

# **Board of Professional Responsibility**

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## **33<sup>rd</sup> Annual Discipline Report Fiscal Year July 1, 2013 – June 30, 2014**

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### **Board of Professional Responsibility Organization and Composition**

The Tennessee Supreme Court regulates and supervises the practice of law in Tennessee pursuant to Tennessee Supreme Court Rule 9. The Court appoints twelve members to the Board of Professional Responsibility (the Board) to effectuate Tenn. Sup. Ct. R. 9 and the Court's disciplinary enforcement.

The Board consists of nine (9) attorneys and three (3) public (non-attorney) members who serve three-year terms and geographically represent the entire state. In 2013-2014, Board members volunteered 962 hours and received no compensation for their service. Current members of the Board include:

J. Russell Parkes (Chair)  
Michael King (Vice-Chair)  
Michael Callaway  
Margaret Craddock (Lay Member)  
Wade Davies  
Francis Guess (Lay Member)  
Lela Hollabaugh  
Odell Horton, Jr.  
Susan Emery McGannon  
H. Scott Reams  
Joe G. Riley  
Eleanor Yoakum (Lay Member)

The Court appoints a Chief Disciplinary Counsel who reports to the Board. The Board also employs attorneys as Disciplinary Counsel and support staff to assist with attorney registration; consumer assistance; investigation and litigation. A staff directory is attached as Exhibit A.

### **District Committee Members**

The Tennessee Supreme Court appoints attorneys to serve as district committee members from each disciplinary district in the state. In 2013-2014, 165 attorneys assisted the Court and the Board as district committee members reviewing Disciplinary Counsel's recommendations on investigative files and sitting on hearing panels conducting formal disciplinary charges. Of the 165 current members, 125 reported volunteering 1,708 hours for which they received no compensation for their services. A roster of current district committee members is attached as Exhibit B.

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#### Assistance, Investigation and Prosecution

##### ▪ Consumer Assistance Program (CAP)

Non-frivolous complaints against attorneys submitted by clients, lawyers, judges and the public are referred to the Board's Consumer Assistance Program (CAP) for assistance or opened and assigned to Disciplinary Counsel for investigation. CAP answers questions, provides information, informally mediates disputes, and refers matters to Disciplinary Counsel for investigation.

##### Caseload<sup>1</sup>

Cases Opened	3,788
Cases Closed	3,737
Activities Opened	8,252
Activities Closed	8,252

##### Actions Taken

Mediate	32%
Advise	55%
Referrals	13%
Total:	100%

##### ▪ Investigation

Disciplinary Counsel investigate complaints alleging unethical conduct. After investigation, Disciplinary Counsel recommend dismissal of the complaint if there is insufficient proof of a violation of the Rules of Professional Conduct. If the investigated complaint reflects a violation of the Rules of Professional Conduct, Disciplinary Counsel recommend diversion, private informal admonition, private reprimand, public censure, or the filing of formal disciplinary charges. A district committee member reviews and approves or disapproves Disciplinary Counsel's recommendation for dismissal, diversion, and private informal admonition. The Board of Professional Responsibility reviews and approves or disapproves Disciplinary Counsel's recommendation for private reprimand, public censure, and the filing of formal disciplinary charges.

