

State of New York
Commission on Judicial Nomination

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December 1, 2012

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FOR IMMEDIATE RELEASE

Commission on Judicial Nomination Announces Nominees for Judge Ciparick Vacancy

The Commission Releases Its List of Seven Nominees Following Extraordinary Interest in the Upcoming Court of Appeals Vacancy Created by Judge Ciparick's Retirement

Under New York's Constitution, the Commission on Judicial Nomination is charged with evaluating, and then recommending to the Governor, candidates to fill vacancies on the State's highest court, the New York Court of Appeals. The Commission vigorously seeks out, carefully evaluates, and then nominates to the Governor well qualified candidates from the extraordinary, diverse community of lawyers who are admitted to practice in New York State for at least 10 years.

In connection with the upcoming vacancy on the Court that will be created by the retirement of Senior Associate Judge Carmen Beauchamp Ciparick at the end of this year, the Commission today has released its Report to the Governor, containing the names of seven candidates who in the Commission's collective judgment are well qualified, by virtue of their character, temperament, professional aptitude, experience, qualifications and fitness for office, to fulfill the duties of that high office.

The Commission's Report follows months of outreach efforts that were conducted through public announcements, individual solicitations of applications and informational

meetings held by the Commission in Albany, Rochester and New York City. These efforts resulted in the receipt of 75 applications, which is significantly higher than for any other recent vacancy on the Court. The applicant pool was also extremely diverse. Of those 75 applicants, 35 (47%) were women, and 24 (32%) were ethnic minorities. The Commission ultimately interviewed 36 candidates, of whom 17 (47%) were female, and 18 (50%) were ethnic minorities.

Judge Judith S. Kaye, Chair of the Commission, stated, “I have now seen the Commission’s process for the first time from the other side of the table. I am so gratified at the level of public interest that this vacancy attracted, the number of applications we received, and the extraordinary quality and diverse backgrounds of our applicants. That so many wonderfully qualified candidates were motivated to apply demonstrates the remarkable strength and depth of the legal profession in the State of New York.”

The Commission’s seven nominees to the Governor are, in alphabetical order:

- **Hon. Sheila Abdus-Salaam**, Associate Justice, Appellate Division, First Department;
- **Hon. Rolando T. Acosta**, Associate Justice, Appellate Division, First Department;
- **Kathy H. Chin, Esq.**, attorney in private practice (Cadwalader, Wickersham & Taft LLP);
- **Hon. Eugene M. Fahey**, Associate Justice, Appellate Division, Fourth Department;
- **Prof. Jenny Rivera**, Professor of Law, CUNY School of Law;
- **Margarita Rosa, Esq.**, Executive Director, Grand Street Settlement; and
- **David A. Schulz, Esq.**, attorney in private practice (Levine Sullivan Koch & Schulz, LLP)

By law, the Governor is to make his appointment from among these seven nominees between January 1 and 15, 2013. The State Senate has thirty days after receipt of the Governor’s nomination to confirm or reject the appointment.

Although the Commission has now fulfilled its role with respect to the Judge Ciparick vacancy, the Commission’s work continues. The Commission must still identify and nominate another slate of candidates to fill the void left on the Court of Appeals by the untimely passing of Associate Judge Theodore T. Jones. To that end, the Commission will hold an informational meeting to discuss the requirements for the position and the Commission’s procedures for submitting recommendations of qualified candidates. The informational meeting will be held this coming week on Wednesday December 5, 2012, 6:00 PM – 7:30 PM, at the New York City Bar Association, 42 West 44th Street, New York, New York 10036.

Candidates for the Judge Jones vacancy may download an application from the Commission's website, www.nysegov.com/cjn. The deadline to submit applications is December 18, 2012. Applicants for the Judge Jones vacancy will also have the option to request that their applications be considered by the Commission for future vacancies.

