EXHIBIT 1

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To Whom It May Concern,

I write pursuant to Illinois Supreme Court Rule 3 to request a rule change so that Illinois's court access policies are internally consistent and conform to the constitutions of Illinois and the United States.

I am requesting the Rule Committee of the Illinois Supreme Court immediately enjoin from enforcement portions of all rules, laws, and policies that restrict the public from access to court records in violation of the Illinois and United States Constitutions as well as the Clerks of Courts Act (705 ILCS 105/16, para. 6).[1]

3 (a) (3) "All proposals shall offer specific language for the proposed rule or amendment, as well as a concise explanation of the proposal."

To address anomalies in current policies on access to court records scattered throughout Illinois manuals, rules, and a recently enacted state statute, I am requesting that Illinois Supreme Court Rule 8[2] be immediately amended.

PROPOSED RULE CHANGE

Rule 8. Case and Document Accessibility

(a) All cases and documents are presumed to be accessible by the court and the clerk.

(b) Clerks shall limit access to case information and documents that are not identified as public to the clerk and/or limited supervisory staff through the use of access codes restricting access. ~~Access to court records and documents remotely over the Internet shall be as authorized by the Illinois Supreme Court Remote Access Policy.~~

(c) All records, dockets and books required by law to be kept by court clerks shall be deemed public records unless otherwise specified per Rule 8(d), and shall at all times be open to inspection without fee or reward, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto.

(d) Unless otherwise specified by Rule, statute or order of court, access to case information and documents maintained by the clerk are defined as follows:

(1) "Public" means a document or case that has not been ordered by a court or statute to be impounded, confidential, sealed, or expunged. ~~that is accessible by any person upon request~~.

(2) "Impounded" means a document or case that is accessible only to the parties of record on a case; otherwise, the document or case is only accessible upon order of court.

(3) "Confidential" means a document or case that is accessible only to the party submitting

1 Clerks of Courts Act. https://www.ilga.gov/legislation/ILCS/ilcs3.asp?ActID=1847.

2Adopted September 29, 2021, enacted January 1, 2022. https://www.illinoiscourts.gov/resources/d7c75bd9-4e65-457d-9e86-60e5973981b0/file

the document or filing the case; otherwise, the document or case is only accessible upon order of court.
(4) "Sealed" means a document or case that is accessible only upon order of court.
(5) "Expunged" means a document or case that is accessible only upon order of court as provided in section 5.2(E) of the Criminal Identification Act (20 ILCS 2630/5.2(E)).
(6) Public records, as defined by Rule 8 (c), shall be accessible to the public remotely or through rules no different than rules allowing access to public records for the Illinois Attorney General.
~~(c) Notwithstanding the above, the court may enter an order restricting access to any case or document per order of court.~~

RATIONALE

Current rules, as published in the Illinois Supreme Court Remote Access Policy ("RAP),[3] the Manual On Recordkeeping for the Illinois Supreme Court, referencing the RAP,[4] and 705 ILCS 85/5 Record and Document Accessibility, restating Illinois Supreme Court Rule 8, include protocols that impermissibly violate the public's constitutional right to access public court records. The current protocols denying the public's access to supreme, appellate, and circuit court public court records on the same terms as public court records are available to the Illinois Attorney General lack a compelling interest of the judiciary or the legislature and impermissibly discriminate against the public and, for appellate court records, also attorneys.

The specific reasons for this requested Rule change are as follows:

1. Access to public court records is protected by the First Amendment.
2. The current RAP establishing different levels of access on its face and in practice denies the public access to court records on request. It also imposes fees that discriminate based on profession, thus impairing the rights of pro se litigants and citizens and journalists.
3. Rule 8 and other portions of Supreme Court rules and Manuals are tautological – a public record is a record "accessible to the public on request" (?!) – and contradictory. For instance, appellate court records that are not impounded, sealed, or expunged are *de jure* public records. But they are demonstrably not available on request, as I learned in November, 2023 when told this by various staff and officials of the Illinois Appellate Court, First Division, District 1 and staff of the Administrative Office of the Illinois Courts.

