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# Access to Justice for Immigrant Communities

In immigrant communities, language and poverty can create significant barriers to justice. This new model removes those barriers, allowing lawyers to assist more potential clients with family law issues.

By Dr. M. Jude Egan, Family Lawyer

I have a family law practice (with some immigration) in Santa Maria, CA, a town of about 110,000 residents in northern Santa Barbara County. Unlike its southern neighbor, Santa Maria is a poor community, with more than 60% of residents living at or below 125% of the poverty line and 17% living below the poverty line. As in so many places, race and poverty go hand-in-hand. More than 75% of residents are Latino/Hispanic, 62% speak a language at home other than English, and almost 34% were born in another country (all data, unfortunately, based on the 2010 census, which will be updated this year). Close to 60% of new family law filings are parental rights actions (meaning the parents were not married).

Although so much of becoming a Certified Family Law Specialist is the ability to take “complex” or “high asset” cases and charge a higher fee, in fact, low asset cases with immigration status issues, Hague Convention issues, issues regarding quasi-community property held in other states or countries, cross-border visitation issues, linguistic issues, housing issues, employment issues – including verification of income teaching us all about how Latino workers are taken advantage of by employers – all point to incredibly complex family law matters.

### Language Can Create an Insurmountable Barrier

Although I have not observed overt discrimination in our courthouses, I acknowledge that it is incredibly difficult to provide the same blind justice to people who speak another language and have little in the way of experience in speaking up in front of a judge. Spend a morning in family court and listen: first to the advocacy of the attorneys, followed by English-speaking pro per litigants. Enough courtroom teledramas have educated them in the language of advocacy, but Mexican courts, for example, are not places of civil procedure reform and opening of access to justice for self-represented litigants.

Too often Latino litigants spend their entire court time talking about where the baby should sleep and forget to mention hidden assets or an arrest that will lead to a deportation of one parent or a pending eviction or a school IEP or a child walking the thin line toward gang initiation because there is no education system for them (or anyone) to know what or how to ask for what they want. The language barrier makes cross-examination, even by the judicial officer, next to impossible. Hearings border on farce (without blame laid at anyone’s feet).

### Non-Lawyers Providing Legal Advice

Santa Maria has a “gray market” of Legal Document Assistants (LDAs) who help prepare and file court documents. Many of them are fluent Spanish speakers and, as a result, they are called upon to assist people through the process. I have long been a proponent of LDA work, especially in communities like mine, but I believe strongly in continuing education because the road is paved with landmines – even for Family Law Specialists, much less for LDAs. My biggest concern is that clients of LDAs cannot request legal advice (we know they do, but they should not receive it from non-lawyers) while they request legal help in filling out documents.

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This creates an opportunity for impropriety. On the other hand, LDAs are an absolute necessity in communities like ours, where, for many of our residents, accessing lawyers is nearly impossible given the poverty and language barriers. Thankfully, the LDAs assist people in doing financial disclosures, but I have been on record stating that LDAs should not draft Marital Settlement Agreements because of the high likelihood of error. The poverty of the parties is no reason to assume a divorce is not complicated; there are many details of many divorces that go unadjudicated or ignored.

Since judges are reactive, they respond only to what they are asked. When parties know neither what nor how to ask – or even what types of things they might ask for – divorces in communities like ours are often incomplete despite the best efforts of judicial officers to properly resolve all issues.

Good judicial officers, of which my particular community is fortunate to have, attempt to resolve what they can and allow Family Code 2556 (reserving jurisdiction over unadjudicated assets), ongoing child support jurisdiction and the ability to modify child custody at a later date. But this effectively means that even good judicial officers are attempting a sort of “rough justice” in which they resolve what they can, dissolve marriages, and figure they will deal with future problems as they come. Because our Spanish speaking litigants’ problems are complex, this “rough justice” approach rarely resolves all issues, including the executory issues: for example, drafting QDROs, transferring title to vehicles and real property, etc.

### A Crisis of Access to Justice

In response to what we believe is a crisis of access to justice, my firm launched the Family Law and Immigration Center (FLIC) on July 15, 2020. FLIC is not unlike “unbundled” legal services except that it will provide educational services for the community, including evening classes on family law and immigration issues. FLIC keeps prices low and gives them access to a lawyer with no deposit or retainer by allowing them to schedule time to ask questions, have documents drafted, and learn what to ask for and how to ask for it.

I believe that this model is the only way to deal with multiple problems affecting the immigrant communities in towns like ours. The answer is not, as the State Bar seems to suggest, to open legal practice to non-lawyers, but to permit

lawyers to assist more potential clients. If we get the documents and disclosures right, we make it easier for judges and courts to serve their communities.

At some level, FLIC will provide expanded services of the Family Law Facilitator, but including immigration issues, at prices that even our impoverished residents can afford (likely \$1,000 over the course of the six-month “cooling off” period, with no retainer).



### Providing Equal Services to Immigrants

The only way to provide truly equal legal services to immigrant communities is to give them access to lawyers at prices they can afford without retainers. You eliminate the high-priced barrier to entry and allow people to buy hours or fractions of an hour as they need them. Clients have access to legal advice when they need it and, importantly, they learn how and what to ask for in court (including decorum).

The FLIC model can be replicated across jurisdictions to give greater access to justice for non-native English speakers, the poor, immigrants, and people who are otherwise left out by the legal system. Particularly during the pandemic when so many communications are digital, FLIC will be

available statewide so that we may serve other communities. We will gather and publish data as we develop. ■



*M. Jude Egan, Ph.D., a California Certified Family Law Specialist, wrote his doctoral dissertation on Jurisprudence and Social Policy. He was commended by the National Voluntary Organizations Active in Disaster for his work drafting the National Nonprofit Relief Framework for a policy paper ultimately adopted by the Centers for Disease Control. [www.JudeEganLaw.com](http://www.JudeEganLaw.com)*

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