If any person or organization wishes to receive copies of future Commission press releases, please provide an email or mailing address to: Commission on Judicial Nomination, Attn: Stephen P. Younger, Commission Counsel, c/o Patterson Belknap Webb & Tyler LLP, 1133 Avenue of the Americas, New York, New York 10036; or to CJN_PR@pbwt.com. The Commission will register the address and make every effort to distribute its future press releases in the designated manner. Persons interested in learning more about the Commission on Judicial Nomination are encouraged to visit the Commission's website: www.nysegov.com/cjn.

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December 1, 2012

The Honorable Andrew M. Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

As Chair of the Commission on Judicial Nomination, I have the honor to report to you on behalf of the Commission, pursuant to Article 6, Section 2 of the Constitution, and Section 63(3) of Article 3-A of the Judiciary Law, the names of seven candidates for your consideration for appointment to the office of Associate Judge of the Court of Appeals, who in the collective judgment of the Commission are well qualified, by virtue of their character, temperament, professional aptitude, experience, qualifications and fitness for office, to discharge the duties of that high office. The vacancy in that office is the result of the mandatory retirement of Associate Judge Carmen Beauchamp Ciparick, as of December 31, 2012.

The current vacancy created by Judge Ciparick's prospective retirement represents the first occasion on which the Commission had the opportunity to utilize its new Rules, which were redesigned to enhance outreach efforts and encourage applications from a diverse range of candidates. The Commission, including its Outreach Committee formed pursuant to the Commission's Rules, took many steps to seek the largest possible number of well-qualified applicants, consistent with the Commission's mandate to "conduct broad outreach to encourage wide participation in the application process." 22 N.Y.C.R.R. § 7100.6.

More than three months before the application deadline, the Commission disseminated statewide notice of the forthcoming vacancy and application procedure, and continued its outreach efforts through the date of the application deadline. Notice was sent to the media, bar associations, New York law schools, members of the judiciary and all branches of State government.

The Commission conducted a series of informational meetings concerning the upcoming vacancy and the candidate application process. The meetings were held during May and June 2012, in Albany, Rochester and New York City, so as to reach a diverse cross-section of our State's legal community. The Commission meetings included eminent speakers, ranging from retired members of the Court of Appeals, to representatives of the Governor's office, to members of the legal academy and various State and local bar associations, and to those with a special affinity for the Court, including Hon. Mario M. Cuomo. The informational meetings were well attended, and attracted wide media coverage.

The vacancy received extensive media coverage overall. I was interviewed several times to advance the Commission's outreach efforts, and authored an essay that ran in various publications across the State. The Commission is aware of dozens of news articles from the Spring and Summer of 2012 addressing the upcoming vacancy or the Commission's informational meetings. And as in years past, the Commissioners engaged in individual solicitation of applications from qualified candidates.

I am proud to say that the Commission's outreach efforts were successful. The Commission disseminated over 160 applications through its website and informational meetings, and through third-party websites. Ultimately, 75 candidates submitted applications to the Commission, an increase of almost 60% over the largest number of applications associated with the previous ten vacancies on the Court. *See Exhibit A hereto.*

The applicant pool was also diverse. Approximately 47% of the applications were submitted by female candidates, and approximately 32% by candidates of diverse backgrounds. Both measures represent a significant increase in submissions from candidates of diverse backgrounds.¹

The Commission met in November and conducted in-person interviews of 36 candidates, over the course of four full days – again a substantial increase over prior years. The candidates interviewed by the Commission similarly represented the diversity of the overall applicant pool. Of the 36 interviewed, 17 (47%) were female, and 18 (50%) were ethnic minorities. The Commission interviewed candidates from all corners of the State, of varying personal and professional backgrounds, drawing from the bench, the practicing bar, law schools and the private sector.

As in the past, the Commission staff investigated the qualifications of the applicants. The result of each investigation was reported to the Commission and discussed before and after the interviews. The Commission sought by its investigations and interviews to address each candidate's character, temperament, professional aptitude, experience, qualifications and fitness for office.

