



**NEW YORK
CITY BAR**

**REPORT ON LEGISLATION BY THE
LEGAL REFERRAL SERVICE COMMITTEE
AND SMALL LAW FIRM COMMITTEE**

**A.2218
S.3261**

**M. of A. Weprin
Sen. Hoylman-Sigal**

AN ACT to repeal Section 470 of the Judiciary Law, relating to allowing attorneys having offices in NY state to reside in an adjoining state,

THIS BILL IS APPROVED

This report is respectfully submitted by the Legal Referral Service Committee and Small Law Firm Committee (“the Committees”) of the New York City Bar Association in support of A.2218/S.3261, which would repeal Judiciary Law § 470. This bill originates with, and is supported by, the New York State Bar Association.

RELEVANT LAW

Judiciary Law § 470:

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.

BACKGROUND

Under Judiciary Law § 470, attorneys licensed in New York who maintain physical offices in New York may practice in the State even if they are residents of a distant state or foreign country. At the time of its enactment, the logic behind the rule was that it helped ensure personal service on a nonresident attorney. However, the Court of Appeals has acknowledged there are enough measures already in place outside of Judiciary Law § 470 to ensure proper service on a nonresident attorney. Regardless, Judiciary Law § 470 has been found to be constitutional, and a nonresident attorney without a physical New York office address is

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

currently in violation of the above-referenced law - even though the law only refers to “office” and not “physical” office.

REASONS FOR SUPPORT

After careful consideration, the Committees agree that Judiciary Law § 470 should be repealed in its entirety, without adding new language to or modifying existing language of the New York statutes. This recommendation is based on the Committee’s review of Judiciary Law § 470, the relevant Civil Practice Law and Rules (CPLR) statutes, the New York State Bar’s Working Group Report, and the New York State Bar’s CPLR Sub-Committee Memorandum. It is also worth noting lawyers who are admitted to the New York federal courts have successfully practiced in those courts without maintaining a brick-and-mortar office in New York. There is no reason why New York State Courts should be different.

The Committees conclude that there are three reasons for an outright repeal of the law:

First, as mentioned above there are already various established methods in place to ensure proper service on a nonresident attorney. Specifically, they may be properly served under CPLR §§ 2103(b), 313, 301, and 302. The clerk of the relevant Appellate Division may also receive service for a nonresident attorney. Therefore, these forms of service render Judiciary Law § 470 unnecessary.

Second, the law continues to foster procedural difficulties and delays in situations where a non-compliant attorney may be prevented from filing a case or removed from a pending matter – increasing client costs and anxiety. If the matter to be filed has a statute of limitations which is soon to expire, the attorney may be unable to secure a physical address in time to satisfy the statutory deadline. This situation leaves the client and lawyer open to a Judiciary Law § 470 challenge. And, if an attorney is removed from a pending matter, a client must secure new representation. Although the Court of Appeals clarified that courts can no longer conclude that a non-compliant lawyer renders a complaint void when filed – a draconian result which had effectively barred clients from filing a new complaint when the statute of limitations had expired – a party must still cure the statutory violation with either the appearance of compliant counsel or an application for admission *pro hac vice* by appropriate counsel.¹ In these situations, a court may decide to adjourn the matter until either the attorney becomes compliant or the client finds substitute counsel; however, it may be very difficult for a client to do so in cases where the litigation is too far advanced. If neither compliance nor substitution of counsel is possible, the client may be forced to proceed *pro se*, severely compromising their position, delaying progress of the litigation, and increasing the burden on judicial resources.²

¹ See *Arrowhead Capital Fin., Ltd. v Cheyne Specialty Fin. Fund L.P.*, 32 NY3d 645, 650 [2019] and *Marina Dist. Dev. Co., LLC v Toledano*, 174 AD3d 431, 433 [2019]. The Committees also note the asymmetry of temporary practice and regular practice of law in New York, *i.e.*, that there is more leniency when engaged in the temporary practice of law in New York as opposed to complying with Section 470, even though the actual amount of legal work handled may be identical. This asymmetry creates a disincentive for a nonresident attorney to seek to be admitted in New York and comply with Section 470. See Ct. App. Rule 523 and 523.2 “Temporary Practice of Law in New York”.

