

Judicial Appointments
Advisory Board

Annual Report 2003





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1. Introduction



The Hon. Mr. Justice
Ronan Keane
Chief Justice
Chairperson of the Board



The Hon. Mr. Justice
Joseph Finnegan
President of the
High Court



The Hon. Mr. Justice
Esmond Smyth
President of the
Circuit Court



His Honour Judge
Peter Smithwick
President of the
District Court



Mr. Rory Brady S.C.
Attorney General



Mr. Conor Maguire S.C.
Bar Council Nominee



Mr. Laurence K. Shields
Solicitor
Law Society Nominee



Ms. Olive Braiden
Nominee of the Minister
for Justice, Equality and
Law Reform



Mr. John Coyle
Nominee of the Minister for
Justice, Equality and Law
Reform



Mr. Tadhg O'Donoghue
Nominee of the Minister
for Justice, Equality and
Law Reform



Mr. Brendan Ryan B.L.
Secretary to the Board



Introduction

The Judicial Appointments Advisory Board (hereafter “the Board”) was established pursuant to the **Courts and Court Officers Act, 1995** (hereafter “the Act”). The purpose of the Board is to identify persons and inform the Government of the suitability of those persons for appointment to judicial office.

The Board consists of (Section 13):

- the Chief Justice; who is Chairperson of the Board;
- the President of the High Court;
- the President of the Circuit Court;
- the President of the District Court;
- the Attorney General;
- a practising barrister who is nominated by the Chairman for the time being of the Council of the Bar of Ireland;
- a practising solicitor who is nominated by the President for the time being of the Law Society of Ireland; and
- not more than three persons appointed by the Minister for Justice, Equality and Law Reform, (hereafter “the Minister”), who shall be persons engaged in or having knowledge or experience of commerce, finance, administration or persons who have experience as consumers of the service provided by the courts that the Minister considers appropriate.

A person appointed to be a member of the Board by virtue of a nomination by the Chairman of the Bar Council or by the President of the Law Society and persons appointed by the Minister are members of the Board for a period not exceeding three years and any such persons so appointed shall be eligible for re-appointment to the Board.

Judicial Appointments / Introduction

The Act (**Section 14**) enables the Board to adopt such procedures as it thinks fit to carry out its functions and, in the exercise of that power, the Board has adopted rules and procedures which are contained in Appendix I to this report. They also have power to appoint sub-committees to assist them and may:

- advertise for applications for judicial appointment;
- require applicants to complete application forms;
- consult persons concerning the suitability of applicants to the Board;
- invite persons identified by the Board to submit their names for consideration by the Board;
- arrange for the interviewing of applicants who wish to be considered by the Board for appointment to judicial office; and
- do such other things as the Board considers necessary to enable it to discharge its functions under the Act.

The extent to which these powers have been availed of by the Board is considered in Section 3 of this report.

Section 16 of the Act deals with the submission of names to the Minister. A person who wishes to be considered for appointment to judicial office is required to so inform the Board in writing and to provide the Board with such information as it may require to enable it to consider the suitability of that person for judicial office, including information relating to education, professional qualifications, experience and character. To assist the Board in this regard the applicants are required to complete a detailed application form which includes questions on their practice, their professional qualifications, education, character, etc., and are also required to outline on their application form why they consider themselves suitable for judicial office.

This Section goes on to provide that where a judicial office stands vacant or before a vacancy in a judicial office arises, the Board, at the request of the Minister, submits to the Minister the names of all persons who have informed the Board of his or her wish to be considered for appointment to that judicial office and the Board shall submit the names of at least seven persons whom it recommends for appointment. The Board must also provide the Minister with particulars of education, professional qualifications, experience and character of the persons whom it recommends under this Section.



Where fewer than seven persons inform the Board of their wish to be appointed to judicial office or where the Board is unable to recommend to the Minister at least seven persons, the Board may recommend to the Minister a lesser number of persons for appointment.

Where more than one judicial office in the same court stands vacant or in advance of more than one vacancy arising in the same court, the Board shall recommend at least seven persons in respect of each vacancy or such lesser number of names as the Minister specifies, following consultation with the Board.

Section 16 of the Act goes on to require the Government when advising the President in relation to the appointment of a person to a judicial office to first consider persons who have been recommended by the Board. When a person is appointed on a recommendation by the Board, notice of that fact shall be published in *Iris Oifigiúil*.