¹ In aggregate, over the ten previous vacancies, approximately 18.5% of applications were submitted by female candidates, and approximately 15% of applications were submitted by candidates of color. *See Exh. A.*

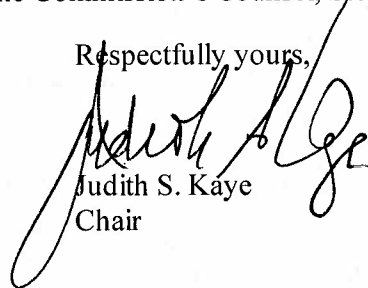
The candidates thus nominated by the Commission for the office of Associate Judge, and listed in alphabetical order, are:

- Hon. Sheila Abdus-Salaam
- Hon. Rolando T. Acosta
- Kathy H. Chin, Esq.
- Hon. Eugene M. Fahey
- Prof. Jenny Rivera
- Margarita Rosa, Esq.
- David A. Schulz, Esq.

Each candidate recommended for the office of Associate Judge has been interviewed by the Commission and each has filed the financial statement required by law, which is being transmitted to you separately. A summary of the careers of the recommended candidates is attached.

Section 66(2) of the Judiciary Law provides that “[t]he governor shall have access to all papers and information relating to persons recommended to him by the commission.” At your request, the Commission will furnish you with any such material or information, which requests should be directed to the Commission’s Counsel, Stephen P. Younger.

Respectfully yours,



Judith S. Kaye
Chair

NOMINEE BIOGRAPHIES (in alphabetical order)

Hon. Sheila Abdus-Salaam

Justice Sheila Abdus-Salaam, an Associate Justice of the Appellate Division, First Department, was found by the Commission to be well qualified for the position of Associate Judge based on her character, temperament, professional aptitude, experience, qualifications and fitness for office. She was interviewed by the Commission on November 6, 2012.

Justice Abdus-Salaam received her undergraduate degree from Barnard College in 1974. Upon graduating from Columbia Law School in 1977, where she was a Charles Evans Hughes Fellow, she began her legal career as a Staff Attorney at East Brooklyn Legal Services Corporation (1977-1980). Thereafter, Justice Abdus-Salaam served as an Assistant Attorney General in the New York State Department of Law (1980-1988) and as General Counsel for the New York City Office of Labor Services (1988-1991). Justice Abdus-Salaam then began her judicial career in 1992, when she was elected to the position of Judge of the Civil Court of the City of New York. In 1994, she was elected to the Supreme Court of the State, New York County, where she sat on the Criminal Term from 1994 to 1995, followed by the Civil Term from 1996 to 2009. In 2009, Justice Abdus-Salaam was appointed to the Appellate Division, First Department, where she currently serves.

Justice Abdus-Salaam recently authored the Court's opinion in *Martin v. Portexit Corp.*, which addressed the admissibility of an electronically signed physician's affirmation. Justice Abdus-Salaam also wrote a dissenting opinion in the *ABN AMRO Bank, N.V. v. MBIA, Inc.*, a case concerning insurance policyholders' rights to bring claims for fraudulent conveyance, *inter alia*, against a bond insurer in connection with a financial restructuring.

Justice Abdus-Salaam is Vice President of the Columbia Law School Board of Visitors and a member of the Pattern Jury Instructions Committee. She also previously served as Chair of the Board of Directors of Harlem Legal Services.

Hon. Rolando T. Acosta

Justice Rolando T. Acosta, an Associate Justice of the Appellate Division, First Department, was found by the Commission to be well qualified for the position of Associate Judge based on his character, temperament, professional aptitude, experience, qualifications and fitness for office. He was interviewed by the Commission on November 7, 2012.

Justice Acosta graduated from Columbia University in 1979, where he received the 1979 NCAA Scholarship as the best student-athlete nationwide. Justice Acosta received a J.D. degree from Columbia University Law School in 1982. Justice Acosta was employed by the Legal Aid Society as an attorney and Director of Government and Community Affairs of Civil Practice (1982-1988, 1994-1997), and served as First Deputy Commissioner and Deputy Commissioner for Law Enforcement on the New York City Commission on Human Rights (1988-1993).