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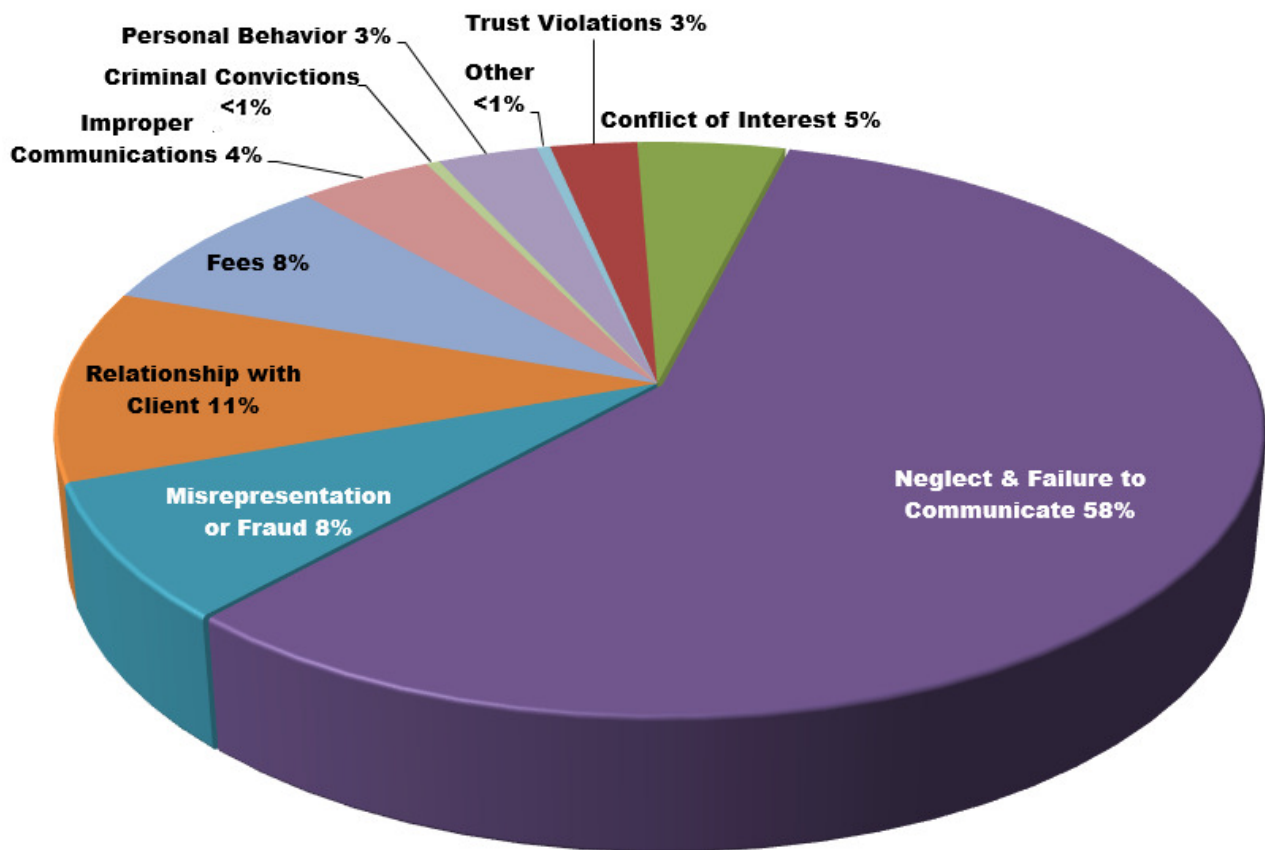
<sup>1</sup> Each case number involves a client and a particular attorney, but within that case, there can be multiple activities. For example, a case is first opened and a minor communication problem is successfully mediated. Later, there may be a question about a returned file, which is mediated. These are two separate activities within the same case.

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**A. Nature of Investigated Complaints**



**B. Investigative Complaint Caseload**

Complaints Received:	1,277
Complaints Pending at beginning of Fiscal Year:	<u>518</u>
Total Complaints:	1,795

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#### C. Investigative Complaint Disposition:

Administrative Dismissals:	400
Investigative Dismissals:	551
Transfer to Formal Charges:	199
Diversions:	41
Private Informal Admonitions:	56
Private Reprimands:	13
Informal Public Censures:	30
Consent to Disbarment:	1
Transfer to Disability Inactive:	4
Placed on Retired Status:	23
Other: <sup>2</sup>	<u>8</u>
Total Complaints processed:	1,326

#### ▪ Formal Disciplinary Proceedings:

After the Board of Professional Responsibility authorizes Disciplinary Counsel to file formal disciplinary charges (i.e., a petition for discipline) against an attorney, the matter is assigned to three district committee members who constitute a hearing panel. The Hearing Panel sets the disciplinary proceeding for a hearing which is open to the public unless a protective order has been entered. The Tennessee Rules of Evidence and Rules of Civil Procedure apply unless Tennessee Supreme Court Rule 9 provides otherwise.

The Board of Professional Responsibility must prove an attorney's ethical misconduct by a preponderance of the evidence. Hearing Panels may recommend dismissal, public censure, suspension or disbarment.