The Board shall not submit or recommend the name of a person unless that person meets the eligibility requirements laid down by statute. Further, the Board shall not recommend the name of any person unless in the opinion of the Board the person concerned:

- has displayed in his/her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned;
- is suitable on grounds of character and temperament;
- is otherwise suitable; and
- complies with the requirements of Section 19 of the Act.

Having received the advice of counsel, the Board interprets these requirements as a minimum standard. A person must have these qualities to be recommended, but having these qualities is in itself not enough for a person to be recommended.

Under **Section 17** of the Act (as amended), the procedures set out above do not apply where the Government proposes to advise the President to appoint to judicial office a person who is for the time being a judge of the High Court, Circuit Court, District Court or who is eligible for appointment to the Supreme Court or the High Court under the provisions of Section 5 of the Courts (Supplemental Provisions) Act, 1961, (as amended).

Section 18 of the Act provides that the Board shall not recommend its own members for appointment, with the exception of the Attorney General who must withdraw from any deliberations of the Board concerning his or her suitability for judicial office.

Section 19 of the Act requires a person who wishes to be considered for appointment to judicial office to undertake in writing to the Board his or her agreement, if appointed to judicial office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or the President of the court to which the person concerned is appointed.

Under **Section 23** of the Act, where the Government proposes to advise the President of an appointment to the office of Chief Justice or President of the High Court, President of the Circuit Court or President of the District Court, it is required first to have regard to the qualifications and suitability of persons who are serving at that time as judges in courts established in pursuance of Article 34 of the Constitution.

There have been some amendments to the procedures followed by the Board since 1995:

- a) **The Standards in Public Office Act, 2001** requires applicants to certify that their tax affairs are in order. **Section 22 (1)** prohibits the Board from recommending a person for judicial office unless the person has furnished to the Board:
 - (I) a tax clearance certificate that was issued to the person not more than 18 months before the date of the recommendation, and
 - (II) a statutory declaration made by the person not more than one month before that date to the effect that, at the time of the making of the declaration, the person is, to the best of his or her knowledge and belief, in compliance with the obligations specified in *subsection (1) of section 25* and that nothing in *subsection (2) of that section* prevents the issue to him or her of a tax clearance certificate.

- b) The criteria for selection to the Supreme and High Courts have been amended by **Section 8 of the Courts and Court Officers Act 2002**.



The purpose of this amendment seems to be to ensure that solicitors appointed to the Supreme and High Courts (as they are now eligible to be under Section 5 of the 1961 Act, as amended by Section 4 of the 2002 Act) are sufficiently conversant with practice and procedure in the Superior Courts.

It is best to quote these directly:

Subsection (7)

- b) (i) “The Board shall recommend a person to the Minister under this section only if the Board is of the opinion that the person:
 - (I) has displayed in his or her practice as a barrister or a solicitor a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned,
 - (II) in the case of an appointment to the office of ordinary judge of the Supreme Court or of ordinary judge of the High Court, has an appropriate knowledge of the decisions, and an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court and the High Court,
 - (III) is suitable on the grounds of character and temperament,
 - (IV) complies with the requirements of section 19 of this Act, and
 - (V) is otherwise suitable.

- b) (ii) In determining whether the requirements of subparagraph (i)(II) of this paragraph are satisfied, the Board shall have regard, in particular, to the nature and extent of the practice of the person concerned insofar as it relates to his or her personal conduct of proceedings in the Supreme Court and the High Court whether as an advocate or as a solicitor instructing counsel in such proceedings or both”.

In the carrying out of its functions, the Board each year places advertisements calling on all those who wish to be considered for appointment to judicial office to apply to the Board. Additionally, all those who already have applications on file are requested to reapply. Applications are valid for a calendar year.

There is a separate standard application form for each court level. Each completed application form must be accompanied by twelve original photographs. As previously stated, under Section 22 of the Standards in Public Office Act, 2001, the Board cannot

recommend a person to the Minister unless that person has furnished to the Board the relevant tax clearance certificate (TC4) issued to that person not more than eighteen months before the date of recommendation and a statutory declaration that their tax affairs are in order, made by the person not more than one month before that date. In practice, the tax clearance certificate is submitted with the application form or on the expiration of a certificate previously provided. The Secretary to the Board writes to all applicants in advance of a meeting to request the statutory declaration.