Justice Acosta has served on the Appellate Division since 2008. Before his service on the appellate bench, Justice Acosta served as a Justice of the New York State Supreme Court, New York County (2004-2007), as Presiding Justice of the Harlem Community Justice Center (2001-2003), and as a Judge of the Civil Court of the City of New York (1998-2001).

Among the matters he has handled on the bench are *U.S. Bank National Association v. GreenPoint Mortgage Funding Inc.*, in which Justice Acosta, writing for the court, adopted the Second Circuit's *Zubulake* standard on the issue of which party bears the cost of producing electronic discovery materials. He also authored the Court's opinion in *Fletcher v. Dakota, Inc.*, which addressed whether individual members of a co-op board can be held liable for discrimination in connection with the purchase of an apartment.

Justice Acosta was previously the President of the Association of Judges of Hispanic Heritage, and was selected as the 2004 Latino Judge of the Year by the National Hispanic Bar Association. He is currently a member of the New York State Commission on Judicial Conduct and the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York. He is a Trustee of Columbia University. He previously served as Vice President of the New York City Bar Association and as an Officer and Founding Board Member of the Upper Manhattan Empowerment Zone Development Corporation.

Kathy H. Chin, Esq.

Kathy H. Chin, currently a partner at the law firm of Cadwalader, Wickersham & Taft LLP in New York City, was found by the Commission to be well qualified for the position of Associate Judge based on her character, temperament, professional aptitude, experience, qualifications and fitness for office. She was interviewed by the Commission on November 7, 2012.

Ms. Chin received her undergraduate degree from Princeton University in 1975. She graduated in 1980 from Columbia University School of Law, where she was Editor-in-Chief of the Columbia Journal of Transnational Law and a Harlan Fiske Stone Scholar. Upon graduation, she joined the Cadwalader firm as an associate, and became a partner in 1990.

In her litigation practice, Ms. Chin represented the New York State Association of Counties in challenging regulations issued by the State University of New York which restricted the control that counties could exercise over community colleges. Ms. Chin has also been actively involved in *pro bono* matters, including assisting families of uniformed personnel who perished on 9/11.

Since 2003, Ms. Chin has served on the New York City Commission to Combat Police Corruption, and she served on the New York City Planning Commission from 1995 to 2001. She also was a member of Governor Mario M. Cuomo's Screening Committee for the First Judicial Department; the Magistrate Judge Merit Selection Panel for the Eastern District of New York; the Second Circuit Judicial Conference Planning and Program Committee; Chief Judge Judith S. Kaye's Commission to Promote Public Confidence in Judicial Elections; and Chief Judge Jonathan Lippman's Attorney Emeritus Advisory Council.

Hon. Eugene M. Fahey

Justice Eugene M. Fahey, an Associate Justice of the Appellate Division, Fourth Department, was found by the Commission to be well qualified for the position of Associate Judge based on his character, temperament, professional aptitude, experience, qualifications and fitness for office. He was interviewed by the Commission on November 8, 2012.

Justice Fahey received his law degree in 1984 from the SUNY at Buffalo School of Law. He previously received his B.A. (*cum laude*) from SUNY at Buffalo in 1974 and subsequently received an M.A. in European History from SUNY at Buffalo in 1998. After graduation from law school, he worked in private practice from 1985 through 1993. He also previously served as a Judge on the Buffalo City Court (1995-1996) and on the New York State Supreme Court, Eighth Judicial District (1997-2006). During 2005-2006, he was assigned to the Commercial Division. Justice Fahey was appointed to the Appellate Division in 2006.

Justice Fahey recently authored an opinion in the case of *New Yorkers for Constitutional Freedoms v. New York State Senate*, concluding that there had been no violation of the Open Meetings Law as a result of meetings that Senate Republicans had with Mayor Bloomberg and Governor Cuomo in connection with New York's Marriage Equality Act.

Previously, Justice Fahey served as a member of Buffalo's Common Council both before and after law school (1978-1983, 1988-1994). Justice Fahey has been involved in Western New York community organizations including Deaf Adult Services of Western New York, Inc., Buffalo Neighborhood Housing Services and Fillmore-Leroy Area Residents, Inc.

