

# Family Mediation

## LYNN AND MIKE DIVORCE

### General Information

Lynn and Mike are in their early thirties. They have been married for five years and have one child, DJ, age four and a half years. They met in college, where she studied business marketing and he studied computer science. After graduation, Mike joined an up and coming computer programming and services corporation, CompuStart, and Lynn worked for a local advertising agency. Mike's position was the higher paid one, yet he did not find working for someone else rewarding. Lynn loved her advertising work and found it to be a creative outlet.

Lynn's pregnancy was not planned and provided the impetus for Mike and Lynn to get married three years after they graduated. Lynn agreed to quit her job after DJ's birth and provided primary caretaking and homemaking during DJ's first two years. During this time, Mike continued to work at CompuStart and felt somewhat removed from both Lynn and DJ. He also felt extra pressure was put on him as sole wage earner.

Mike, after his graduation, had used \$50,000 of a \$100,000 inheritance to pay off his college loans and the remaining amount for the down payment on a small, two bedroom house, on which Mike has done considerable improvement work. At the time of the marriage, Mike's equity in the house (its market value less the mortgage payments) was about \$60,000. While the house was not ideal for a family, and Lynn thought it "masculine," eventually she added her "woman's touch" to make the house a home and she ended up spending most of her time at the home with DJ, at least during DJ's first two years. The equity in the house, which is still in Mike's name, is now about \$200,000.

Eventually Lynn felt like she needed more in her life; she missed work and she missed people. Mike was bored with the work he was doing. They had some money saved in their joint savings account and agreed, about 2 1/2 years ago, to use it to start their own software business, *Time Manager*, which they operate from a small rented space in town. They have invested \$40,000 in the business from their joint account, as well as their time. Most of the money was used to buy new computer equipment, office furniture, supplies, mailing lists and some carefully placed advertising. The computer equipment and office furniture have a current value of about \$10,000. The business developed slowly and the financial pressure added to the tension in their marriage. They have exhausted all but \$20,000 of their savings and have difficulty paying their living expenses. They now net about \$40,000 a year total from their business, which they manage together and have no other employees.

They alternate their work schedules, so that Mike takes care of DJ in the mornings until about 12:30 p.m. and then takes DJ to afternoon day care. Mike generally works 1 pm to 9 pm, with Lynn working 9 am to 5 pm, picking up DJ from day care and putting him to bed in the evening. By the time Mike arrived home (sometimes he would go out for a beer with friends), Lynn was tired and in

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bed. In this way, Lynn and Mike have grown apart, despite encouraging signs for their business. They just recently learned that the U.S. Business Software catalog was interested in carrying their *Time Manager* product. Although final terms have not yet been worked out, U.S. Business Software indicated its desire to market the software to 3.5 million small businesses, spending \$50,000 toward the promotional effort. This could be their big breakthrough. If this doesn't increase their revenue, one or both of them will have to get another job.

Mike and Lynn drifted so emotionally apart that they felt the marriage was not working and began to question why they were together at all (except for the business commitment and DJ). After four months of marriage counseling they agreed that they both wanted "out". Last month Lynn moved into her own two-bedroom apartment a few blocks from Mike's house. They split their savings account, each taking \$10,000 and have agreed on an equal division of all the personal and household possessions they have purchased during their marriage. Lynn has a car given to her by her parents when she graduated from college, and Mike has a car leased in the name of their business. Each has hired a lawyer, saying they wanted the divorce to be amicable. Neither of them quite knows how to deal with the parenting and business issues. Their attorneys suggested that they try mediation, offered at a reasonable fee by another attorney they both know.

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### Private Information for Mike

Mike is a very sensible and down to earth person. He really loved Lynn and was pleased the two of them decided to get married when they learned that she was pregnant. Mike adores DJ and one of the primary motivating reasons for him leaving his job and working with Lynn on *Time Manager* was that he could control his own work time, spending mornings with DJ and working afternoons and evenings. Initially, this seemed like a great arrangement, as Mike and Lynn could each spend substantial time with DJ, minimizing the need for day care. Mike did not realize how this complementary work schedule would affect his relationship with Lynn. Although he enjoys running his own business, there's little time for anything but working and DJ. Mike feels that he and Lynn have lost their emotional bond.