#### A. Caseload

Formal cases filed:	74
Formal cases pending at beginning of Fiscal Year:	<u>71</u>
Total formal proceedings:	145
Public hearings conducted in Fiscal Year:	41

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<sup>2</sup> Abated by death; complaint withdrawn; duplicate file.

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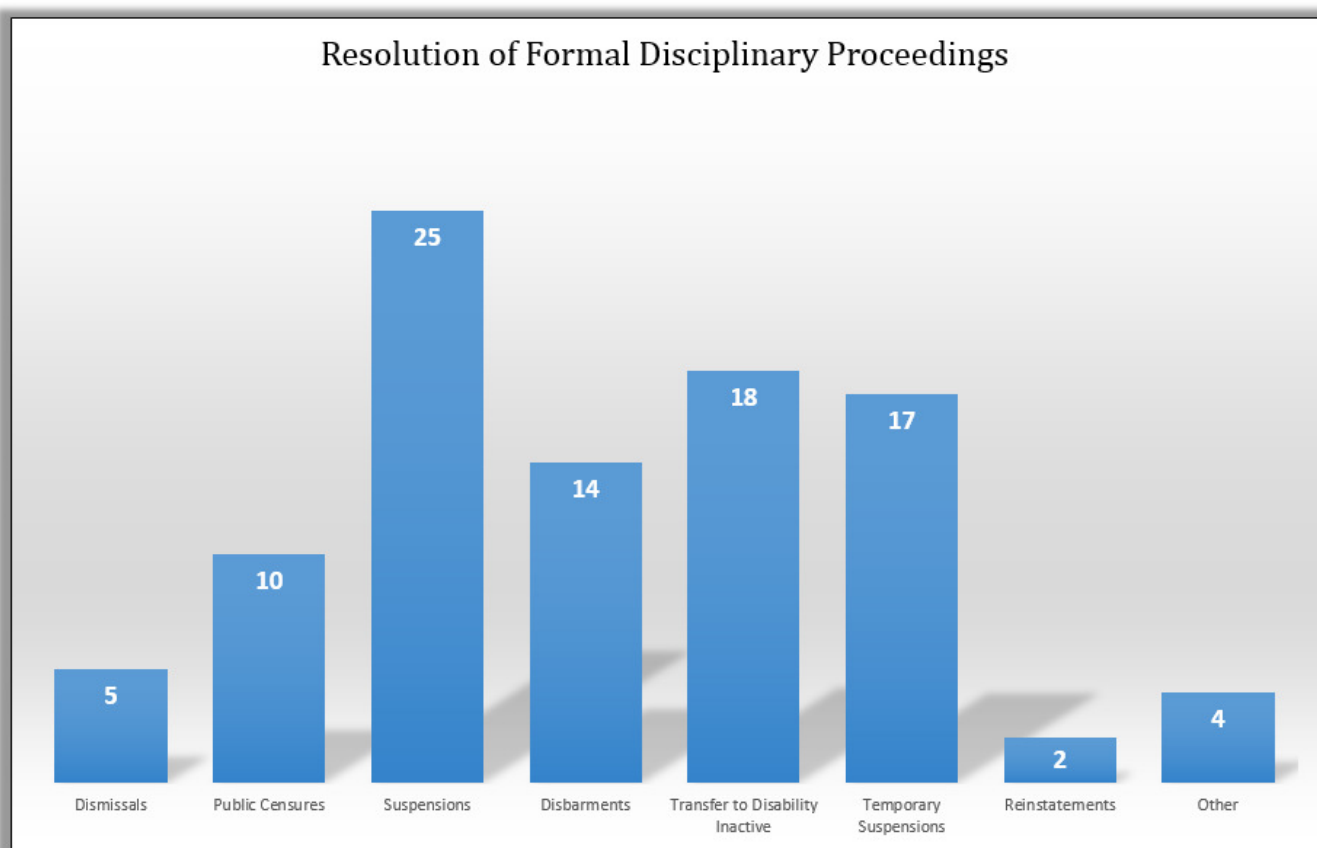
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#### B. Formal Disciplinary Proceedings Disposition:

Dismissals:	5
Public Censures:	10
Suspensions:	25
Disbarments:	14
Transfer to Disability Inactive:	18
Temporary Suspensions:	17
Reinstatements:	2
Other <sup>3</sup> :	4
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Total:	95



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<sup>3</sup> Abated by death; voluntary non-suited.