The process of considering persons and submitting names to the Minister commences when the Minister communicates with the Chairman of the Board to request recommendations where a judicial vacancy exists or is due to arise. The Chairman then agrees a suitable date with the Secretary, who informs the members of the Board. The members are given an agenda for the meeting, including a copy of the Ministers request (which indicates the number and jurisdiction of the vacancy(ies)) and a copy of all valid applications on file for the relevant jurisdiction(s).

Once the Board has drawn up a list of those it proposes to recommend, the Secretary to the Board writes to the Bar Council and the Law Society, as appropriate, asking them to verify that those who are to be recommended are in good standing with those professional bodies and that they meet the statutory requirements under the 1961 Act (as amended). Once an affirmative reply has been received, the Chairman writes to the Minister, setting out the Board's recommendations.



2. Applications / Appointments

During the period that this report is concerned with, the Board made recommendations to the Minister in respect of one judicial vacancy.

2.1 Meetings held to consider vacancies in the Supreme Court

None (No vacancies arose).

2.2 Meetings held to consider vacancies in the High Court.

There were three new appointments to the High Court in 2003.

1. The Hon. Mr. Justice Paul Gilligan was appointed on 28th January 2003 on foot of a Board meeting held on the 10th December 2002 (details contained in the 2002 Annual Report).
2. The Hon. Mr. Justice Sean O'Leary was elevated by the Government from the Circuit Court to the High Court. *
3. The Hon. Mr. Justice Sean Ryan was appointed by the Government to the High Court. *

** It should be noted that the Government did not seek recommendations from the Judicial Appointments Advisory Board in respect of these appointments.*

2.3 Meetings held to consider vacancies in the Circuit Court

None (No vacancies arose).

2.4 Meetings held to consider vacancies in the District Court.

By letter dated 6th February 2003 the Minister for Justice, Equality and Law Reform communicated with the Board concerning the filling of a vacancy in the District Court which was due to arise when Judge Desmond Windle retired on the 26th April 2003.

The Minister, in accordance with Section 16(2) of the Courts and Court Officers Act, 1995, requested the Board to furnish him with nominations for this vacancy and the name of each person who had informed the Board of his/her wish to be considered for this appointment.

On the 20th May 2003 the Judicial Appointments Advisory Board considered seventy-eight applications for one position of ordinary Judge of the District Court.

Applications considered May 2003			
Experience in years	10-15	15-20	Over 20
Senior Counsel			
Male			
Female			
Barrister			
Male		3	
Female	1		
Solicitor			
Male	1	5	44
Female	8	3	13

Where applicants have qualified as members of both professions, they have been included under the profession practised at the time the application was made for the purpose of the above statistics.

Appointed: Ms. Angela Condon, Solicitor.

2.5 Summary

The following persons were appointed in 2003 to Judicial Office on foot of recommendations made by the Judicial Appointments Advisory Board.

Supreme Court

No appointments.

High Court

The Hon. Mr. Justice Paul Gilligan.

Circuit Court

No appointments.

District Court

Judge Angela Condon.

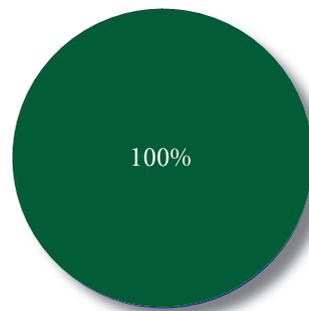
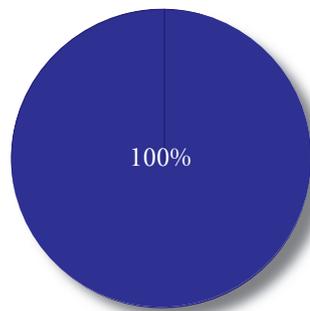
The following table is a profile of the appointees

Experience in years	10-15	15-20	Over 20
Senior Counsel			
Male			1
Female			
Barrister			
Male			
Female			
Solicitor			
Male			
Female			1