PACER

The federal courts through PACER ("Public Access to allow public access to Court Electronic Records") make publicly available remote, digital access to court briefs, exhibits, and orders for cases involving sensitive and otherwise private information across the country, including that of Illinois residents. The PACER web page states: "The Public Access to Court Electronic Records (PACER) service provides electronic public access to federal court records. PACER provides the public with instantaneous access to more than 1 billion documents filed at all federal courts."[5] affecting records of no less sensitivity than those of the Illinois state courts. The proposed rule change and attendant policy changes for access fees track the policies for the federal courts electronic access policies.[6]

3 Illlinois Supreme Court Access Policy, revised, effective June 1, 2022. https://efile.illinoiscourts.gov/wp-content/uploads/2022/10/Remote_Access_Policy.pdf

4 AOIC, "Manual on Recordkeeping," Fourth Edition, Version 4.4, Effective January 1, 2022. Update effective March 15, 2022. https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/89f29131-2311-4aa8-aa7f-2032921bc80a/Manual%20on%20Recordkeeping.pdf.

5 "FAQ. What is PACER?" https://pacer.uscourts.gov.

6"FAQ. How much does it cost to access documents using PACER? - Access to case information costs $0.10 per page .... The cost to access a single document is capped at $3.00, the equivalent of 30 pages for documents and case-specific reports

Insofar as PACER makes more than one billions documents available to the public, restrictions of public access to state court records cannot possibly be defended based on any allegations of a compelling interest. Insofar as the Illinois Supreme Court and the Seventh Circuit have repeatedly recognized a First Amendment right to court records in individual cases, any across-the-board denial en masse clearly violates this right.

CASE LAW

First Amendment

The U.S. Constitution, statutes, and case law have long held that U.S. citizens must tolerate the risk of harm from some loss of privacy through the public nature of court proceedings as a small and necessary price to pay for the transparency necessary for the rule of law. *Matter of Continental Ill. Sec. Litigation*, 732 F.2d 1302, 1308-9 (7th Cir. 1984) ("[W]e agree with the Sixth Circuit that the policy reasons for granting public access to criminal proceedings apply to civil cases as well. See *Brown Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179 (6th Cir. 1983). See also *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580, 100 S.Ct. 2814, 2829, 65 L.Ed.2d 973 (1982) (opinion of Burger, C.J.); id. at 596, 100 S.Ct. at 2838 (opinion of Brennan, J.); id. at 599, 100 S.Ct. at 2839 (opinion of Stewart, J.). These policies relate to the public's right to monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system. [Cit. omit.]" The AOIC's denial of equal access to court records violates a fundamental right, obstructs access to justice, corrodes faith in Illinois courts, and impairs democracy. *Matter of Continental Ill. Sec. Litigation*, 732 F.2d 1302, 1308 (7th Cir. 1984) ("The public's right of access to judicial records has been characterized as "fundamental to a democratic state[.]"" Cit. omit.)

"Although the presumptions under common law and state statutory law have different sources, our supreme court has held they are 'parallel' to the first-amendment presumption and has analyzed the three presumptions together. See *Skolnick* [*v. Altheimer Gray*] 191 Ill. 2d at 231-33, 730 N.E.2d at 16-17." *In Re Gee* 956 N.E.2d 460, 464 (2010). These findings appear in numerous other holdings, such as *In re Marriage of Johnson*, 232 Ill.App. 3d 1068, 1074 (1992). *("*"The file of a court case is a public record to which the people and the press have a right of access.*")*

People v. Zimmerman, 79 N.E.3d 209, 212 (Ill. App. Ct. 2017) ("[E]mbedded in the first amendment to the United States Constitution (U.S. Const. amend. I) is a right of access to court records.*).*

Common Law and Ninth Amendment

Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978). ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.")[7] *Warner* cites copious case law: "See, *e.g.*, *McCoy* v.

