time Top 10 honoree.

A practicing attorney since 1985, he spent the last two decades training in mediation and building an alternative dispute resolution and collaborative law practice.

According to a nominator, in addition to being known for divorce mediation, Sugarman has been successful in various other mediation services including disputes involving businesses,

estates (such as inheritance disputes), workplace issues (such as allegations of wrongful discharge) and organizations (such as infighting that leads to dysfunction).

"He's built a large mediation and 'collaborative law' practice and conducted thousands of hours of mediations, which resulted in satisfying outcomes for the parties," a nominator said. "He's a great attorney and a great person."

"He's a first-class lawyer and first-class matrimonial mediator," a nominator said.

Sugarman is an adjunct professor at the UB School of Law, teaching basic and advanced mediation and mediation advocacy courses. His law student representation in mediation competition teams competed this year in Vienna and Paris, and was one of ten teams in the country that earned the right to go to the American Bar Association national competition in April. ■

### **We Love Referrals!**

Despite this modern age of marketing and advertising, the best source of our new business is word of mouth. We are grateful that many of our clients and friends feel confident in recommending our firm.

Unfortunately, many people who need a good lawyer do not know where to turn. If you or someone you know has been injured by someone's negligence or has other legal needs, please call us: **716-873-6765**

# SOCIAL SECURITY DISABILITY Q&A

The following are common questions about disability:

## Q Am I Disabled?

A To receive benefits under the Social Security Disability or SSI program, you must have a physical or mental health problem (or a combination of problems) severe enough to keep you from working for at least 12 months. The test isn't whether or not you are able to go back to your old job. The test is are you capable of holding any job? By using an extensive set of regulations, the Social Security Administration will take into account your medical condition, age, abilities, training and work experience in deciding your case.

## Q What is the Difference Between Social Security Disability and SSI?

A Both programs are administered by the Federal Government and both require that you prove that you are disabled from working. Social Security Disability requires that you became disabled while you were insured. You are insured if you have worked 20 out of the last 40 "quarters" (1/4 of a year). SSI (Supplemental Security Income) has no earnings requirement but you and your family must be poor.

## Q How Do I Apply?

A You can apply in person at any Social Security office or phone (1-800-772-1213). The administration will want to know who your medical providers are, what medication you are presently on and your work history for the last 15 years. For disability cases, you can also apply online at [ssa.gov](http://ssa.gov) on your own or with our assistance.

## Q What Do I Do If I Have Been Denied Benefits?

A Request a hearing. Nationally about 70% of all applicants are denied benefits on the initial application. But many of these people ultimately receive benefits when they pursue their claim. Therefore, if you are disabled and have been denied benefits, contact your Social Security office and file for a hearing within 60 days of the day you received your denial notice.

## Q What Is A Hearing?

A The hearing is where you will have the best chance of winning. Approximately 1/2 of the applicants who have been denied ultimately receive benefits at

the hearing level.

A hearing is conducted by the Office of Disability Adjudication and Review. An Administrative Law Judge will preside and testimony is taken under oath.

The only people present will be the Judge and the Judge's assistant, you, your attorney, and any witnesses you may want to be present. Usually the Judge will ask a vocational expert to testify about your ability to work.

Medical records will be accepted as evidence. The Judge and your attorney will ask you about your present medical condition, medical history, your abilities, education, training, work experience, and the limitations in your daily life caused by your disability. You and/or your attorney may have a closing argument.

## Q Do I Need A Lawyer?

A You have the right to have an attorney represent you at all stages of your Social Security case. Statistics have shown that people represented by attorneys are successful more often than people without an attorney.

## Publisher's Box

The Legal Pad is a publication of the law offices of **Pusatier, Sherman, Abbott & Sugarman LLP**.

2464 Elmwood Avenue • Kenmore, New York 14217  
(Tel) 716-873-6765 • (Fax) 716-873-7709

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**Pusatier, Sherman, Abbott & Sugarman LLP**  
2464 Elmwood Avenue  
Kenmore, New York 14217