CTQ-2014-00005

To be argued by:
LAURA ETLINGER
Time requested: 20 minutes

Court of Appeals of the State of New York

EKATERINA SCHOENEFELD,

Respondent,

v.

STATE OF NEW YORK, NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, COMMITTEE ON PROFESSIONAL STANDARDS OF NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT AND ITS MEMBERS,

Defendants,

v.

ERIC T. SCHNEIDERMAN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF NEW YORK, ALL JUSTICES OF NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, ROBERT D. MAYBERGER, IN HIS OFFICIAL CAPACITY AS CLERK OF NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, JOHN G. RUSK, CHAIRMAN OF THE COMMITTEE ON PROFESSIONAL STANDARDS "COPS,"

Appellants.

REPLY BRIEF FOR APPELLANTS

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Dated: January 12, 2015

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PRELIMINARY STATEMENT

As we demonstrated in our opening brief, the office requirement in Judiciary Law § 470 can—and therefore should—be narrowly construed to require only an address in the State at which a nonresident attorney may be served with legal papers on behalf of the clients he or she represents, including by designation of an agent for this purpose. Read this way, the statute avoids a serious question of the statute's constitutionality under the Privileges and Immunities Clause. And as we further explained, this narrow reading is appropriate because it is supported by the statute's legislative history, is generally consistent with the lower court cases that have applied § 470, and serves two purposes reasonably related to the practice of law.

Respondent counters with two arguments. First, she argues that even read narrowly, the statute violates the Privileges and Immunities Clause. Second, she argues that the legislative history of the statute and lower court cases that have applied its mandate do not support appellant's narrow reading. These arguments are mistaken. And the proposed amicus brief of a group of New York-licensed nonresident

attorneys (hereinafter "proposed amici') likewise raises no arguments that merit a different result.

For the reasons stated in our opening brief and for the additional reasons set forth below, the Court should answer the certified question by holding that Judiciary Law § 470 is satisfied as long as the nonresident attorney maintains an office in the State sufficient for the personal service of legal papers on behalf of the clients the attorney represents.

ARGUMENT

THE RULE OF CONSTITUTIONAL AVOIDANCE PROPERLY GUIDES THE INTERPRETATION OF JUDICIARY LAW § 470

The Court should construe Judiciary Law § 470 narrowly—as requiring nothing more than an address within the State at which the attorney can be personally served with papers on behalf of clients—to avoid the difficult constitutional question raised by a broader construction. In certifying a question to this Court regarding the statute's minimal requirements, the Second Circuit held that the constitutionality of New York Judiciary Law § 470 "turns on" the interpretation of the "office" requirement. (A6.) It explained that reading § 470 more broadly to require nonresidents to maintain an

operational office in the State would implicate the Privileges and Immunities Clause. (A11.) Consequently, if the statute "is at least susceptible" of a narrow construction that avoids raising constitutional concerns, that narrow interpretation should prevail. *People v. Finkelstein*, 9 N.Y.2d 342, 345 (1961); *accord Overstock.com, Inc. v. N.Y. State Dep't of Taxation & Fin.*, 20 N.Y.3d 586, 593 (2013); *People v. Correa*, 15 N.Y.3d 213, 233 (2010); *Matthews v. Matthews*, 240 N.Y. 28, 34-35 (1925); *People ex rel. Simpson v. Wells*, 181 N.Y. 252, 257 (1905).

The narrow construction described above satisfies this rule. Interpreting Judiciary Law § 470 as requiring nonresident attorneys to maintain an address in the State sufficient for personal service of legal papers does not implicate the Privileges and Immunities Clause because it places nonresident and resident attorneys on equal footing as to their ability to be personally served within the State—a factor related to the practice of law in the New York courts. And § 470 is readily amenable to this constitutional construction. Indeed, the construction is supported by the statute's legislative history, is generally consistent with the governing lower court cases, and serves two purposes reasonably related to the practice of law.

A. If Judiciary Law § 470 Is Read To Require No More Than An Address Sufficient For The Service Of Legal Papers It Withstands Constitutional Scrutiny.