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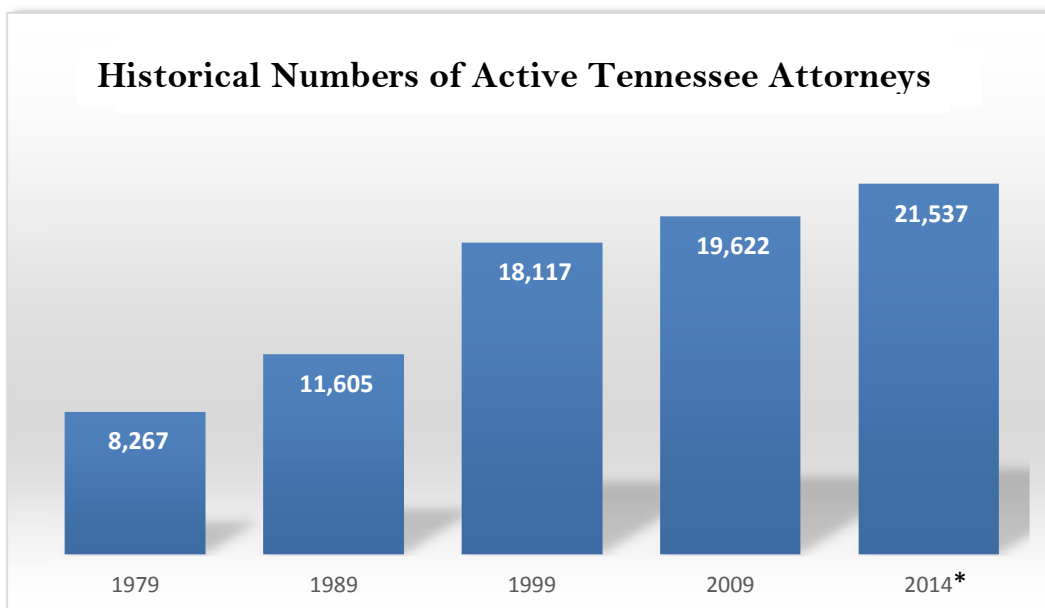
#### ▪ **Non-disciplinary/Administrative Suspensions:**

Pursuant to Supreme Court Rules, the Supreme Court suspends attorneys who fail to pay their annual fee (Tenn. Sup. Ct. R. 9 § 10.6); fail to complete annual continuing legal education requirements (Tenn. Sup. Ct. R. 21 § 7); fail to comply with Interest on Lawyers Trust Account requirements (Tenn. Sup. Ct. R. 43 § 15); fail to pay the Tennessee professional privilege tax (Tenn. Sup. Ct. R. 9 § 26); or default on student loans (Tenn. Sup. Ct. R. 9 § 37). No attorney suspended pursuant to these Rules may resume practice until reinstated by order of the Supreme Court. Attorneys administratively suspended during fiscal year 2013-2014 are as follows:

Non-payment of Annual Fee:	32
Continuing Legal Education non-compliance:	130
Interest on Lawyer's Trust Accounts non-compliance:	27
Professional Privilege Tax non-compliance:	0
Default on a Student Loan:	0
Total:	<u>189</u>

#### ▪ **Current Number of Tennessee Attorneys**

Active Attorneys:	21,537
Inactive Attorneys:	4,128
Pro hac vice Attorneys:	674



\*Attorneys not included in this chart: Inactive attorneys (4,128); Pro hac vice attorneys (674).

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#### ▪ **Education and Information**

The Board issues Formal Ethics Opinions and staff respond to informal ethics questions by phone and internet. Disciplinary Counsel present continuing legal education seminars, publish *Board Notes*, a bi-annual newsletter, and update the Board's website with rule changes, disciplinary decisions and news for attorneys, judges and the public.

#### **A. Ethics Opinions**

1. Formal Ethics Opinions: In Fiscal Year 2013-2014, the Board issued two Formal Ethics Opinions:

- **2013-F-157** addressing whether a lawyer appointed guardian ad litem (GAL) has a conflict in subsequently representing another interest in a matter regarding the child for which the attorney was GAL;
- **2014-F-158** regarding whether a lawyer who represented a testator can refuse to honor a court order or subpoena to disclose, prior to the client's death, a Will or other testamentary document executed when the testator was competent on the basis that the document is protected against disclosure by the attorney-client privilege or confidentiality.

