

Divorce Magazine Interviews Judith S. Charny

Judith Charny offers information and advice about New Jersey family law, including details on different approaches, the division of various assets, and explains how alimony, child support and other divorce-related topics are settled.

Judy Charny has been practicing family law since 1984. She's a partner at the law offices of Charny, Charny & Karpousis, a South New Jersey firm that is focused in the area of divorce and family law. As a litigator, Miss Charny aggressively represents her clients but she has a practical mindset which is essential in an emotional time.

She advocates for clients who are stay at home parents, wage earners, consultants, executives, professionals, and business owners and their spouses. As a business owner herself, Judy is especially sensitive to the concerns of business owners and professionals who are facing divorce. In addition to practicing traditional litigation, Judy has led the firm's efforts to offer mediation and a new, collaborative divorce approach to the process.

She is a master in the Thomas S. Forkin family Law Inn of Court and is on its executive committee. She is a matrimonial early settlement panellist in the Supreme Court of New Jersey for both Camden and Burlington counties. And she's served on District Four Ethics Committee of the Supreme Court of New Jersey. Miss Charny has served as the Cherry Hill Township Municipal Court Prosecutor from 1999 to 2008, and from 2011 to the present, in addition to having her own practice.

She has received many awards and accolades. I recommend you visit the firm website to read Judy's impressive biography. The website address is charnylaw.com.

Miss Charny has appeared on national, regional and local television programs. She's often featured and quoted in magazines, been profiled in numerous New Jersey magazines and newspapers. She's active in her community, and volunteers her time, supports many organizations that make a difference. To say Judy is an accomplished family lawyer would be a serious understatement.

How does your firm approach a divorce case? What are the first steps?

Our firm approaches each case individually. We don't have a formula where you come in, we speak to you, we file a divorce complaint and we do everything by rote. We're very individual. We talk to each person. I talk to most of the people that come for consultations and discuss their concerns, whether it be their children, the business, their support. Everyone has their own hot button and everybody has their own concerns. So everybody's individual.

I explain too that there are different ways of approaching divorce and it's not a cookie cutter situation. We're very good at what we do because we're unique and we can determine different ways of approaching each case. We're very knowledgeable on the law. We can certainly litigate. We're competent in that

regard but we're also competent in mediation and other alternative ways of dispute resolution, which is sometimes much more advantageous to the client than the straight on litigation approach.

The good news is we're good at it all. I feel good about that. Many people come to me and say, "I heard you were a bulldog," and "I heard you were a really great litigator." I appreciate that. But I also can see where it may not be the best option for you under the circumstances.

What are the basic things that a divorcing person should know as they're starting the divorce process in New Jersey?

It's very important when you come for a consultation to have an understanding of your financial situation. I have many people that come to me and say they don't know anything about their finances. I can appreciate that but it's going to be a much more costly process if a person doesn't have any idea of what their finances are. Also, it's very difficult once litigation starts to ascertain finances if you are the party that doesn't have any knowledge of them.

A lot of times, if they don't bring tax returns and statements to the consultation, I will say to them, "I need you to go back and look for these things. I need you to-, they're yours. They're your joint accounts," or you know, "it's your finances, that you should try to see what they are because the more you know, the less costly the litigation is going to be." Sometimes it's very difficult, but that would be my primary statement to someone who's divorcing: they should have a sense of what their financial situation is when they come to see a divorce attorney. They should have some understanding of that.

That kind of dovetails into what to bring to the first consultation. I would say that a person should bring tax returns, bank statements, mortgage statements, anything that evidences the financial situation. That would be very important to bring to the initial consultation.

Do you think that self representation is a good idea?

I don't think it's a good idea, especially if there are children involved, because they don't really understand the law. They don't understand what they're negotiating for or against if they don't know what the law is. And people get a misconception of what the law is. I have a lot of people who come for consultations that read things online, and sometimes they're not very accurate or they don't apply to their particular situation, but they don't realize that. I think at the very least, if they don't have the money for a complete divorce, they should at least have a consultation so that they understand what's involved before deciding that they want to self-represent.

I encourage mediation. That's a process that at the end, if the parties are self represented, then they literally just go to the lawyer at the end to review it to make sure it's fair. And I think that would be a good alternative if a person doesn't feel that they can afford an attorney throughout the process.

If a couple does end up hiring an attorney to represent each of them, what is the likelihood that their divorce case will go to trial in New Jersey?

I don't know the exact statistics, but I know that settlement in this area of the law is very, very high. Probably 95% to 99% of the cases settle. I personally feel and have a mindset that these cases should not try. They do not belong in court. Families do not belong in that kind of acrimonious situation because it's very detrimental to the children, as well as the relationship of the parents in the future. It's a really horrible alternative. We particularly believe that cases should be settled.