Prof. Jenny Rivera

Professor Jenny Rivera, currently a faculty member at CUNY School of Law in New York City, and Director of the school's Center on Latino and Latina Rights and Equality, was found by the Commission to be well qualified for the position of Associate Judge based on her character, temperament, professional aptitude, experience, qualifications and fitness for office. She was interviewed by the Commission on November 8, 2012.

Professor Rivera received her undergraduate degree from Princeton University in 1982. She graduated with a J.D. Degree in 1985 from New York University School of Law, where she was a Root-Tilden Scholar, and received her LL.M. degree in 1993 from Columbia University School of Law. Professor Rivera began her legal career as a *Pro Se* Law Clerk for the Second Circuit Court of Appeals (1985-1987). She was associate counsel for the Puerto Rican Legal Defense and Education Fund (1988-1992), and then an Administrative Law Judge for the New York State Division of Human Rights (1992-1993). Professor Rivera served as Law Clerk to Hon. Sonia Sotomayor, then on the U.S. District Court for the Southern District of New York (1993-1994).

After teaching at Suffolk University Law School (1994-1997), Professor Rivera joined the faculty of CUNY School of Law in 1997. Professor Rivera served on the New York City Commission on Human Rights from 2002 through 2007. In 2007, Professor Rivera joined the Office of the Attorney General of the State of New York, where she served as Special Deputy

Attorney General for Civil Rights and Bureau Chief of the Civil Rights Bureau. Since May 2012, Professor Rivera has served as the Associate Consultant to Professor Merrick Rossein, the Independent EEO Consultant appointed in *United States and the Vulcan Group Inc., et al. v. The City of New York*.

Professor Rivera serves on the Board of Directors of the Grand Street Settlement; is a member of the Governor's Screening Committee for the Second Judicial Department and serves on the ABA's Commission on Hispanic Legal Rights and Responsibilities. In early 2013, Professor Rivera will receive the Spirit of Excellence Award from the ABA's Commission on Racial and Ethnic Diversity in the Profession.

Margarita Rosa, Esq.

Margarita Rosa, currently Executive Director of Grand Street Settlement in New York City, was found by the Commission to be well qualified for the position of Associate Judge based on her character, temperament, professional aptitude, experience, qualifications and fitness for office. She was interviewed by the Commission on November 7, 2012.

Ms. Rosa received her undergraduate degree (*cum laude*) from Princeton University in 1974 and her J.D. degree from Harvard Law School in 1977, where she received a Lumbard Association Fellowship. Ms. Rosa then entered private practice, working as a litigation associate at Rosenman Colin Freund Lewis & Cohen (1977-1979). Thereafter, she joined the Puerto Rican Legal Defense and Education Fund as a staff attorney (1979-1981), after which she became a litigation associate at Rabinowitz, Boudin, Standard, Krinsky & Lieberman (1981-1984). Ms. Rosa then entered public service with the New York State Division of Human Rights, at which she served as General Counsel (1985-1988), Executive Deputy Commissioner (1988-1990) and ultimately, Commissioner (1990-1995).

In 1995, Ms. Rosa became Executive Director of the Grand Street Settlement, a non-profit organization. In that position, Ms. Rosa oversees over 300 employees. During her tenure at Grand Street Settlement, Ms. Rosa has also taught as an adjunct professor at Fordham University School of Law, New York University and Baruch College.

Ms. Rosa serves on the Boards of Bishop Loughlin Memorial High School and the Foundation for Child Development. She received LatinoJustice PRLDEF's "Pioneer" Award (2012), *El Diario's* "Mujeres Destacadas" Award (2010), and the New York State Attorney General's Award for Distinguished Public Service in the Legal Profession (2002).

David A. Schulz, Esq.

David A. Schulz, a partner at the law firm of Levine Sullivan Koch & Schulz, LLP in New York City, was found by the Commission to be well qualified for the position of Associate Judge based on his character, temperament, professional aptitude, experience, qualifications and fitness for office. Mr. Schulz was previously nominated by the Commission for the position of Associate Judge in 2007. He was interviewed by the Commission on November 7, 2012.