Mike is emotionally hurt. Even though he agrees that the marriage is not working, it hurt him greatly when Lynn decided to move out. He heard from a friend that Lynn is seeing someone, and he was surprised by how jealous he feels. Mike has a great sense of humor and everyone seems to like him. He is also relatively conventional about the way a family should be structured. He prefers things to be clearly defined and kept simple. Although his marriage has not been happy the last couple of years, he looks forward to meeting another woman and remarrying.

He and Lynn have continued to share responsibility for DJ, but they do not talk much. He assumes that the mother usually gets custody, but he wants to remain very involved in DJ's life. He also assumes that he will have to pay some child support, but doesn't feel that is fair, particularly if they continue to be business partners. Lynn is good at marketing and their talents complement one another in the business; however it's hard for him to work with her because of his resentment about her moving out and seeing someone else. He is feeling very unsure and nervous about how this is all going to unfold. He has good computer software skills, but the software job market is still depressed and Mike has no immediate job prospects if the business fails. He thinks he could run *Time Manager* on his own for a while but would eventually need to hire someone with Lynn's marketing and customer service skills. If their *Time Manager* product is marketed in the US Business Software catalog, their yearly profit should double and Mike would be interested in buying Lynn's share of the business, although he has no cash now and most of what they invested was from his earnings.

Mike is grateful that he never put the house in their joint names. At least keeping the house gives him some security because of the increased equity. He knows that Lynn, unlike him, can get financial help from her parents if she needs it. She is also more employable now than Mike. Mike's lawyer has told him that Lynn may argue that she is entitled to half of the mortgage and taxes paid during the marriage, but that it is an open question because she had the benefit of living rent free in his house. In any event, the lawyer cautioned that it is better to work something out than to have to go to court and pay more for attorneys. He is not sure about mediation, but his lawyer recommended it.

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### Private Information for Lynn

Lynn is very energetic, outgoing, and gregarious. She is generally even-keeled and avoids conflict. She's not much of a fighter, but can be quite stubborn. She is determined and goal oriented. Although she loved Mike, she is not sure that they would have gotten married if she wasn't pregnant with DJ. She worked from the time she received her B.A. until DJ was born. She then stayed at home painting, decorating and refinishing furniture, as well as taking care of DJ. She likes to be active and enjoys taking DJ on outings and ventures. She felt good about the time she spent at home with DJ and she enjoyed decorating the house. But she began to really miss her work in advertising, which she found intellectually challenging and creative. After two years, she was ready to go back to work and looked forward to getting out of the house more.

It was Mike's idea to start the *Time Manger* business and she agreed to partner with him so that they could maintain more flexibility in caring for DJ. Mike is the lead programmer and technical person and Lynn is in charge of marketing, distribution and customer service. With the business relatively new and the product needing continuing technical development, she doubts her ability to keep it going alone. She doesn't know if she and Mike can continue working together and would consider selling her interest for half of what they invested from their joint account (½ of \$40,000), although she would want more if the US Business Software deal comes through.

As Lynn and Mike grew apart, she felt lonely and a few months ago, after counseling started, she met John, who makes her happy. She is not sure exactly what the relationship is really about, but she knows she needs "space" to think about it and possibly give it a try. This is one of the reasons that she decided that the marriage was over and she moved out. John, who runs his own successful advertising agency, has made it clear that he would like Lynn to work with him, but they have not discussed any details, other than that he could pay her more than she makes through her current work with *Time Manager*. John's son is six months older than DJ and lives with John's former wife, although John sees him frequently.

Lynn's parents have assured her that they will provide financial help if she needs it. This is reassuring to her as she has nearly exhausted her share of the savings. However, she does feel strongly that she is entitled to half of the appreciation on the house since they married (½ of \$140,000). She would like to buy her own house and believes Mike can take out another mortgage to pay her the \$70,000.

Lynn prefers some form of joint custody so she and Mike can continue to share parenting responsibilities for DJ. However, she assumes that DJ's principal residence will be with her. Lynn expects no spousal or child support. She assumes an equal split of their business income with Mike first reimbursing the business for his use of the leased car, unless he buys her interest in the business. Because she and Mike have not been able to talk much and she knows he feels hurt, she is pleased that he is willing to try mediation, as suggested by their lawyers.

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### Instructions for Observer

The observer of each group should report to the class on:

- Settlements that were reached.
- What additional information might have been helpful.
- What seemed to help move the parties toward agreement.
- Problems the mediator faced.
- How it felt to mediate a divorce situation for all players.
- How this divorce mediation compared with a commercial mediation experience.