

NJ Lawyers Say NY's Office Requirement Can Still Be Defeated

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Ekaterina Schoenefeld *NYLJ/Mark Hamblett*

Opponents of a New York law requiring out-of-state lawyers to maintain offices in the state in order to practice there are still regrouping after suffering a blow in an [April 22 ruling](#) by the U.S. Court of Appeals for the Second Circuit.

But while New Jersey attorneys who have been challenging the law said they were unsure of their next steps, there may still be hope for reform.

Princeton attorney Ekaterina Schoenefeld, who filed the suit challenging a requirement that attorneys who practice in New York but live elsewhere must have an in-state office, said she may petition for a rehearing en banc by the entire court, or for certification before the Supreme Court. She noted, however, that the chances of being granted either remedy is rare.

"The decision was a disappointment, but stuff happens," Schoenefeld said.

Schoenefeld lives and works in New Jersey and would like to represent clients in New York but is unable to because of New York Judiciary Law Section 470, which requires nonresident

attorneys to maintain a brick-and-mortar office in the state. Lawyers who live in New York are not subject to the same requirement and are allowed to work from home.

Schoenefeld said she has hasn't looked into other means of changing the law, such as legislation, because seeking a judicial remedy was "something I could do myself."

Two judges on the Second Circuit panel ruled that Section 470 passes constitutional muster, while the third judge said the law discriminates against out-of-state lawyers. The court's decision overturned the ruling of a judge of the Northern District of New York who said Section 470 is unconstitutional.

Seeking a judicial remedy is "the well-work path for having these kinds of rules overturned. I don't know what's next," said Michael Ansell of Ansell, Grimm & Aaron in Ocean, who was one of 24 attorneys who lent his name to an amicus curiae petition filed in the case by the Institute for Public Representation at Georgetown University.

Ansell said the Second Circuit's decision was a surprise because prior rulings had suggested the case would be decided in the plaintiff's favor. He said his firm has an arrangement with a New York firm that allows it to surmount the requirement for an office in the city, but solo practitioners are typically not able to afford such arrangements.

But David Rubin, a Metuchen attorney who submitted an amicus curiae brief to the Second Circuit on behalf of the New Jersey State Bar Association, said the circumstances of the case give it a good chance of being granted an en banc hearing.

"The fact that this was a split decision of importance to the legal community gives it all the ingredients" for a full panel rehearing, said Rubin.

The NJSBA takes the position that lawyers should not be required to maintain an office in order to practice law, Rubin noted. His brief said Section 470 violates the U.S. Constitution's Privileges and Immunities Clause, Article IV, Section 2, because it impermissibly discriminates against out-of-state attorneys by requiring them to maintain in-state offices.

New York's ruling came just as New Jersey judiciary officials took steps that will make it easier for lawyers from other jurisdictions to practice in the state's courts. On April 14, New Jersey's Administrative Office of the Courts said it will adopt the Uniform Bar Exam to replace New Jersey's previous test. The Judiciary also adopted admission by motion, subject to conditions.

Regina Waynes Joseph, a solo practitioner in West Orange, said she had "no particular insight into the outcome of a possible full panel hearing," or whether the case would even be granted such a hearing, but added, "I think more review is better than less."

Joseph was another of the 24 attorneys referenced in an amicus curiae brief by the Institute for Public Representation at Georgetown University Law Center. The group's brief said "the office requirement is particularly troubling for many of the amici—including Regina Waynes Joseph, a

past president of the Garden State Bar Association—who live very close to the New York border and wish to practice in New York courts without Sec. 470's discriminatory burdens."

Joseph expressed hope that the law might be changed by some means other than a court order. She said "it would be quite something" if Section 470 were changed by "the relevant authorities of the State of New York...so that the practice of law would not be so burdensome."

Reform absent litigation may be possible: A 12-member working group of the New York State Bar Association announced April 22 that it would begin examining Section 470 in earnest.

The group was formed about a year ago but had been largely inactive while awaiting the Second Circuit ruling, according to its chairman, David Schraever of Nixon Peabody in Rochester, New York. Schraever said it was too soon to discuss what aspects of the issue the group would look at, but noted that the issue is important to the New York State Bar Association because 20,000 of its 74,000 members live or work outside the state of New York.

"We obviously have a large contingent of non-resident members so it's an issue we will look at," Schraever said.

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