In the entire realm of situation, I believe that the statistics are pretty high for settling. The Supreme Court has recognized that. In the court rules, there's mandatory settlement conferences in family law cases. They're very much looking to have these cases settled due to the horrible nature of the litigation in this area of the law.

What is equitable distribution? What does that mean?

What that means is that we are not a community property state. In a community property state, everything that is acquired during the marriage is split 50/50, period. We're similar. It's called equitable. Anything that is acquired during the marriage, in your name, in your partner's name, and joint names, anything that is acquired, including an increase in value of assets that were acquired prior to the marriage, basically becomes marital estate.

After they are identified and valued, they are distributed equitably. Basically what that means is it's what's fair. A lot of the time in a long term marriage, it is 50/50. But there are arguments that can be made. It's not in stone, 50/50. In fact, when there's a business involved and the spouse does not work in the business, that spouse will get 30% of the value of the business. There's statutory factors that determine what's fair, the length of the marriage, the age of the parties, the ultimate tax distribution, the ability of each party to make their own money. There're a lot of considerations. But first thing that's done is that all the assets are identified as marital and valued, and then distributed equitably.

Now what about alimony, does that still exist in New Jersey?

Yes, alimony exists in New Jersey. There are bills at the moment in front of the legislature to change alimony. It's an alimony reformed bill to basically abolish permanent alimony, which we have now in New Jersey, and making alimony more of a formulaic approach.

Right now, we have statutes, which include the length of the marriage, the homemaker's time, how much time a homemaker would take off of work, the disparity of income, the training of each party, the ability of each party to maintain the lifestyle. There're a lot of factors involved in alimony and it's very particular at the moment in New Jersey. That's the statute that we have. But the alimony reform statute is being considered at the moment.

In New Jersey, it is one of the states that is very good to the dependent spouse. When you are a dependent spouse, you will get alimony in New Jersey. And I don't know that that's true in a lot of other states. It's known to be a good state for the dependent spouse.

What if a couple is divorcing and one of the spouses has been in control of the money, and during the divorce process, they don't give the other spouse access to money?

When a client is in that situation, a divorce complaint has to be filed because an action has to be started in order to go to court. There's something that's called pendente lite support. That's called pending the action. How is this family going to maintain itself? We don't allow situations where one spouse simply just steals all the money and runs away. It's marital money. The status quo for the children and the wife have to be maintained. There's going to be no change in beneficiary. All the bills have to be paid exactly the same way that they were paid during the marriage. All the insurances are maintained.

If there's a lot of money, there would be some kind of a restraint on the use of certain assets if they don't need to be used for everyday support. All that is done during a pendente lite motion gets everything stabilized so that you can move on to discovery and the ultimate, dissolution of the marriage. I try not to have to go there because it costs money and you're already working on the divorce and now you're working on the pendente lite arrangement.

I can negotiate what the status quo was. That's something that I ask my clients when they come into consultation. I get their bank statements, I see where the money comes in, where it goes out, I get the status quo. We can do that by consent so that we don't have to spend the money to go to court. There is something that can be done. There will not be a situation where one spouse is controlling the money and the other spouse doesn't have any throughout the litigation. That's not going to happen if you have an attorney.

Once you get to the point where you're dividing the assets of the family, how do you go about dividing the assets? What's involved with that?

First we have to do what's known as discovery. We have to get all the documentation that has to do with the finances of this family. We identify the assets that are marital and then we have to get them valued. Depending on the case and how the case is flowing, which goes back to my individual approach, sometimes we'll hire another attorney and I will discuss hiring one expert to just value the house and go from there. If it's very acrimonious, you have to hire two experts, and then it becomes an expert battle.

But the crux of the matter is you have to value the property, get a value, and then negotiate a split that's fair. And if you can't agree, that's where you end up having to go to court.

Would the same thing be true for a business?

It has to be valued.

So you would hire experts, or who does that valuation?

You have to hire a forensic accountant to put a number on the business, absolutely. The law is, if the spouse really had nothing to do with the business at all, it's usually a 30% split. A lot of times, spouses work in the business, small business, the spouse is very involved. As their involvement goes up, their percentage goes up.

In a case where one spouse supported the other one through medical school, would that be a 30/70 split as well or one of the factors?

That would be a factor that may cause the percentage to go up. There is something in New Jersey called reimbursement alimony. I've rarely seen it, but what it means is that you actually get a share. As part of the alimony you would get a share of that degree because you've participated in the other party getting that degree. Mostly in that situation the party gets more alimony based on the fact that there's more income because they have this degree.