Mr. Schulz received a B.A. from Knox College (*magna cum laude*) in 1974, an M.A. in economics from Yale University in 1975, and a J.D. degree from Yale Law School in 1978. He has been engaged in the private practice of law in New York City from 1979 to the present. He is a founding partner of his current firm, which was formed in 2003. Previously, he practiced at Rogers & Wells LLP, and following a merger, at Clifford Chance US LLP. Mr. Schulz is currently an adjunct professor at Yale and Columbia University Law Schools and has previously served in a similar capacity at Fordham University School of Law and Brooklyn Law School.

Mr. Schulz is a Past President of the Defense Counsel Section of the Libel Defense Resource Center. He is also Chair of the Intellectual Property Council and Past Chair of the Communications and Media Law Committee of the New York City Bar Association. He served on the Sedona Conference's Working Group on Protective Orders, Confidentiality and Public Access. He also serves as a Trustee of Knox College.

Mr. Schulz is a frequent author and lecturer on topics related to the press and the First Amendment. He is an associate member of the Society of Professional Journalists.

EXHIBIT A

N.Y.S. Commission on Judicial Nomination

Data on New York Court of Appeals Applicants (1997-2008)

	Richard D. Simons Vacancy (1997)		Vito J. Titone Vacancy (1998)		Joseph W. Bellacosa Vacancy (2000)		Howard A. Levine Vacancy (2002)		Richard C. Wesley Vacancy (2003)		George Bundy Smith Vacancy (2006)	
Total Applicants:	38		41		32		27		46		26	
Total Female Applicants:	5	13%	7	17%	7	22%	4	15%	11	24%	2	8%
Total Ethnic Minority Applicants:	2	5%	6	15%	2	6%	4	15%	1	2%	5	19%
Applicants Interviewed:	22		18		24		18		23		16	
Interviewees Who Were Female:	4	18%	3	17%	7	29%	3	17%	4	17%	2	13%
Interviewees Who Were Ethnic Minorities:	2	9%	4	22%	2	8%	3	17%	0	0%	3	19%
Candidates on Nomination List:	7		7		7		7		7		7	
Nominees Who Were Female:	1	14%	0	0%	3	43%	3	43%	1	14%	1	14%
Nominees Who Were Ethnic Minorities:	1	14%	2	29%	1	14%	1	14%	0	0%	1	14%

