

Alerts

New York Law Office Requirement Held Unconstitutional

November 16, 2011

Lawyers for the Profession® Alert

[*Schoenefeld v. New York*, 2011 WL 3957282 \(N.D.N.Y., 2011\)](#)

Brief Summary

The U.S. District Court for the Northern District of New York struck down a New York statute that required New York-licensed lawyers who reside out-of-state to maintain an in-state office as unconstitutional under the privileges and immunities clause.

Complete Summary

Plaintiff lawyer sought declaratory relief alleging that a New York statute was unconstitutional under the privileges and immunities clause. The law required New York-licensed attorneys who reside outside of New York (but not those who resided in the state) to maintain law offices within the state of New York. The district court held the statute unconstitutional.

The court first held that the practice of law is a fundamental right under the privileges and immunities clause because it has both commercial and noncommercial purposes. The court then held that the statute discriminated against nonresident attorneys because such lawyers, at a minimum, must maintain both a residence in their home state and a law office in New York, whereas an attorney residing and licensed in New York could, for example, operate his or her law practice out of his or her residence. The court held that the law “effectively preclude[d] a number of non-resident attorneys from practicing law in New York” and that it imposed a “significant competitive cost” burden on nonresident attorneys licensed in New York who must maintain a New York office outside their home to practice law.

Given that the privileges and immunities clause was implicated by the statute, the court analyzed the issue of whether the law’s discriminatory effect had a substantial relationship to a substantial state interest. The court rejected the state’s contention that there existed a substantial state interest here. It also determined that, if any such interest did exist here, the law had no valid substantial relationship to such interest.

The court held that ensuring the availability of attorneys to court proceedings and interested parties was not a substantial state interest because the in-state

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office requirement did not necessarily ensure the lawyer's proximity to a given courthouse (e.g., an attorney in New Jersey might be closer to courthouse in New York City than a lawyer in Buffalo). The court then held that the ability of the state Bar and courts to oversee attorney character and fitness was not a substantial state interest here because such oversight is available during and after an attorney's admission to the Bar regardless of where he or she resides. Finally, the availability of the remedy of attachment against lawyers was not a substantial interest because attorneys could satisfy the in-state office requirement by maintaining an of-counsel relationship with a New York office and such lawyers would have little, if any, property to attach.

Alternatively, the court held that the statute did not bear a substantial relationship to any alleged substantial state interests. The court found that the statute was unnecessary to ensure attorneys' availability for service of process because the state could impose a less restrictive requirement for appointing an agent for service of process. Similarly, the existence of modern communications and/or local counsel would address issues regarding an out-of-state resident lawyer's availability for court proceedings.

Significance of Opinion

This decision likely will affect many lawyers by giving out-of-state resident New York-licensed lawyers easier access to practice within the state. More importantly, the decision reflects a proper, growing skepticism for the continuing viability of or justification for laws and court rules that impose archaic geographical border limitations on the practice of law by licensed attorneys.

For more information, please contact your regular [Hinshaw](#) attorney.

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