

Memorandum in Support

NYSBA #1

February 10, 2023

S.3261
A.2218

By: Senator Hoylman-Sigal
By: M. of A. Weprin
Senate: Judiciary
Assembly: Judiciary
Effective Date: Immediately

AN ACT to repeal section 470 of the judiciary law, relating to allowing attorneys having offices in the state to reside in an adjoining state.

LAW AND SECTIONS REFERRED TO: Section 470 of the Judiciary Law.

This bill would repeal Judiciary Law §470 which requires New York licensed attorneys who reside outside of the state to maintain a physical office space within the State.

Judiciary Law §470 is outdated and is no longer needed to serve the purpose for which it was originally enacted back in 1909. At that time, residency within the State of New York was required to practice law, the implication being that a non-resident attorney who did not have an office in New York might not be amenable to service of process. In 1979, the New York Court of Appeals struck down the residency requirement on grounds that it violated the Privileges and Immunities Clause, but this vestige of that requirement was not repealed.

This concern over service of process is no longer an issue as New York has adopted modern procedures including E-filing, virtual court proceedings, and a searchable database maintained by the courts of attorney contact information. Further, serving documents on an out of state attorney is addressed by CPLR 2103(b) and even contemplates service via electronic means under CPLR 2103(b)(7). The most frequent impact of §470 is the dismissal of actions brought by nonresident attorneys who do not maintain a physical office within New York, despite their being New York licensed attorneys otherwise fully competent to practice law within the State.

The repeal of this requirement first enacted when the horse and buggy was a primary mode of transportation is similarly unsuited to the needs of New Yorkers in rural communities. Rural communities have an imminent crisis as only 4% of New York licensed attorneys serve rural communities with nearly 75% of those practitioners expected to retire in the next 10-30 years. By eliminating this onerous requirement, these New Yorkers will be able to make use of a population of attorneys that would otherwise be available to them but for this antiquated and unnecessary law.

Lastly, it is important for the State to be prepared for the changes to the practice of law because of the COVID-19 pandemic. Attorneys who had no issue with maintaining a physical office location are now experiencing disruptions to their practices. The office space they use may no longer be available, they have restructured to a remote work environment, or they have relocated out of the State for a variety of professional or personal reasons to meet our rapidly evolving world. Repealing this antiquated law will allow New York licensed attorneys to continue representing New Yorkers without disruption to their practices.

For the above reasons, the New York State Bar Association **SUPPORTS** this Legislation.