Respondent argues (Resp. Br. at 39-48) that even if Judiciary Law § 470 is interpreted narrowly as appellants propose, the statute still discriminates against nonresident attorneys in violation of the Privileges and Immunities Clause. This argument is mistaken.

As we demonstrated in our opening brief (Opening Br. at 37-40), when interpreted as requiring nothing more than an address within the State at which the attorney may be personally served with legal papers on behalf of clients, including by designation of an agent for this purpose, Judiciary Law § 470 does not discriminate against nonresident attorneys. As to their ability to provide an in-state location for the personal service of legal papers, *see* Civil Practice Law and Rules ("C.P.L.R.") 2103(b), resident and nonresident attorneys are not equally situated. Resident attorneys necessarily have at least one such address—their residence. Judiciary Law § 470 ensures that nonresident attorneys have such an address as well. Judiciary Law § 470 thus places nonresident and resident attorneys on equal footing by ensuring that all attorneys who practice in the New York courts have an address

within the State at which they can be personally served with legal papers on behalf of the clients they represent.

Respondent's contrary argument—that even read narrowly, Judiciary Law § 470 still implicates the Privileges and Immunities Clause (Resp. Br. at 40-47)—rests on two mistaken assumptions. First, it assumes that the narrow reading of the statute cannot withstand constitutional scrutiny unless it can satisfy the test for laws that impose a substantial, discriminatory burden on the right of nonresidents to practice law in the State. *See Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 284 (1985) (outlining Privileges and Immunities Clause test for discriminatory state laws). This assumption is wrong, because it ignores that, read as set forth above, the statute does not discriminate against nonresident attorneys at all. The test for laws that implicate the Privileges and Immunities Clause therefore does not apply.

Second, respondent's argument assumes that, even read narrowly, Judiciary Law § 470 would impose a substantial burden because it would require nonresident attorneys to hire office staff, obtain insurance, obtain equipment, and purchase utility services and thus

impose a significant financial burden on them. In fact, a nonresident attorney could satisfy Judiciary Law § 470's office requirement by lesser means, including hiring an agent to accept personal service of legal papers on his or her behalf, arranging an "of counsel" relationship, or using a virtual office for this function.

Indeed, in their amicus brief to the Second Circuit, proposed amici affirmatively offered the designation of an agent to accept service as a "less restrictive means" by which New York could serve its interests in compliance with the Privileges and Immunities Clause because it could cost as little as $75.00 per year (Second Circuit Amici Br. at 26-27, *reproduced in* Resp. Supp. Appendix at SA-201 to SA-202). These amici also posited that an attorney could comply with § 470 by using a "virtual office," which they asserted could cost as little as $59.00 to $100.00 per month (Second Circuit Amici Br. at 17, *reproduced in* Resp.

Supp. Appendix at SA-192).[1] And a nonresident who practices infrequently in New York could designate an agent for receipt of service or rent virtual office space for the limited duration of the attorney's practice in the New York courts. In this way, any burden imposed by § 470 would reasonably relate to the size and scope of the nonresident's New York practice, and would not impose a substantial burden on the nonresident attorney. The availability of such alternatives to minimize any burden imposed by Judiciary Law § 470 in placing nonresidents on equal footing with resident attorneys only further supports the constitutionality of the statute, when interpreted narrowly.

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[1] A virtual law office has been described as "a physical location that offers business services and facilities, such as private or semi-private work spaces, conferences rooms" and office equipment. *See* Assoc. of the Bar of the City of New York Comm. On Prof. Ethics, Formal Op. 2014-2 (June 2014), available at http://www.nycbar.org/ethics/ethics-opinions-local/2014opinions/2023-formal-opinion -2014-02 (last accessed July 29, 2014). The use of a virtual law office as an alternative to the traditional law office was recently found to be consistent with New York's Rules of Professional Conduct. *Id.*; *see also* New York State Bar Assn. Ethics Op. 1025 (2014) (holding that consistent with the Rules of Professional Conduct a nonresident attorney may have a solely electronic presence in the State where the attorney retains an agent for the acceptance of service in the State) (*reproduced in* Respondent's Compendium at C-29 to C-34).

B. This Narrow Construction Is Supported By The Statute's Legislative History, Is Generally Consistent With Lower Court Case Law, And Serves Two Purposes Reasonably Related To The Practice Of Law.

