Access to Justice Requires a Record

The Hidden Barrier to Meaningful Appellate Review



Renee E. Beeker

President and Founder,
National Family Court Watch Project
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A survivor, speaker, and advocate for reform of the judicial system since 1996.

A parent can sit through a hearing that changes where a child lives, leave with a court order, and still have no reliable way to establish what was said. Without an adequate record, an appeal may be available in theory but extraordinarily difficult to pursue effectively. In August 2026, the California Supreme Court confronted this problem in Family Violence Appellate Project v. Superior Court. Its decision raises a question for courts nationwide: When families must pay to preserve their court proceedings, is meaningful appellate review equally accessible?[1]

In the author's family court case in 2004, a stenographer was present. A record was made, although she had to pay to obtain the transcript. That distinction matters. There is the cost of making a record, and there is the cost of getting a usable copy. Her experience illustrates that creating an official record and ensuring meaningful access to that record are related but distinct concerns. Courts may preserve proceedings electronically; a missing reporter does not necessarily mean a missing record. Parties need to know whether an official verbatim record is being made.

The California Supreme Court's Decision

In Family Violence Appellate Project v. Superior Court, the California Supreme Court described the consequences when civil, family, and probate hearings proceed without an official verbatim record. A party who can afford a private reporter may create one; a person who cannot pay may be unable to demonstrate error on appeal. The court required meaningful access to an official

verbatim record, upon request, for litigants who cannot reasonably afford a private reporter. Electronic recording must fulfill that duty when an official reporter or official reporter pro tempore is unavailable.[1]

This decision is a significant step toward meaningful appellate review, but it does not answer every access question. A person may qualify even if they can afford ordinary court fees. The ruling requires a request and inability to reasonably afford a private reporter; it does not require automatic recording for everyone. Some appeal procedures permit alternative records, but those alternatives cannot systematically replace verbatim records. Creating an audio file also leaves questions about obtaining a timely, affordable transcript.[1]

The scale of the problem is documented in California. Its Judicial Council reports that 3,007,651 of 4,214,365 family law, probate, and unlimited civil hearings between April 1, 2023, and March 31, 2026, had no verbatim record: 71.3 percent. This combines three categories; it is not a family-law-only rate or a national estimate.[2]

Riverside Superior Court's January 2025 policy describes limited reporter availability in family law, including domestic violence restraining order cases, and requests by fee-waiver recipients. That policy predates California's August 2026 ruling and must be read alongside its broader affordability standard. The Riverside example illustrates how court-reporting practices and availability can vary even within a single state.[3]

Court Reporting Practices Beyond California

Although the California ruling addresses obligations under California law, the practical challenges it identifies are not confined to one state. Published court policies show why a national conversation is necessary. Florida's Eleventh Judicial Circuit advises that parties in most family hearings must hire private reporters when necessary. It provides in-house recordings for specified proceedings, including family domestic violence hearings, Title IV-D child support, and all magistrate proceedings. Florida's Seventeenth Judicial Circuit also assigns private reporting to litigants in family civil and other unlisted case types, while covering specified proceedings, including domestic violence injunctions. These policies affect represented and self-represented litigants.[4,5]

The public needs to be able to answer several questions before a consequential hearing begins: Will an official verbatim record be made? If not, who must request or arrange one, and by when? How will everyone know recording is active throughout the proceeding? What happens if equipment fails? What will the recording or transcript cost, and how long will it take to obtain? Courts should provide advance notice explaining the requirements, available assistance, and retention period while parties still

have time to act. Answering these questions only after an appeal becomes necessary answers them too late.

Observations from the National Family Court Watch Project

The National Family Court Watch Project (NFCWP) has long asked observers whether a court reporter was present and, when possible, recorded the reporter's name. That observation cannot establish whether an unseen electronic system was operating. This distinction underscores the need for courts to make their recording procedures transparent to litigants and courtroom observers. People contacting NFCWP have reported having to arrange and pay for a reporter. A volunteer whose case is in Florida's Eleventh Judicial Circuit describes that financial burden after exhausting funds for legal representation. Her account is consistent with the circuit's published policy for most family hearings.[4] She also reports that a reporter she hired was not admitted to a prior hearing despite advance notice to the judicial assistant. The reason and whether another official record was made remain unclear. Courts should explain how privately hired reporters gain admission, including to virtual hearings.

Our monitors sometimes cannot hear what is said in courtroom or virtual proceedings. That matters for public observation, although it does not prove the official recording is absent or unintelligible. Michigan's manual directs video operators to monitor recorded audio and notify the judge when equipment failure or inaudible speech prevents a record. Its virtual-court guidance addresses background noise through muting participants when they are not speaking. Determining whether a recording failed requires examining the recording itself.[6,7]

Courts face competing demands on limited funds. Qualified reporting and reliable recording require staff, training, equipment, and secure storage. Those pressures deserve consideration alongside the consequences of shifting responsibility for creating a record to families. Preserving proceedings should be part of delivering justice, with resources and responsibility clearly assigned.

Establishing a Standard for Meaningful Access

Every state should establish a clear, public standard for preserving substantive family court hearings through qualified reporting or reliable court-operated recording. Courts should tell parties before the hearing how the official record will be made, monitor intelligibility, document interruptions, retain the record securely, and provide a practical route to an affordable copy and transcript. Florida's technical standards already address protection against alteration, overwriting, and recording loss through backup provisions. Such standards offer a foundation for reform; they do not establish compliance

in every hearing. Access must also respect lawful confidentiality protections.[8] We often speak of access to justice as the ability to enter a courtroom and be heard. It must also include the ability to establish what happened there. A dependable record supports meaningful review and public confidence that judicial decisions can be examined. The California Supreme Court has recognized the importance of ensuring access to an official record when a litigant cannot reasonably afford a private reporter. The next question belongs to every court system: Why should anyone have to purchase the preservation of a proceeding in which the court exercises power over their family?

References

Sources consulted October 7–9, 2026. Selected examples, not a national survey or compliance audit.

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[4] Florida Eleventh Judicial Circuit. Court Reporting Services. https://www.jud11.flcourts.org/Court-ReportingServices

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[8] Florida Courts. Digital Court Recording Technical and Functional Standards (March 2021), pp. 4–5, 9. https://www.flcourts.gov/content/download/801459/file/dcr-technical-and-functional-standards-march2021.pdf