

## No Office, No Practice? No! Requirement of New York Office for Non-resident Attorneys Ruled Unconstitutional

New York lawyers face plenty of competition within the state. Do we also have to be subjected to competition from non-residents admitted to the bar in New York but not paying New York rents or requiring New York incomes? In other words, can non-resident lawyers admitted in New York practice in New York without an office in the state? New York Judiciary Law §470 says “no,” but a judge in the Northern District of New York now says “yes”, holding Judiciary Law §470 to be unconstitutional.

### New York Office Rule Violates Privileges & Immunities Clause

Judiciary Law §470 forbids residents of states contiguous to New York who are members of the New York bar from practicing in New York without an office in New York, but imposes no “office” requirement on New York residents.<sup>1</sup> In *Schoenefeld v. State of New York*,<sup>2</sup> plaintiff was licensed to practice law in New York, but resided in New Jersey. Her only office was in Princeton. She claimed that she had declined to represent New York clients under compulsion of Judiciary Law §470 because she did not maintain a New York office. She sought a declaratory judgment that §470 violates the Privileges and Immunities and Equal Protection clauses of the U.S. Constitution, arguing that the law discriminates against non-resident attorneys without a substantial justification.

The District Court for the Northern District of New York analyzed only the plaintiff's Privileges and Immunities argument. The Court concluded that the practice of law is a fundamental right sufficient to trigger protection under the Privileges and Immunities Clause and that §470, which requires only attorneys residing in an adjoining<sup>3</sup> state to maintain a New York office, places “a significant burden on those who wish to practice law in multiple states.”

Having found that §470 “implicates the fundamental right to practice law under the Privileges and Immunities Clause,” the Court had to decide whether there was a substantial reason for the disparate treatment between resident and non-resident attorneys and whether the unequal treatment had a substantial relationship to the State's objective in enacting the law. The State offered three reasons for the in-state office requirement:

- The State needed to ensure that attorneys could be properly served with process and papers and appear for court proceedings
- Attorneys' characters could be better observed and disciplined
- The remedy of attachment would be available against the attorneys

The Court rejected each of these reasons, holding that:

- Attorneys who had been admitted in New York were likely to live close enough to be available to attend court proceedings, and that the office requirement was “not a well-crafted remedy” to solve problems of service of process and court appearances.
- Attorney-applicants were required to appear for in-person interviews prior to being admitted and remained subject to discipline regardless of residence.
- The remedy of attachment would not be useful where a non-resident attorney's only New York presence was a rented desk or office.

Having found that none of the interests advanced by the State were furthered by the in-state office requirement for non-resident attorneys, the Court found that §470 violated the Privileges and Immunities clause. The State

presented Third and Fourth Circuit case law that upheld an in-state office requirement, but the Court distinguished those cases because §470, unlike other office-requirement statutes, applied only to out-of-state residents.

### **Ruling Not a Game-Changer...Yet**

This opinion is brand-new and still appealable. Even if the District Court ruling stands, it is still open to New York State to attempt to frame some other law that limits or impairs the ability of out of state lawyers to practice in New York but passes Constitutional muster.

The case illustrates the pervasive effect of modern technology and multi-office firms on the practice of law. With laptops, Skype, the internet and virtual law offices, it has become even easier to practice law across state lines. Whatever happens to Judiciary Law §470, there is a growing trend of attorneys' practicing across state lines with or without a physical law office. The tension between local attorneys and those who want to save money by practicing locally, but remotely and at a lower cost, will continue.

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<sup>1</sup> The statute is in the form of a grant allowing residents of "adjoining" states to practice in New York if they maintain a New York office: "Attorneys having offices in this state may reside in adjoining state. A person, regularly admitted to practice as an attorney and counsellor, in the courts of record of this state, whose office for the transaction of law business is within the state, may practice as such attorney or counsellor, although he resides in an adjoining state."

<sup>2</sup> 1:09-CV-00504 (N.D.N.Y. Sept. 7, 2011).

<sup>3</sup> The statute does not address residents of non-adjoining states.

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