Interpreting Judiciary Law § 470 to require only that a nonresident attorney maintain an address in the State sufficient to receive personal service of legal papers on behalf of the clients he or she represents is also reasonable. The narrow reading is consistent with the statute's original service-related purpose, does not represent a significant departure from the existing lower court case law, and continues to serve legitimate state interests.

As we explain in our opening brief (Opening Br. at 28-30), the predecessor to § 470 served a service-related purpose. Judiciary Law § 470 was enacted as an exception to the requirement that attorneys had to be New York residents, both for admission purposes and also to practice in New York courts. The enactment of an exception to the residency requirement required a special rule governing service of legal papers on these nonresident attorneys. Thus, the predecessor to § 470 provided that litigants could personally serve the nonresident attorney by mailing papers to the nonresident attorney's New York office from the city or town where the office was located. *See* Act of March 22, 1862,

ch. 43, 1862 N.Y. Laws 139 (*reproduced at* Opening Br. at A1). The narrow reading of the modern statute, like the original enactment, assures that litigants will be able to personally serve legal documents in the State on nonresident attorneys practicing in New York courts.

To be sure, when the predecessor to § 470 was enacted in 1862, it required nonresident attorneys to maintain their *only* office in New York. *See* Act of March 22, 1862, ch. 43, 1862 N.Y. Laws 139 (*reproduced at* Opening Br. at A1). Thus it is true that, when the statute was originally enacted, the only office to which it could have referred was a fully operational office at which the nonresident attorney practiced law. But the Legislature included no express requirement to that effect. Then in 1866, the statute was revised to eliminate the sole office requirement. Act of March 16, 1866, ch. 175, 6 Edmonds, Statutes at Large 706 (2d ed. 1877) (*reproduced at* A79). Thus after 1866, the nonresident attorney's New York office was not necessarily where the attorney practiced full-time. In broadening the statute in this way, the Legislature reasonably could have contemplated that something less than a fully operational law office would satisfy the statute. Respondent is thus simply incorrect when she argues (Resp. Br. at 19-20) that the

Legislature never could have intended that an address sufficient for the personal service of legal papers would satisfy the office requirement of Judiciary Law § 470.

There is similarly no merit to the argument of proposed amici (Proposed Amici Br. at 10-12) that the Court should reject appellant's narrow reading to avoid rendering as surplusage the statute's reference to office "for the transaction of law business." Because Judiciary Law § 470 neither explains that phrase nor identifies any specific legal activities that must occur at the subject office, the phrase can reasonably be read to mean an office "that facilitates the transaction of law business" in that it serves as the New York address at which legal papers may be served, including by personal service. Such a reading is reasonable viewed in light of the need to interpret the statute to avoid raising serious constitutional questions.

Respondent and proposed amici are likewise incorrect when they maintain (Resp. Br. at 26; Proposed Amici Br. at 12-17) that the lower courts that have applied Judiciary Law § 470 have "consistently interpreted" the statute as requiring a nonresident attorney to "maintain an actual, physical space in New York where he or she is

expected to be present on a regular basis for the purpose of practicing law in the State." (Resp. Br. at 26.) Respondent and proposed amici simply mischaracterize the existing case law.

None of the appellate decisions on which respondent and proposed amici rely address the minimum requirements necessary to satisfy § 470. In many of these decisions, however, the courts actually *approved* of the nonresident attorney offices at issue. These cases thus provide no guidance at all as to the minimal requirements necessary to satisfy the office requirement. Nonetheless, many of these decisions approving nonresident attorney offices contained facts establishing that the nonresident attorney had an address for personal service of legal papers. *See, e.g., Matter of Tatko v. McCarthy*, 267 A.D.2d 583 (3d Dep't 1999) (of counsel relationship); *Keenan v. Mitsubishi Estate, N.Y.,* 228 A.D.2d 330 (1st Dep't 1996) (a reciprocal satellite office sharing arrangement); *Matter of Estate of Scarsella*, 195 A.D.2d 513 (2d Dep't 1993) (telephone and desk in a real estate office with use of a secretary); *see also CA Constr., Inc. v. 25 Broadway Office Properties, LLC*, No. 100728/09, 2010 N.Y. Misc. LEXIS 1591 (Sup. Ct. N.Y. County March 15, 2010) (leased office space where a designated individual was