2. Advisory Opinions: Disciplinary Counsel responded to 2,290 phone and internet inquiries from attorneys seeking ethical guidance.<sup>4</sup>

#### **B. Continuing Legal Education (CLE) Presentations:**

Between July 1, 2013 and June 30, 2014, Disciplinary Counsel presented fifty-three (53) CLE seminars, attended by approximately 3,729 attorneys.

#### **C. Board Notes:**

In 2013-2014, the Board emailed *Board Notes*, the Board's bi-annual newsletter to all attorneys and judges and published it on the Board's website.

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<sup>4</sup> Tennessee attorneys may submit ethics inquiries to the Board by calling 615-361-7500, ext. 212, or via the Board's website at [www.tbpr.org](http://www.tbpr.org).

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**D. Website at [www.tbpr.org](http://www.tbpr.org):**

The Board continues to enhance its website with current rule changes, disciplinary decisions and news for the bar and the public. The Board routinely posts disciplinary Judgments and has uploaded all Hearing Panel Judgments in concluded matters; and Circuit, Chancery and Supreme Court decisions from 2008 to the present.

**E. *Resources for When an Attorney is Unable to Practice Law:***

In April, 2014, Disciplinary Counsel prepared and emailed to bar associations and judges and posted on the Board's website resources for when an attorney is unable to practice law. These resources include sample pleadings and checklists for closing a law office and notifying clients.



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**Board of Professional Responsibility**  
**Staff Directory**

<b>Name</b>	<b>Title</b>	<b>Extension</b>
Alan Johnson	Disciplinary Counsel	207
Betsy Garber	Disciplinary Counsel	203
Beverly Sharpe	Director of Consumer Assistance	226
Beverly Yousefzadeh	Administrative Payables Clerk	241
Bill Moody	Disciplinary Counsel	217
Candis Grooms	Case Manager	229
Cheri Weaver	CAP Legal Assistant	208
Danny Buckner	Administrative Receivables Clerk	219
Eileen Smith	Disciplinary Counsel	210
Elizabeth Gray	Administrative Scan Clerk	202
Harlene Labrum	Paralegal	220
James Vick	Deputy Chief Disciplinary Counsel - Investigation, Ethics Counsel	212
Joy Vaughn	Legal Assistant	242
Julie Turner	Executive Assistant	209
Justin Cox	Legal Assistant	201
Kevin Balkwill	Disciplinary Counsel	223
Krisann Hodges	Deputy Chief Disciplinary Counsel - Litigation	214
Kristi Astafan	Registration Manager	213
Mary McKnight	Lead Legal Assistant - Litigation	224
Patty Burton	Assistant Director	216
Preston Shipp	Disciplinary Counsel	222
Reynold Gaulden, Jr.	Registration Clerk	244
Rita Webb	Executive Secretary	206
Russ Willis	Disciplinary Counsel	236
Sandy Garrett	Chief Disciplinary Counsel	211
Stephanie Richey	Registration Assistant	227
Suzanne Saucier	Legal Assistant	221
Tammy Emery	Lead Legal Assistant - Investigations	218
Tony Pros	Network Administrator	230
Zuzu Savage	Receptionist	200

Exhibit A

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## Fiscal Year July 1, 2013 – June 30, 2014