Does it make any difference in divorce, if one spouse moves out of the home or not? Should they stay in the home?

It's really a very individual situation. First of all, it depends on children. It depends on the relationship in the house, if they're even able to stay together. Sometimes they're not. There's a situation where there's domestic violence, they're not going to be able to stay in the house. My thoughts usually are that the person who is the primary caregiver should stay in the house with the children and if there's domestic violence, they would have to call the police and have the other party taken out.

I have had situations where someone comes to me and said they're so scared they left with their children. That is problematic because the other party has equal rights to the children and can have the children brought back, basically saying that one party kidnapped the other. People should stay in the house if they can. You lose understanding of what's going on in the house if you're not in the house. That's the best way I can say it. You don't have access to the house, and when it's time to start dividing stuff up, you don't even know what's there anymore. Especially if you have children, you should stay in the house.

If your safety is really at risk your best advice would probably be to stay in the house if you can, particularly if you have children.

Even if your safety is at risk. I always say we have domestic violence statutes in the State of New Jersey to protect people if they feel they're at risk. If they feel uncomfortable in their own home, they need to call the police and get the other person taken out before they leave with their children. That's my advice. They should not leave with their children. Children should stay in the house with their caregiver as much as possible.

If one of the spouses feels that the divorce is the other spouse's fault, is that spouse likely to get more in the divorce case if they're not the ones responsible for the divorce occurring?

I don't want to use the word archaic, but that's a really archaic thought. In this day and age, we have no fault divorce mostly. There still are fault grounds. They're very rarely used. And they don't change the equitable distribution in most cases. There's a very slim exception if there's an adultery situation where the adulterer is utilizing marital funds or marital assets to further the adultery, then that money is basically owed back to the non-adulterer.

In reality, it doesn't make a lot of difference in terms of the relief. Most people just want to put adultery because it makes them feel better. But you have to be able to prove that they used the money and that's not easy to do. That's kind of a hard situation unless it's really a lot of money they're maintaining, a house for the mistress or whatever. It's usually just a couple of vacations and a few dinners, doesn't really amount to a huge amount of money. That's just what I've seen.

In general, it's a no fault divorce state, and fault doesn't really matter. The relief that is sought is going to be the relief and it goes by the factors more than fault.

So you would recommend that they should perhaps get psychological assistance to help them through the emotional and psychological aspect of their divorce?

In most circumstances. There still a law that says if you can prove adultery and you can prove marital money has been spent to further the adultery, you are going to get some money back. There is that slight exception. I always recommend for my clients to have guidance from a therapist of some sort during the process. It's a very difficult process. While I'm very compassionate, I'm not a psychologist or therapist. I try very hard to help everybody in the case, but it's not really my job, and I do like them to see somebody to help them through it.

I provide books and things to read, and try to help them see what's going on. But the reality is I have cases where there's adultery most of the time, and people are very angry. It just doesn't change their ultimate relief. They need to understand that. I try from jump to explain that you're not going to get more money. And you're not going to get a feeling that you were right and he was wrong, because it's just not the way it works.

Can you kind of give me a little bit of information about how child support works?

Child support is by the guidelines of the State of New Jersey. We literally have a program that we use to plug in the numbers. It's much more formulaic than alimony. Of course it has to do with how many overnights each parent has with the child, and there's sole parenting and share parenting. If you're the sole parent, it means the other parent only has about 52 overnights, every other

weekend with the child, which means that they don't maintain a separate house for the child.

Shared parenting, there's an understanding that they have separate resources for the child. The child support would be much less because you're spending money on the child in your own home. This really has a lot to do with custody.

It's a process you have to look through to kind of come up with the numbers, right?

It's one of the last things that is considered because custody is the first thing that's considered, and that's really the most important. The child support even comes after the spousal support, because on the guidelines you have to put your alimony, which would change the proportion of income in the family if there's alimony.

Now obviously if the child is playing tennis and gymnastics or swimming and they have these very expensive activities, that's something that needs to be considered in the forefront. Again, it goes back to I try to be individual and talked to my clients from jump about, you know, what's important to them, because they each have, you know, their hot buttons, and one of them, you know, maybe is child support.

If they were very active in sports or something, that those would be considered extra child support amounts. Would the same apply to something like private schools or universities?

Not universities. College contributions is a totally different animal. But private school can go on the child support guidelines book. Related daycare can go on the guidelines, extraordinary extracurricular activities. There's a lot of factors that can be considered for the guidelines. But it is essentially a guideline.