authorized to accept service); *CPA Mut. Ins. Co. of Am. Risk Retention Co. v. Weiss & Co.*, No. 603967/06, 2008 W.L. 8234086 (Sup. Ct. N.Y. County Aug. 18, 2008) (shared leased office space with a receptionist authorized to accept service); *Austria v. Shaw*, 143 Misc.2d 970 (Sup. Ct. N.Y. County 1989) (use of a desk and secretarial staff).

As for the appellate decisions finding that § 470's office requirement was not met, nearly all of them either provide insufficient information about the facts presented to establish how the requirement was being implemented or are entirely consistent with the narrow interpretation of that requirement that the Court should adopt. For example, three appellate decisions find a nonresident attorney did not maintain a "local office," but do not discuss the facts underlying that conclusion. *See Empire HealthChoice Assurance v. Lester*, 81 A.D.3d 570 (1st Dep't 2011); *Kinder Morgan Energy Partners, L.P. v. Ace Am. Ins. Co.*, 51 A.D.3d 580 (1st Dep't 2008); *Neal v. Energy Trans. Group*, 296 A.D.2d 339 (1st Dep't 2002). The available appellate records in two of these cases, however, reveal that the nonresident attorney at issue had no presence at all in New York. *See Empire HealthChoice Assurance*, 81 A.D.3d at 570; *Kinder Morgan Energy Partners, L.P.*,

51 A.D.3d 580. And in other appellate decisions, the courts have held that § 470 was not satisfied where there was no assurance that the nonresident attorney could be personally served at the purported New York office. *See, e.g., Lichtenstein v. Emerson*, 251 A.D.2d 64 (1st Dep't 1998) (New York office was in the basement of a restaurant and there was no evidence restaurant employees had been instructed to accept service); *Matter of Haas*, 237 A.D.2d 729 (3d Dep't 1997) (no assurance telephone calls or mail sent to assistant's home would be received by the attorney in Texas); *Matter of Larsen*, 182 A.D.2d 149 (2d Dep't 1992) (New York office was used as a mail drop); *Matter of Tang*, 39 A.D.2d 357 (1st Dep't 1972) (nonresident used hotel room in New York two to four nights per week); *see also Matter of Estate of Garrasi*, 29 Misc.3d 822 (Surr. Ct. Schenectady Co. 2010) (no indication attorney had a New York address at which to receive service). These cases are thus consistent with interpreting Judiciary Law § 470 as requiring nothing more than an address at which the nonresident attorney may be personally served with legal papers on behalf of the clients the attorney represents.

Similarly, the record in this case does not support respondent's claim (Resp. Br. at 33-37) that the Committee on Professional Standards of the Third Department has applied the statute to require nonresident attorneys to maintain a fully operational law office in the State. Most of the disciplinary letters issued by the Committee provide no information about the minimum requirements necessary to satisfy Judiciary Law § 470. They merely recite that the attorney in question did not maintain an office in the State, be it an office, physical office, law office or "bona fide" office, but they do not specify what physical presence, if any, the attorney had in the State. (*See* A131-132, A133-134, A135-136, A137-138, A139-140, A141-142.)

At the same time, Committee letters that provide information about the underlying circumstances support appellant's narrow service-related reading of the statute because the circumstances described would have made it difficult to personally serve legal papers at the New York addresses provided. (*See* A129-130 [nonresident attorney had discontinued his law office at the New York address provided]), A143-145 [New York address was a mailbox in a UPS store and attorney purported to meet with clients in a room in her

brother-in-law's car wash], A146-147 [nonresident attorney alleged he had permission to use an office in a building leased by another, but had no desk or telephone there, and did not regularly receive correspondence at that address]).

