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Is Statute Governing Law Practice on Its Way Out?, New York Law Journal

By Brett A. Scher, Esq. and Amanda R. Gurman, Esq.
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On March 31, 2015, the New York Court of Appeals issued a decision in Schoenefeld v. State of New York, — N.E.3d —, 2015, N.Y. Slip Op. 02674 (2015), that probably signals the death knell of a statute that has been on the books since 1862—Judiciary Law §470, the statutory provision mandating that nonresident attorneys must still maintain an "office for the transaction of law business [] within the state." In a case that has been proceeding through the federal courts since 2008, the New York Court of Appeals was asked by the United States Court of Appeals for the Second Circuit to answer the following certified question: "[u]nder New York Judiciary Law §470, which mandates that a nonresident attorney maintain an "office for the transaction of law business" within the state of New York, what are the minimum requirements necessary to satisfy that mandate?"

Before certifying the question, the Second Circuit telegraphed that a requirement that a nonresident actually maintain a physical office in New York, would likely implicate Article IV, section 2 of the U.S. Constitution, the Privileges and Immunities Clause. The New York Court of Appeals' most recent ruling makes it clear that Judiciary Law §470, as currently worded, requires nonresident attorneys to maintain …

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