² The Committees also recognize that improvements to service of process procedures under exigent circumstances should be considered; however, Section 470 does not alleviate or exacerbate service issues.

Regardless of the procedural setting, Judiciary Law § 470 challenges cause clients unnecessary delays, expense, and anxiety. Moreover, Judiciary Law § 470 challenges do not move cases forward. Such challenges tax the courts with motions which will inevitably return the action to the same point of litigation it was at when the challenge was filed. Given the courts' enormous post-pandemic backlog of cases, repealing Judiciary Law § 470 removes the possibility of Judiciary Law § 470 motion challenges. At worst, these challenges may be gamesmanship and a delay tactic and, at best and regardless of motive, they sustain one type of motion that needlessly delays litigation at precisely the time cases need to accelerate and resolve. Ultimately, far from its intended effect, Judiciary Law § 470 may cause an unnecessary burden on the court and its dockets, attorneys, and clients alike.

Third, before the COVID-19 pandemic and resulting economic crises, the requirement of maintaining a physical office address was unnecessarily inconvenient and expensive for many nonresident attorneys – a burden in terms of rent, other associated maintenance fees, and service charges. Now, in the new normal of hybrid or entirely remote work environments, office spaces are going unused and have proven to be unnecessary for lawyers to engage with their clients. Regardless of where a lawyer resides, remote work has become a counter-inflationary measure that encourages lawyers to not increase their rates. Increasing nonresident attorneys' costs are very likely to affect an overall increase in the cost of services charged to clients exactly when thousands of New Yorkers will have difficulty paying legal fees for much needed services – and even more difficulties if, as predicted, all constituents will face a recession in 2023. Conversely, lowering overhead expenses enables lawyers to lower rates (or not raise them). Recent reports indicate that solo and small firm practitioners – termed “People Law” lawyers (as opposed to Big Law lawyers) -- have held off on raising their rates for many years and also do not collect or even bill for all of the hours they work on their clients' matters.³ Lawyers now feel inflationary pressure to raise their rates. The requirement of securing an unnecessary brick and mortar presence in New York exacerbates the situation, making it even more likely that non-resident People Law lawyers must raise their rates, even though their inclination may be to do otherwise, in order to remain competitive and accessible to lower and middle class clients. Against the backdrop of inflation and possible recession in 2023, repealing Section 470 would help lawyers keep their rates lower and increase access to justice for all middle class and moderate means constituents, whether individuals or the vast number of underserved small businesses. In turn, more lawyers may be able to maintain lower costs and more efficient practice in New York, potentially increase assistance to unrepresented litigants, and lessen the burden of unrepresented parties on the courts.

Given the decrease in use of traditional offices, it is clear that Judiciary Law § 470's restrictions on the use of virtual offices is unnecessary. Indeed, as small businesses struggle with the uncertainty of a post-pandemic economy and predicted economic downturn, many solo and small firm practitioners are not renewing their existing leases. The law forecloses nonresident lawyers from the expanding use of cost-efficient, virtual workspaces, closing off those workspaces from the benefit of another lucrative market segment and helping that market

³ According to a 2022 Clio report, the average law firm is only able to collect fees for about 75% of billable work and spends 18% more time in actual hours for each billable hour -- against the backdrop of inflation increasing faster than hourly billing rates. See <https://www.clio.com/resources/legal-trends/2022-report/>.

segment survive in this uncertain economy and continue to contribute critical tax revenues. The overhead costs associated with maintaining a physical office address are a needless expense, and having a physical presence is neither a determining factor of successful or professional representation nor necessary to effectuate service upon a nonresident New York licensed attorney. In this new normal, the focus must be on increasing the ability for *all* New York-licensed lawyers in good standing to help meet the tremendous legal needs of New Yorkers. Dismantling the outdated, artificial and now pointless barrier erected by Judiciary Law § 470 will help more New York-licensed lawyers in good standing do just that.

For these reasons, we support passage of A.2218/S.3261 and thank you for your consideration.

Legal Referral Service Committee
Joseph F. Tremiti, Chair

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