Judicial Appointments / Statistics

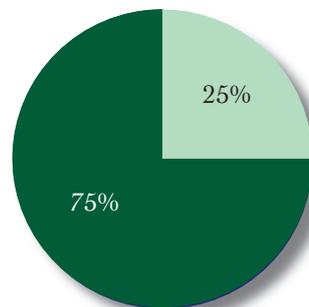
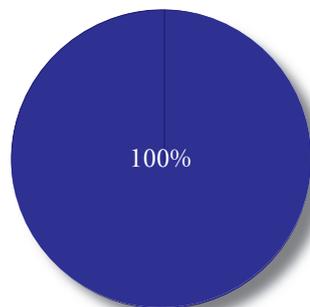
Total number of applications received for appointment to the Office of Ordinary Judge of the Supreme Court in 2003

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	2	2	0	0	0	2
% of Total	100	100	0	0	0	100



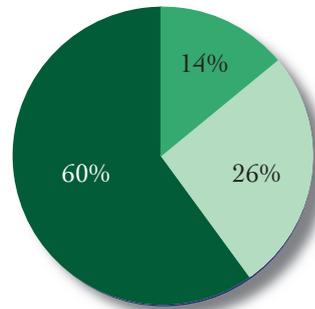
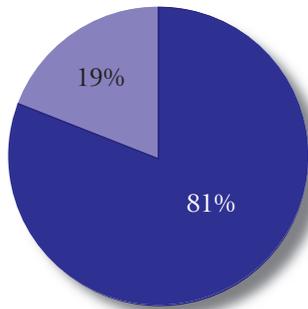
Total number of applications received for appointment to the Office of Ordinary Judge of the High Court in 2003

	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	4	4	0	0	1	3
% of Total	100	100	0	0	25	75

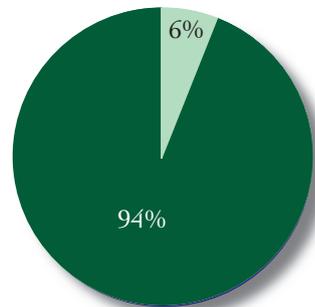
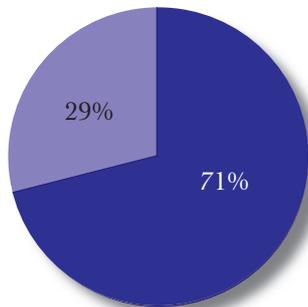


Judicial Appointments / Statistics - (Continued)

Total number of applications received for appointment to the Office of Ordinary Judge of the Circuit Court in 2003						
	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	43	35	8	6	11	26
% of Total	100	81	19	14	26	60

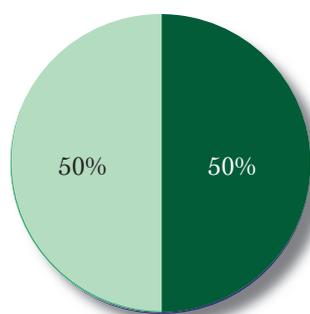
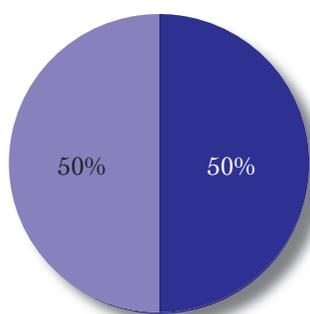


Total number of applications received for appointment to the Office of Ordinary Judge of the District Court in 2003						
	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	82	58	24	0	5	77
% of Total	100	71	29	0	6	94



Judicial Appointments / Statistics - (Continued)

Total appointees						
	Total	Male	Female	Senior Counsel	Barrister	Solicitor
Total	2	1	1	1	0	1
% of Total	100	50	50	50	0	50





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3. Conclusions and Recommendations

The Board has once more given careful consideration as to whether it should invite the Government to consider if the present legislation should be amended so as to reduce the minimum number of candidates whom the Board is required to recommend below the present figure of seven. The Board, for the present, has come to the conclusion that the present minimum number of seven is appropriate but this is an issue which the Board may revisit in the future. It should be noted, in this regard, that the Board has received the benefit of legal opinion from senior counsel that, in arriving at a list of candidates whom it is prepared to recommend to the Minister as suitable for appointment, it is not confined simply to transmitting to the Minister the names of all those who meet the threshold requirements of eligibility and suitability and that its function is to select from the candidates so qualified (seven or more in number), those whom the Board are satisfied that it should recommend as suitable for appointment to the vacancy concerned, having regard to all the requirements laid down in the Act.