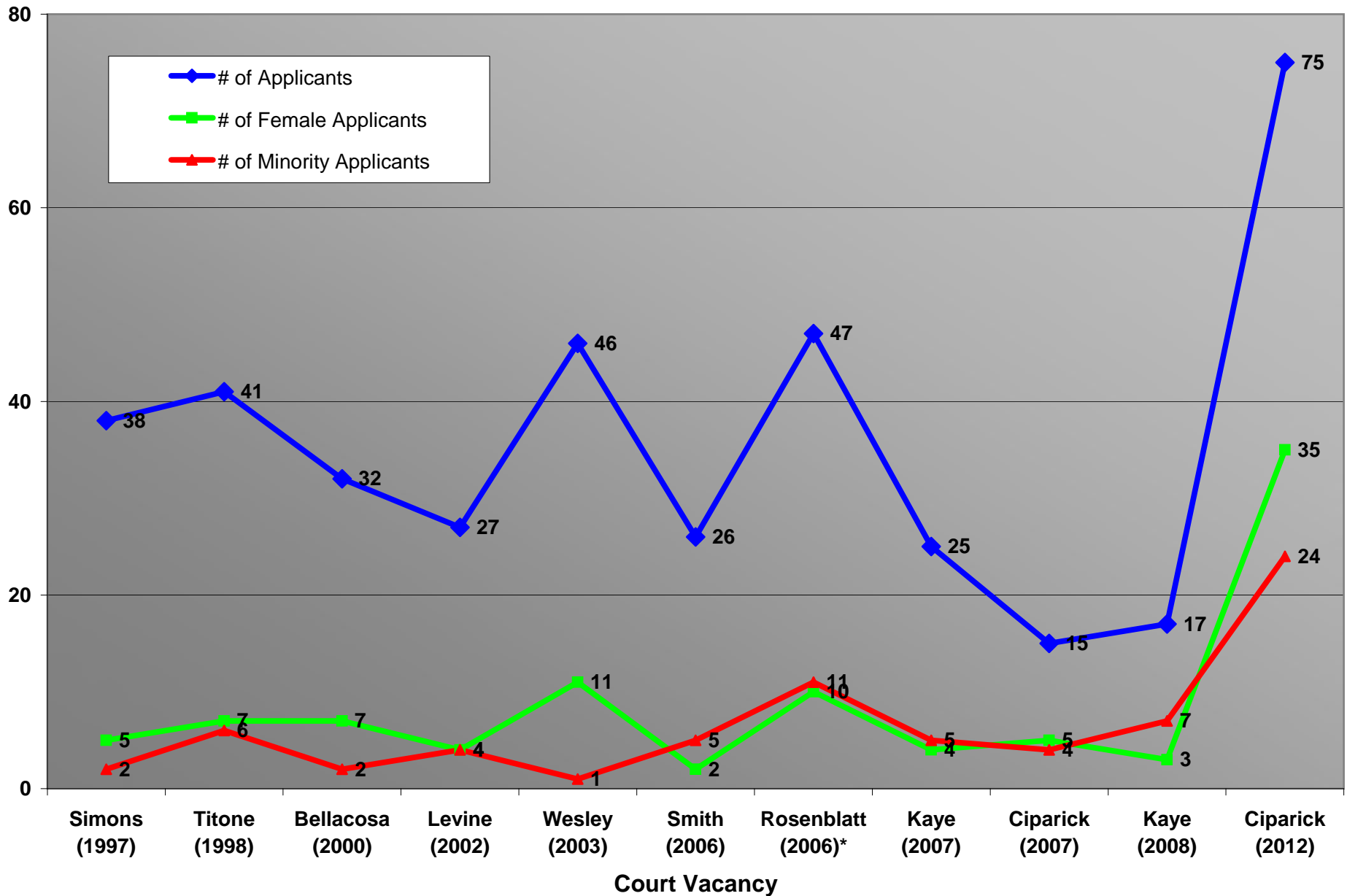
	Albert M. Rosenblatt Vacancy (2006)*		Judith S. Kaye Vacancy (2007)		Carmen B. Ciparick Vacancy (2007)		Judith S. Kaye Vacancy (2008)	
Total Applicants:	47		25		15		17	
Total Female Applicants:	10	21%	4	16%	5	33%	3	18%
Total Ethnic Minority Applicants:	11	23%	5	20%	4	27%	7	41%
Applicants Interviewed:	24		14		9		12	
Interviewees Who Were Female:	7	29%	3	21%	3	33%	3	25%
Interviewees Who Were Ethnic Minorities:	6	25%	3	21%	3	33%	4	33%
Candidates on Nomination List:	7		7		5		7	
Nominees Who Were Female:	1	14%	1	14%	2	40%	0	0%
Nominees Who Were Ethnic Minorities:	2	29%	1	14%	1	20%	1	14%

Totals 1997-2008	
314	
58	18%
47	15%
180	
39	22%
30	17%
68	
13	19%
11	16%

Carmen B. Ciparick Vacancy (2012)	
75	
35	47%
24	32%
36	
17	47%
18	50%
7	
4	57%
5	71%

* Rosenblatt vacancy figures include 25 candidates who applied for the Rosenblatt vacancy, and 22 candidates who applied for the 2006 Smith vacancy, and whose applications were reconsidered for the Rosenblatt vacancy.

Applications to Court of Appeals, 1997-2012



* Rosenblatt vacancy figures include 25 candidates who applied for the Rosenblatt vacancy, and 22 candidates who applied for the 2006 Smith vacancy, and whose applications were reconsidered for the Rosenblatt vacancy.