In the end, then, respondent's assertion that Judiciary Law § 470 has been read to require a physical office at which the nonresident attorney is present on a regular basis is supported at most by a smattering of unreviewed state and local trial court decisions. This Court is not bound by such decisions. Indeed, it is not bound by any lower court's construction of Judiciary Law § 470 when it interprets the statute to avoid a serious constitutional issue. *See Fleischman v. Fergueson,* 223 N.Y. 235, 236 (1918) (Court of Appeals is bound by affirmed findings of fact supported by the record, but it is not bound by lower court's legal interpretations).

Additionally, the cases cited by proposed amici (Proposed Amici Br. at 17-21) that involve interpretation of the term "office" in the statutes and court rules of other states are simply inapposite. In none of the cited cases did the courts find it necessary to interpret the term office narrowly to avoid raising serious constitutional questions.

Judiciary Law § 470 is also readily amenable to the narrow reading described above because this interpretation serves two purposes reasonably related to the practice of law. As we explain in our opening brief (Opening Br. at 30-32), requiring nonresident attorneys to maintain an address in the State sufficient for service of legal papers preserves to litigants the full range of service options when they are litigating against a party represented by a nonresident attorney. Personal service may be preferred when papers are time-sensitive, oversized, voluminous or bulky. And requiring personal service in New York reasonably relieves adversaries seeking to serve papers personally from having to travel outside the state in which they are practicing to serve papers or else developing relationships with process servers or other similar entities, not just throughout the state where they can fairly expect to need such relationships, but wherever the nonresident attorney may be located. In addition, requiring an address for personal service in New York allows the New York courts to adjudicate service disputes concerning such service (*see* Opening Br. at 32-33).

Finally, there is no support for respondent's alternative proposal (Resp. Br. at 49-54) that if the Court is inclined to interpret Judiciary

Law § 470 to require something less than a fully operational law office, it should interpret the statute to require nonresident attorneys to provide an email address and to consent to service by electronic means. Unlike the narrow interpretation of the statute that appellant describes here, respondent's proposal finds no support in the statute's legislative history and would be inconsistent with provisions of the C.P.L.R. It would thus amount to statutory amendment by judicial decision.

Under current law, service by electronic means is permitted only "where and in the manner authorized by the chief administrator of the courts by rule" and unless the Chief Administrator's rules provide otherwise, electronic service is conditioned on the party's written consent. C.P.L.R. 2103(b)(7). Under the applicable rules, electronic service is defined as service through the New York State Case Electronic Filing ("NYSCEF") system and is permitted only in designated categories of cases in specified courts. *See* 22 N.Y.C.R.R. § 202.5-b(a)(2)(iii) (defining "electronic filing" to mean filing and service through the NYSCEF site); 22 N.Y.C.R.R. § 207.4-a(b)(5) (electronic service in a case pending in Surrogate's Court is complete upon transmission to NYSCEF); Administrative Order of the Chief

Administrative Judge AO 210/14 (Nov. 7, 2014), *reproduced at* A1 (listing courts and types of cases in which electronic filing and service is mandatory or consensual). Thus, at this time, even upon consent, electronic service is not available in all courts or all types of cases. *See, e.g.,* 22 N.Y.C.R.R. § 202.5-b(a) ("documents may be filed and served by electronic means in Supreme Court in such civil actions and in such counties as shall be authorized by order of the Chief Administrator of the Courts and only to the extent and in the manner provided in this section").

For all of the reasons outlined above, Judiciary Law § 470 "is at least susceptible" of being interpreted as requiring only an address in the State sufficient for the personal service of legal papers on behalf of the clients the attorney represents, including by designation of an agent for this purpose. And because this reading avoids a serious constitutional question, it should be adopted by this Court. *See People v. Finkelstein*, 9 N.Y.2d at 345.

CONCLUSION

To avoid a construction that raises serious concerns about the statute's constitutionality, the Court should interpret Judiciary Law § 470 as requiring only that the nonresident attorney maintain an address within the State sufficient for personal service of legal papers, including by designation of an agent for this purpose.