The Board has been given certain powers to assist it in the discharge of its functions, not all of which have been exercised. Apart from the yearly advertisements which are published inviting persons who wish to be considered for appointment to any judicial vacancies that may arise to submit their names to the Board, the Board has decided henceforth to publish advertisements inviting applicants in respect of each specific vacancy which has arisen or is about to arise. Applicants are required to complete application forms and the nature of the information sought by these forms is kept under regular review by the Board.

The Board has not to date availed of its power to arrange for the interviewing of applicants. However, the Board has agreed to obtain suitable expert advice on this matter and this issue will be progressed in 2004.

Having regard to the large number of applications which are regularly received in respect of vacancies in the Circuit and District Courts, the Board has availed of its power to appoint a sub-committee when dealing with such applications. While the final decision as to whether to recommend a particular candidate must always remain with the Board, availing of the sub-committee procedure has greatly assisted the Board in the efficient conduct of its business.

Conclusions and Recommendations - (Continued)

The Board also has not yet availed of its power to invite persons identified by it to submit their names for consideration by the Board. There are clearly serious practical difficulties in exercising that power in the case of a body such as the Board which has no control over the appointment that will ultimately be made.

The Board indicated in the 2002 Annual Report that it is concerned by the absence of any procedure for ensuring that a person who is recommended by them to the Minister as being suitable for appointment, and whom the Government subsequently decides to appoint, undergoes any form of medical examination. The Board recommended in the 2002 Annual Report that the Government should consider whether the existing legislation should be amended so as to enable the Minister to require any person whom the Government proposed to advise the President to appoint to any judicial office to undergo a medical examination before his/her appointment is finalised. The 2002 Annual Report indicated that improved procedures had been implemented whereby applicants are now asked to confirm that there is no reason connected with his/her health which would prevent the applicant from performing the functions connected with judicial office. The details supplied provide the Board with a more complete picture of the health of applicants whom they propose to recommend for appointment to the Minister. However, the Board is firmly of the view that it is not practical for the Board to arrange for the medical examination of all those whom it recommends. Furthermore, the Board is also of the view that the best practice in the case of both the public and private sectors is for a medical examination to be required of those whom it is proposed to **appoint** to positions of particular responsibility, rather than the candidates for the post. It should also be noted that the Board is strongly of the opinion that the anonymity of all the applicants who are recommended is best preserved if only the person whom the Government propose to advise the President to appoint to judicial office is subject to a medical examination.

Under Section 22 of the Standards in Public Office Act, 2001, the Board cannot recommend a person to the Minister unless that person has furnished to the Board a tax clearance certificate (TC4) issued not more than eighteen months prior to the date of recommendation and a statutory declaration that their tax affairs are in order made by the applicant not more than one month before the date of recommendation. In practice, the tax clearance certificate (TC4) is submitted with the application form or on the expiration of a certificate previously provided and the Secretary to the Board writes to all applicants in



Conclusions and Recommendations - (Continued)

advance of a Board meeting requesting them to furnish the statutory declaration. As indicated in the 2002 Annual Report the requirement of a statutory declaration causes particular administrative difficulties, as it must be submitted within a very short time frame before the meeting of the Board. It can also cause difficulties for the Board because not all of the applications which are considered can be recommended, as a fresh statutory declaration may not have been filed by a particular applicant in the time frame allowed. The Board suggested in the 2002 Annual Report that the relevant legislation be amended by extending the duration of the validity of the statutory declaration form 1 month to 3 months. This amendment to the Standards in Public Office Act, 2001, has yet to be implemented and the Board strongly recommends that the legislation be amended without further delay.

Appendix I

Rules of the Judicial Appointments Advisory Board

Definitions

1. The following definitions apply for the purposes of these rules:

“The Act” means the Courts and Court Officers Act, 1995 (No. 31 of 1995); as amended.

“The Board” means the Judicial Appointments Advisory Board, established under section 13 of the Act;

“The Minister” means the Minister for Justice, Equality and Law Reform.

Chairperson

2. The Chief Justice of Ireland, for so long as he or she holds office as such, shall be the Chairperson of the Board.

Meetings

3. (1) The Board shall meet on such dates and at such times and in such places as the Chairperson of the Board shall from time to time direct.

(2) The Chairperson of the Board shall, not less than ten days before the date of any meeting of the Board, cause written notice of such meeting to be given to each member of the Board.

(3) A meeting of the Board may be adjourned to any date, time and place that the Board may decide.

