

LESBIANS, GAY MEN, BISEXUALS AND TRANSGENDER PEOPLE*

*Prepared by the Hon. Michael R. Sonberg

New York State's first openly gay or lesbian judge was William Thom, who was appointed by Mayor Edward I. Koch to fill an interim vacancy on the New York City Civil Court in 1984. Mayor Koch was following the lead of California Governor Jerry Brown who, in 1979, appointed the first openly gay man to the bench in the United States, Los Angeles County Superior Court Judge Stephen M. Lachs.⁵¹

Richard Failla, who was appointed a judge of the New York City Criminal Court by Mayor Koch in 1985, was the first openly lesbian or gay person appointed to a non-interim judgeship in New York State.⁵² Judge Failla had been New York City's Chief Administrative Law Judge at the time of his appointment; his successor in that position, Charles D. McFaul, also was an openly gay man. Judge Failla's appointment was followed by Mayor Koch's appointment in 1986 of Mary Bednar to the Family Court, making her the first open lesbian on the bench. In 1988, Justice Failla was elected to the Supreme Court in New York County and Joan Lobis, who had been a Housing Court Judge since 1985, was elected to the Civil Court from New York County. Judge Lobis was elected to the Supreme Court in 1992, making her the first openly gay or lesbian person elected to the Civil Court as well as the first lesbian elected to the Supreme Court.

In the Second Department, Debra Silber was the first openly gay or lesbian person elected to the bench, when she was elected to the Civil Court in Kings County in 1998. She was followed by Jack Battaglia who was elected to the Civil Court in Kings County in 2000 and then to the Supreme Court, in 2006. None of the other counties in the Second Department has elected an openly gay or lesbian judge to a court of record.

⁵¹ See Will Dean, *Stephen Lachs made history as openly gay judge*, THE DESERT SUN, May 9, 2014, available at <http://www.desertsun.com/story/news/nation/lgbt/2014/05/09/stephen-lachs-lgbt-judge-advocate/8900005/>.

⁵² See Bruce Lambert, *R. C. Failla, Justice and Leader On Gay Rights Issues, Dies at 53*, N.Y. TIMES, May 12, 1993, available at <http://www.nytimes.com/1993/04/12/obituaries/r-c-failla-justice-and-leader-on-gay-rights-issues-dies-at-53.html>.

In the Fourth Department, Judge Ellen Yacknin of Rochester's City Court was elected in 2002, the first open lesbian or gay judge elected outside of New York City. She was followed, in 2004, by Judge Margaret Walsh, Albany County Family Court, the first open lesbian or gay judge elected in the Third Department.

In 2009, Governor David A. Paterson appointed New York County Supreme Court Justice Rosalyn H. Richter⁵³ and Sixth Judicial District Supreme Court Justice Elizabeth A. Garry⁵⁴, to the First and Third Departments of the Appellate Division, respectively. In 2012, Governor Andrew M. Cuomo appointed New York County Supreme Court Justice Paul G. Feinman to the Appellate Division, First Department bench.

As of February, 2014, excluding the three appellate division judges just mentioned, there are 16 lesbian or gay judges sitting in the 1st Judicial District, eight in the 2nd Judicial District, one in each of the 3rd and 4th Judicial Districts, two in the 7th Judicial District, one in each of the 9th and 11th Judicial Districts 11 in the 12th Judicial District.

Because there are no reliable statistics available on the number of LGBT people in New York State—or in the United States or any other part of the world for that matter—we are unable to utilize the same methodology in evaluating the representation of LGBT people as we have used with respect to other under-represented populations. While at today's total of 44 there certainly has been a meaningful increase over the past thirty years in the number of LGBT judges, that increase has been largely confined to appointed judges in New York City and elected judges and justices in the 1st Judicial District. The "openness" of lesbian and gay judges, both in New York City and in the rest of New York State, varies widely; while most LGBT members of the judiciary in New York City are indisputably open regarding their sexual orientation, a few are not, regarding it as a purely personal matter. Outside of New York City, judicial politics in some communities makes it inadvisable for judges who must stand for re-election on a relatively frequent basis to be too strongly identified with the LGBT community.

⁵³ See Biography, *Associate Justice Rosalyn H. Richter*, NEW YORK STATE UNIFIED COURT SYSTEM, http://www.nycourts.gov/courts/ad1/justicesofthecourt/justices_richter.shtml (last accessed Sept. 1, 2014).

⁵⁴ See Biography, *Justice Elizabeth A. Garry*, NEW YORK STATE UNIFIED COURT SYSTEM, <http://www.nycourts.gov/ad3/bios/garrybios.html> (last accessed Sept. 1, 2014).

A possible alternative methodology would be to compare the number of LGBT judges to the numbers of LGBT lawyers in various communities. Unfortunately, OCA does not collect such data. We would encourage OCA to include an optional question regarding sexual orientation on attorney registration forms, as the New York State Bar Association and other bar associations do on their membership forms.