Dated: Albany, New York
January 12, 2015

Respectfully submitted,

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ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and in consultation with the Presiding Justices of the Appellate Divisions, upon notice by the Presiding Judge of the Court of Claims, and, as appropriate, in consultation with or with the approval of County Clerks, I hereby establish or continue, or give notice of, programs for the voluntary and mandatory use of electronic means for the filing and service of documents ("e-filing") in the manner authorized pursuant to L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, L. 2011, c. 543, L. 2012, c. 184, and L. 2013, c. 113, in the counties, courts, and cases in effect as of the date of this Order or upon the effective dates set forth in Appendix A (voluntary e-filing) and Appendix B (mandatory e-filing) attached hereto. Such programs shall be subject to sections 202.5-b, 202.5-bb, 206.5, 206.5-aa, 207.4-a, 207.4-aa, and 208.4-a of the Uniform Rules for the New York State Trial Courts. The consensual electronic filing of matrimonial actions in Supreme Court shall be governed by rules set forth in Appendix C. This Order supersedes AO/64/14.

Chief Administrative Judge of the Courts

Dated: November 7, 2014

AO/210/14

APPENDIX A
CONSENSUAL/VOLUNTARY CASES
(in effect as of November 10,2014,* unless otherwise indicated)

SUPREME COURT

Albany	• commercial, contract, tort • tax certiorari (including under RPTL §730) • foreclosure actions addressing real property and mechanics liens
Bronx	• commercial, contract, tort • tax certiorari (including under RPTL §730) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment **See also, Appendix B (mandatory cases).**
Broome	• commercial, contract, tort • tax certiorari (excluding under RPTL §730) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment • CPLR Art. 78 proceedings • CPLR Art. 75 proceedings • guardianship, matrimonial, and mental hygiene matters
Cortland	• all actions <u>except</u> – Mental Hygiene Law matters
Dutchess	• all actions <u>except</u> – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters – RPTL § 730 proceedings
Erie	**None** **See also, Appendix B (mandatory cases).**
Essex	**None** **See also, Appendix B (mandatory cases).**
Kings	• commercial, contract, tort (except certain Commercial Division matters [see Appendix B]) • tax certiorari (including under RPTL §730) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment **See also, Appendix B (mandatory cases).**
Livingston	• all actions <u>except</u> – Mental Hygiene Law matters
Nassau	• contract, tort • workers' compensation applications for judgment **See also, Appendix B (mandatory cases).**
New York	**None** **See also, Appendix B (mandatory cases).**
Niagara	• commercial, contract, tort • tax certiorari (including under RPTL §730) • foreclosure actions addressing real property and mechanics liens
Onondaga	**None** **See also, Appendix B (mandatory cases).**
Ontario	• all actions <u>except</u> – Mental Hygiene Law matters
Queens	• commercial, contract, tort • tax certiorari (including under RPTL §730) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment **See also, Appendix B (mandatory cases).**
Richmond	• commercial, contract, tort • tax certiorari (including under RPTL §730) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment
Rockland	• matrimonial matters (See AO/366/13 relating to matrimonial filings.) **See also, Appendix B (mandatory cases)**
Suffolk	• commercial, contract, tort (except Commercial Division matters [see Appendix B]) • tax certiorari (excluding under RPTL §730) **See also, Appendix B (mandatory cases).**
Westchester	• matrimonial matters (See AO/139/13 relating to matrimonial filings.) **See also, Appendix B (mandatory cases).**

* For cases commenced prior to March 31, 2014, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12 , AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, and AO/64/14; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/ctclaims).

APPENDIX A
CONSENSUAL/VOLUNTARY CASES (cont'd)
(in effect as of November 10, 2014,* unless otherwise indicated)

SURROGATE'S COURT

Allegany Cattaraugus Cortland Genesee Niagara Queens Tompkins Wyoming	• probate and administration proceedings • miscellaneous proceedings relating thereto • such other types of proceedings as the court may permit
Cayuga Chautauqua Erie Livingston Monroe Ontario Seneca Steuben Wayne Yates	• such types of proceedings as the court may permit **See also, Appendix B (mandatory cases).**

CIVIL COURT

New York City	• actions brought by a provider of health services specified in Insurance Law §5102(a)(1) against an insurer for failure to comply with rules and regulations promulgated by the Superintendent pursuant to Insurance Law §5108(b)

COURT OF CLAIMS

Albany District (Albany, Clinton, Columbia, Essex, Franklin, Greene, Rensselaer, Saratoga, Schenectady Ulster, Warren, Washington)	• claims for personal injury or property damage
New York District (Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk)	• claims for personal injury or property damage