### Board of Professional Responsibility District Committee Member Roster

District	Last Name	First Name		District	Last Name	First Name		District	Last Name	First Name
1	Chitwood	Kent		4	O'Mara	Thomas Michael		6	Spitzer	Michael
1	Drinnon	Douglas		4	Rambo	Andrew		6	Underwood	Timothy
1	Evans	Curtis Dwaine		4	Ray	Donald		6	Vandivort	Kirk
1	Gaby	Gene Paul		4	Rieder	William		6	Walker	Jeffery
1	Herndon, IV	Charles "Chip"		4	Taylor	John Carson		7	Armour	Matthew
1	Hood	Kenneth		4	Tucker	Adam Ford		7	Brown, Mr.	Shaun
1	Johnstone	Frank		4	White	John R.		7	Fagan	Jeff
1	Lauderback	Ed		4	Wright, Jr.	Phillip Andrew		7	Finney	Lowe
1	Phillips	William		5	Burnstein	Julie		7	Krenis	James
1	Spivey	Sandra		5	Campbell	Andrew		7	Maddox, III	Dwayne
1	Stone	Danny		5	Carpenter	Brigid		7	Marshall	Teresa
1	Terry	Braxton		5	Cole	Jonathan		7	McLean, Jr.	Hugh
1	Terry	Steve		5	Crenshaw, Jr.	Waverly		7	Morris	K. Michelle (Booth)
1	Wampler	Andrew		5	Dowlen	Zale		7	Reynolds	Jay
2	Adams	Oliver Dawson		5	Enkema	John		7	Scott	Clint
2	Alley	Keith		5	Floyd	John		8	Dedmon	Dean
2	Barcus	Heidi		5	Grant	Charles		8	Flippin	Floyd
2	Bartlett, Jr.	Beecher		5	Harris	Matthew		8	Jenkins, Jr.	William L.
2	Bosch	Donald		5	Harwell, III	Aubrey		8	Maness	Tony
2	Bustamante	Luis		5	Holmes	Barbara		8	McEwen	Jennifer Deen
2	Cole	R. Deno		5	Kinslow	Rhonda		8	Taylor, IV	Jasper
2	Compher-Rice	Sara Elizabeth		5	LeVan	Mark		8	Unger	Langdon
2	Couch	Virginia		5	Lipshie	Sam		8	Washburn	Jeffery
2	Crutchfield	Karen		5	McLemore	C.K.		9	Aluko	Phyllis
2	Dreiser	John Paul		5	Mendes	Robert (Bob)		9	Babaoglu	Rehim
2	Eberting	Alyson		5	Ney, Jr.	Paul		9	Baker	Marjorie
2	Ellis	Ruth		5	Phillips, Jr.	Brantley		9	Beard	Craig
2	Ford	Joe		5	Potempa	Matthew		9	Bearman	David
2	Irvine, Jr.	Kenneth		5	Purgear	Daniel		9	Branch	Thomas
2	King	Michael J.		5	Raney	Aaron		9	Cassidy	Tom
2	McDonald	Carl		5	Salas	Maria		9	Click	Rick
2	O'Kane	James		5	Sales	Peter		9	Cook	David
2	O'Rear	Carrie		5	Shockley	Gary		9	Donelson	Vivian Ray
2	Rice	Cheryl		5	Simmons	Janelle		9	Elder	Alex
2	Stephens	Mark		5	Stagg	Kimberly		9	Halmon	Harriett
2	Ward	Hugh B.		5	Sweeney	Matthew		9	Holley	Layne (Mr.)
2	Winters	John		5	Todd	Daniel		9	Jones	Les
3	Blevins	Melissa		5	Wilkinson	Gary		9	Jordan	Trey
3	Buchanan	Ginger		5	Williams	Leon		9	Kellum	Timothy
3	Cannon	Blair		6	Allen	David		9	Lait	Hayden
3	Cash	Larry		6	Bateman	Robert		9	Mangrum	Gregory
3	Easterly	Alan		6	Baugh, Jr.	Joseph		9	McMabb	Leland
3	Gerbitz	Leah		6	Boston	Ben		9	Ostrow	Max
3	Greer	Stephen		6	Bryan	Vanessa		9	Quinn	Arthur
3	Harwell	Marc		6	Davies	Lee		9	Reisman	Marc
3	Jenne	Michael		6	Dye	Ms. Dana		9	Ritz	Kevin
3	Marsa	Myrlene		6	Free	Mark		9	Roen	Leah
3	Martin	Alison		6	Flynn	Patrick		9	Tauer	Michael
3	Oliver	Alicia		6	Garner	Samuel		9	Turner	Van
3	Shaw	Scott		6	Gill	Ms. Markley		9	Vincent	Scott
3	Smith	W. Holt		6	Henry, Jr.	Joseph		9	Wackerfuss	Richard
3	Swafford	Lynne Denell		6	Holt, Jr.	Charles		9	Waddell	Amanda
3	Willhite	Bridget		6	Jack	Claudia		9	Walsh	John Kevin
4	Bean	Melanie		6	Plant	Paul				
4	Duncan	Christina		6	Rocconi, Jr.	Larry				
4	Looney	Joe Michael		6	Schell	Edward				