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like docket report, creditor listing, and claims register. The cap does not apply to name search results, reports that are not case-specific, and transcripts of federal court proceedings. NOTE: If you accrue $30 or less of charges in a quarter, fees are waived for that period. 75 percent of PACER users do not pay a fee in a given quarter." https://pacer.uscourts.gov/.

7 The Court in *Warner* defers to the judiciary's hesitance to cite the Ninth Amendment here, though, along with the Article III, the Court's analysis tracks its text: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The littany of references to English court practices preceding the American Revolution relates the practice of "the people"-s longstanding right to inspect court records and attend court proceedings to the Ninth Amendment's remedy of this right's enforcement, while the Court's prerogative to enforce this right is grounded in Article III, the very existence of a "judicial power" referencing an institution that obligates public access to its records of proceedings, absent individualized orders to the contrary. The U.S. case law here is copious. See just *Warner* ("The interest

Providence Journal Co., 190 F.2d 760, 765-766 (CA1), cert. denied, 342 U.S. 894 (1951); *Fayette County* v. *Martin*, 279 Ky. 387, 395-396, 130 S.W.2d 838, 843 (1939); *Nowack* v. *Auditor General*, 243 Mich. 200, 203-205, 219 N.W. 749, 750 (1928); *In re Egan*, 205 N.Y. 147, 154-155, 98 N.E. 467, 469 (1912); *State ex rel. Nevada Title Guaranty Trust Co*. v. *Grimes*, 29 Nev. 50, 82-86, 84 P. 1061, 1072-1074 (1906); *Brewer* v. *Watson*, 71 Ala. 299, 303-306 (1882); *People ex rel. Gibson* v. *Peller*, 34 Ill. App.2d 372, 374-375, 181 N.E.2d 376, 378 (1962). *In many jurisdictions this right has been recognized or expanded by statute*. See, *e.g.*, Ill. Rev. Stat., ch. 116, § 43.7 (1975)." Emphasis added.

Rights to court records under the first, fifth, and fourteenth amendments are all "fundamental rights." Government practices infringing on fundamental rights are subject to strict scrutiny. "[I]n cases where the right infringed upon is among those considered a 'fundamental' constitutional right, courts subject the statute to "strict" scrutiny. To survive strict scrutiny the means employed by the legislature must be 'necessary' to a 'compelling' state interest, and the statute must be narrowly tailored thereto, i.e., the legislature must use the least restrictive means consistent with the attainment of its goal." *In re RC,* 745 NE 2d 1233, 1241 (2001).

Until 2017, the appellate courts provided filed public court records to the public on request. The current refusal to provide the public access to appellate court records on request during working hours at the court's public counter meets neither the "logic" or "experience" prongs for exceptions to a right to access public court records. E.g., *People v. Zimmerman* at 212 ("[T]he first amendment right of access does not attach unless it passes the tests of experience and logic.")

Further, it is illogical for a court to prevent the public much less litigants from access to all public court filings at all times, for all of the reasons courts across the country, including ones the Supreme Court and Illinois courts, have clearly affirmed. See *Nixon v. Warner Communications, Inc*. 435 U.S. 589, 597 (1978), citing at note 7 provisions of the same 1961 Illinois statute the AOIC now refuses to execute as evidence of a "presumption - however gauged - in favor of public access to judicial records." See also *Press-Enterprise II*, 478 U.S. at 9, 106 (quoting *Press-Enterprise Co. v. Superior Ct. of Calif., Riverside City*., 464 U.S. 501, 510 1(1984), *Standard Fin. Mgmt. Corp*., 830 F.2d at 409 ("[R]elevant documents which are submitted to, and accepted by, a court of competent jurisdiction in the course of adjudicatory proceedings, become documents to which the presumption of public access applies[.]"). And see *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606-607 (1982). ("Where . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling government interest, and is narrowly tailored to serve that interest.") See also *Stone v. University of Md. Medical System Corp*., 855 F. 2d 178, 182 (1988) (remanding to district court to unseal records sealed in chambers). ("The breadth of that order is particularly troubling, because it would be an unusual case in which alternatives could not be used to preserve public access to at least a portion of the record...The public's right of access to judicial records and documents may be abrogated only in unusual circumstances...").