* For cases commenced prior to March 31, 2014, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12 , AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, and AO/64/14; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

APPENDIX B
MANDATORY CASES
(in effect as of November 10, 2014,* unless otherwise indicated)

SUPREME COURT

Bronx	• medical, dental, and podiatric malpractice actions **See also, Appendix A (consensual/voluntary cases)**
Erie	• all actions except – CPLR Art. 78 proceedings – Election Law proceedings – in rem tax foreclosures – matrimonial matters – Mental Hygiene Law matters – RPTL § 730 proceedings
Essex	• tax certiorari (excluding under RPTL § 730) • eminent domain matters • foreclosure actions involving real property (but excluding mechanic's liens and in rem tax foreclosure)
Kings	• Commercial Division matters (commercial cases as defined in 22 NYCRR §§202.70(a), (b), and (c)) **See also, Appendix A (consensual/voluntary cases)**
Nassau	• commercial matters (without regard to the amount in controversy) • civil forfeitures • in rem tax foreclosures • tax certiorari (including under RPTL § 730) **See also, Appendix A (consensual/voluntary cases)**
New York	• all actions except – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters
Onondaga	• all actions except – CPLR Art. 78 proceedings – CPLR Art. 70 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters – foreclosure actions – RPTL § 730 proceedings – name change applications – emergency medical treatment applications
Queens	• medical, dental, and podiatric malpractice actions **See also, Appendix A (consensual/voluntary cases)**
Rockland	• all actions except – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters **See also, Appendix A (consensual/voluntary cases)**
Suffolk	• Commercial Division matters (commercial cases as defined in 22 NYCRR §§202.70(a), (b), and (c)) • medical, dental, and podiatric malpractice actions • RPTL §730 proceedings • foreclosure actions addressing real property and mechanics liens **See also, Appendix A (consensual/voluntary cases)**
Westchester	• all actions except – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters **See also, Appendix A (consensual/voluntary cases)**

SURROGATE'S COURT

Cayuga Chautauqua Erie Livingston Monroe Ontario Seneca Steuben Wayne Yates	• probate and administration proceedings • miscellaneous proceedings relating thereto **See also, Appendix A (consensual/voluntary cases)**

* For cases commenced prior to March 31, 2014, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12 , AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, and AO/64/14; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/ctapps).

APPENDIX C

Rules Governing the Consensual Electronic Filing
of Matrimonial Actions in Supreme Court

(a) Application

(1) On consent, documents may be filed and served by electronic means in matrimonial actions in the Supreme Court of authorized counties subject to the conditions set forth below. Except as otherwise required by this order/appendix, the provisions of 22 NYCRR § 202.5-b shall apply.

(2) For purposes of this order/appendix:

(I) "Matrimonial actions" shall mean those actions set forth in CPLR § 105(p) and DRL § 236 wherein:

(A) the action is contested, and addresses issues including, but not limited to, alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support or the equitable distribution of property; or

(B) the action is uncontested; or

(C) the action is a post-judgment application addressing an underlying matrimonial action that was either *(1)* commenced electronically on or after April 1, 2013, or *(2)* initiated by purchase of a new index number.

(ii) A "party" or "parties" shall mean the party or parties to the action or counsel thereto (as set forth in 22 NYCRR § 202.5-b(a)(2)(viii)) and the attorney(s) for the minor child(ren).

(3) No paper or document filed by electronic means in a matrimonial action shall be available for public inspection on-line or at any computer terminal in the courthouse or the office of the County Clerk.

(4) Nothing in this section shall be construed to abrogate existing personal service requirements as set forth in the domestic relations law, family court act or civil practice law and rules.

(5) Unless otherwise directed by the court, forensic evaluation reports in custody, visitation and other matters concerning children shall not be filed electronically.

(6) Service of the initiating documents in post-judgment applications subject to consensual e-filing must be effectuated in hard copy and accompanied by a notice regarding availability of electronic filing in post-judgment matrimonial proceedings on a form to be approved by the Chief Administrator. Proof of hard copy service shall be filed by electronic means.