Quorum

4. At any meeting of the Board a majority of the members of the Board shall constitute a Quorum.



Presiding Member

5. The presiding member at any meeting of the Board shall be:
 - (a) the Chairperson of the Board;
 - (b) in the absence of the Chairperson of the Board, the President of the High Court;
 - (c) in the absence of both the Chairperson of the Board and the President of the High Court, such other person as may be agreed upon by a majority of the members of the Board present at the meeting.

Secretary

6. (1) The Chairperson of the Board shall appoint a person to act as Secretary.
 - (2) The Secretary shall carry out such duties as may be conferred upon him or her by the Chairperson of the Board, and in particular shall be responsible for recording the minutes of the meetings of the Board.
 - (3) In the absence of the Secretary at a meeting of the Board, the presiding member shall appoint one of the members of the Board there present to record the minutes of that meeting.

Voting

7. (1) Voting at meetings of the Board shall be by show of hands.
 - (2) Subject to rule 8, any resolution of the Board shall be passed by a majority of the members present at the meeting at which the resolution is considered, and such resolution shall be minuted.
 - (3) The presiding member at any meeting of the Board shall be entitled to vote and, in the event of a vote upon a resolution producing an equal division, the presiding member shall also have the casting vote.

Amendment of Rules

8. (1) Subject to sub-rule (2) of this rule, these rules may be amended by a majority vote of all the members of the Board on written notice being given to the Chairperson of the Board not less than ten days before the meeting at which the amendment will be considered.
- (2) On receiving the notice referred to in sub-rule (1) of this rule, the Chairperson of the Board shall immediately cause a copy of the notice to be sent to each member of the Board.

Sub-committees

9. (1) The Board may from time to time establish sub-committees comprised of members of the Board to which it may delegate the performance of any of the functions assigned to it under Part IV of the 1995 Act, save that no sub-committee may recommend to the Minister any person for appointment to judicial office, such function belonging exclusively to the Board.
- (2) Each sub-committee shall have not fewer than three members.
- (3) Without prejudice to the generality of sub-rule (1) of this rule, the Board may in particular establish sub-committees to perform any one or more of the following functions:
 - (a) to advertise for applications for judicial appointments;
 - (b) to draw up application forms to be used by applicants for appointment to judicial office;
 - (c) to consult persons concerning the suitability of applicants for appointment to judicial office;
 - (d) to make arrangements for the interviewing of, and to interview, applicants who wish to be considered by the Board for appointment to judicial office and
 - (e) to do such other things as the Board considers necessary to enable it to discharge its duties under Part IV of the 1995 Act (as amended)



Sub-committees - (Continued)

- (4) The Chairperson of each sub-committee shall be appointed by the Chairperson of the Board.
- (5) Resolutions of each sub-committee shall be passed by a majority of its members.
- (6) Each sub-committee shall meet on such dates and at such times and in such places, and shall give such notice of each meeting, as the sub-committee shall determine.

Interpretation

- 10. These rules are to be interpreted in conjunction with the provisions of Part IV of the 1995 Act (as amended).

Commencement

- 11. These rules shall come into force on such date as the Board shall determine.

Appendix II

Supreme Court		
Board Meetings	Number of Vacancies	Number of Applications
March 1996	3	5
June 1999	1	4
January 2000	3	6
June 2000	1	2
October 2002	1	2

High Court		
Board Meetings	Number of Vacancies	Number of Applications
March 1996	2	16
May 1996	2	14
April 1997	1	13
April 1997	1	14
December 1997	1	13
November 1998	2	19
June 1999	1	18
October 1999	2	20
January 2000	1	18
March 2000	2	13
July 2000	1	9
January 2002	1	14
June 2002	4	27
December 2002	1	25

Appendix II - (Continued)

Circuit Court		
Board Meetings	Number of Vacancies	Number of Applications
June 1996	9	194
December 1996	2	199
May 1997	2	204
February 1998	3	219
March 1999	1	221
December 1999	1	224
January 2001	1	100
July 2001	3	98
June 2002	1	91
September 2002	2	90

District Court		
Board Meetings	Number of Vacancies	Number of Applications
August 1996	3	233
February 1997	1	245
April 1997	1	256
June 1998	3	291
October 1998	1	292
August 1999	1	306
December 1999	1	301
March 2000	1	155
March 2001	2	110
July 2001	1	109
June 2002	4	98
July 2002	1	93
May 2003	1	78