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necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies, see, *e.g., State ex rel. Colscott* v. *King*, 154 Ind. 621, 621-627, 57 N.E. 535, 536-538 (1900); *State ex rel. Ferry* v. *Williams*, 41 N.J.L. 332, 336-339 (1879), and in a newspaper publisher's intention to publish information concerning the operation of government, see, *e.g., State ex rel. Youmans* v. *Owens*, 28 Wis.2d 672, 677, 137 N.W.2d 470, 472 (1965), modified on other grounds, 28 Wis.2d 685a, 139 N.W.2d 241 (1966). But see *Burton* v. *Reynolds*, 110 Mich. 354, 68 N.W. 217 (1896)."

EQUAL PROTECTION/PROHIBITION AGAINST SPECIAL LEGISLATION

The RAP's discrimination against non-attorneys on its face clearly violates the Fifth Amendment Due Process Clause as well as the Fourteenth Amendment's Equal Protection Clause.[8] *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) ("[D]ue process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.") The right to access judicial records for the purpose of checking the power of a state government is no less protected by the Fifth Amendment than the right to dissolve a marriage.

The State of Illinois has no authority to convey special privileges to attorneys denied non-professionals, either by edict or by statute. *See Skinner v. Anderson*, 38 Ill.2d 455, 459 (1967), finding a statute limiting complaints for damages against architects violates art. IV, sec. 22 [1870]. ("'The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for — * * * Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.'") The granting to licensed attorneys and state agencies access to a database with court records the legislature has declared public, and the denial of access to other Illinois residents, taxpayers, and litigants is a clear violation of the Illinois State Constitution of 1970, art. IV, sec. 13. *See Best v. Taylor Mach. Works*, 689 NE 2d 1057, 1070 (1997), ("The special legislation clause expressly prohibits the General Assembly from conferring a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated."). *Pro se* litigants are similarly situated to attorneys, as far as the need to access court records to pursue their litigation.

Allowing only attorneys to free remote access to circuit court records clearly discriminates against non-attorney citizens who seek to petition the government for policy changes responsive to information produced in court proceedings, in violation of the First Amendment. "'By separately preserving this right, the Petition Clause helps to give persons a sense of participation in their government, to better inform the government, and to provide the opportunity for a peaceful settlement of disputes, advancement of the law, and correction of social problems." C. Andrews, *Motive Restrictions on Court Access: A First Amendment Challenge*, 61 Ohio St. L.J. 665, 674 (2000).'" *Hytel Group, Inc.* v. *Butler*, 938 N.E.2d 542, 551 (2010) (affirming right to petition, for public or private interest). The policy discriminating against Plaintiff's access to court records as a litigant and citizen thus infringes on a fundamental right by imposing fees or making distinctions without specific findings of a compelling governmental interest.

The policy also violate the Fourteenth Amendment's Equal Protection Clause. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (overturning Illinois judicial rule requiring transcripts for appeal of criminal convictions). ("It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. [cit. omit.]. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty.") See also *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 100-101 (1972). ("[W]e reject the city's argument that, although it permits peaceful labor picketing, it may prohibit all nonlabor picketing because, as a class, nonlabor picketing is more prone to produce violence than labor picketing. Predictions about imminent disruption from picketing involve judgments appropriately made on an individualized basis, not by means of broad classifications ...") The RAP and the Circuit Court's remote acces policies discriminate against anyone who is not wealthy and cannot afford attorneys or take time from work to travel long distances to courts.

8 "...nor shall any State...deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

CONCLUSION

For the reasons and precedents stated above, and because of my own interests in pro se litigation now underway, as well as my interest in scholarship and reporting, I respectfully request a rule change as soon as possible, and no later than the 30 days agencies typically require for administrative appeals, notwithstanding the 12 month time-frame provided for in Rule 3.

Sincerely,

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Professor

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