

Board of Professional Responsibility

36th Annual Discipline Report Fiscal Year July 1, 2016 – June 30, 2017

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 2016-2017, Board members volunteered 1,019 hours and received no compensation for their service. Current members of the Board include:

Michael King (Chair)
Joe Riley (Vice-Chair)
Kenneth Blackburn (Lay Member)
Dana Dye
Ruth Ellis
Odell Horton, Jr.
John D. Kitch
Joe Looney
Jon Lundberg (Lay Member)
Jimmie Miller
Tyreece Miller (Lay Member)
Bridget Willhite

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 2016-2017, 168 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 168 members, 159 reported volunteering 2,463 hours in 2016-2017 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

Number of Cases Opened	2,676
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Timeliness of Resolution

0 to 15 days	46.0%
16 to 30 days	14.9%
31 to 60 days	17.1%
61 or more days	21.9%

Actions Taken

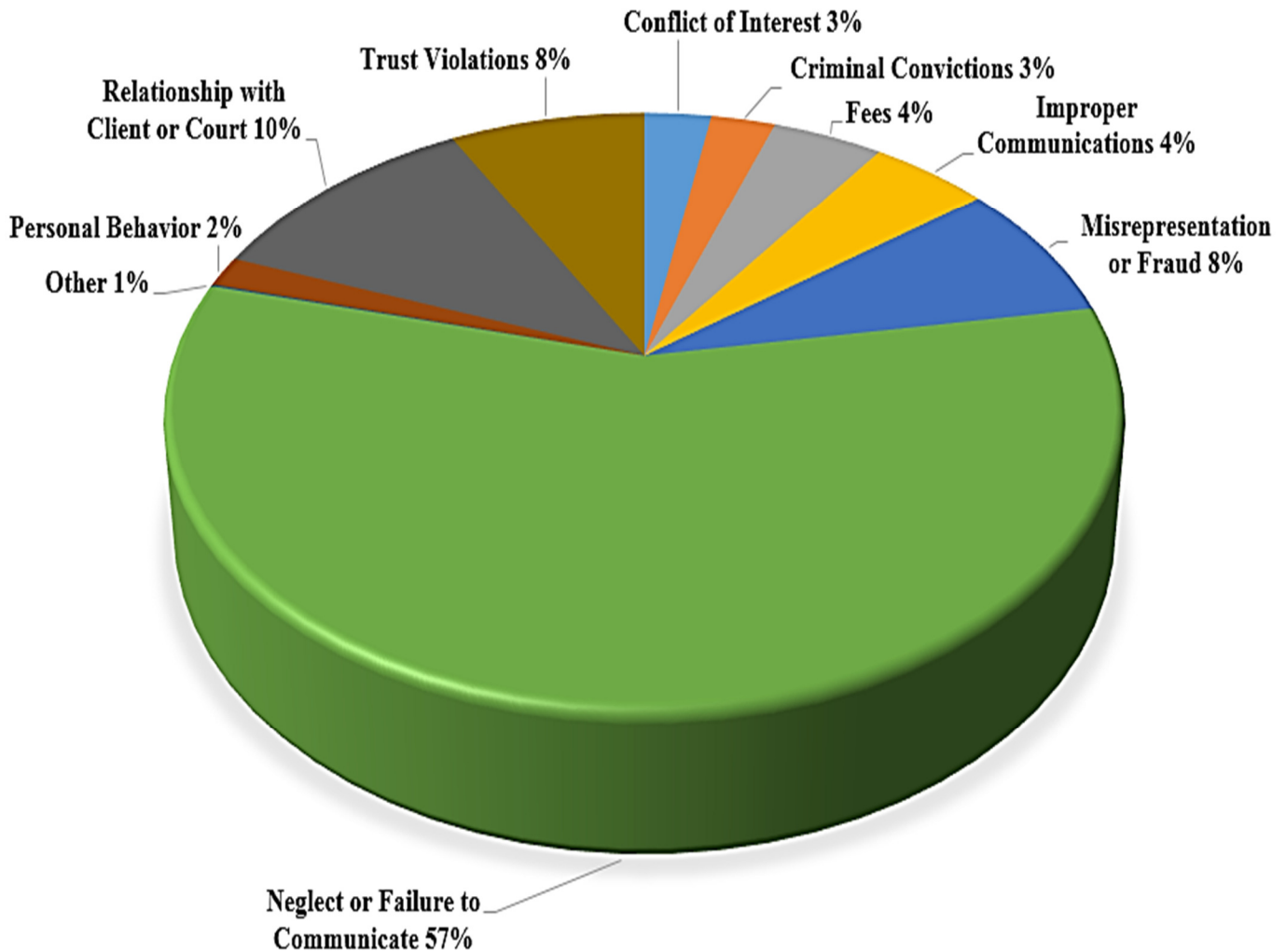
Mediate	34%
Advise	44%
Referrals	15%
Provide Information	7%

▪ **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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A. Nature of Complaints



B. Investigative Complaint Caseload

Complaints Received:	1,552
Complaints Pending at beginning of Fiscal Year:	<u> 610</u>
Total Complaints:	2,162

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C. Investigative Complaint Disposition:

Administrative Dismissals:	510
Investigative Dismissals:	504
Diversions:	30
Private Informal Admonitions:	60
Private Reprimands:	35
Informal Public Censures:	46
Transfer to Disability Inactive:	46
Placed on Retired Status:	13
Other: ¹	10
Total:	1,254

▪ **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

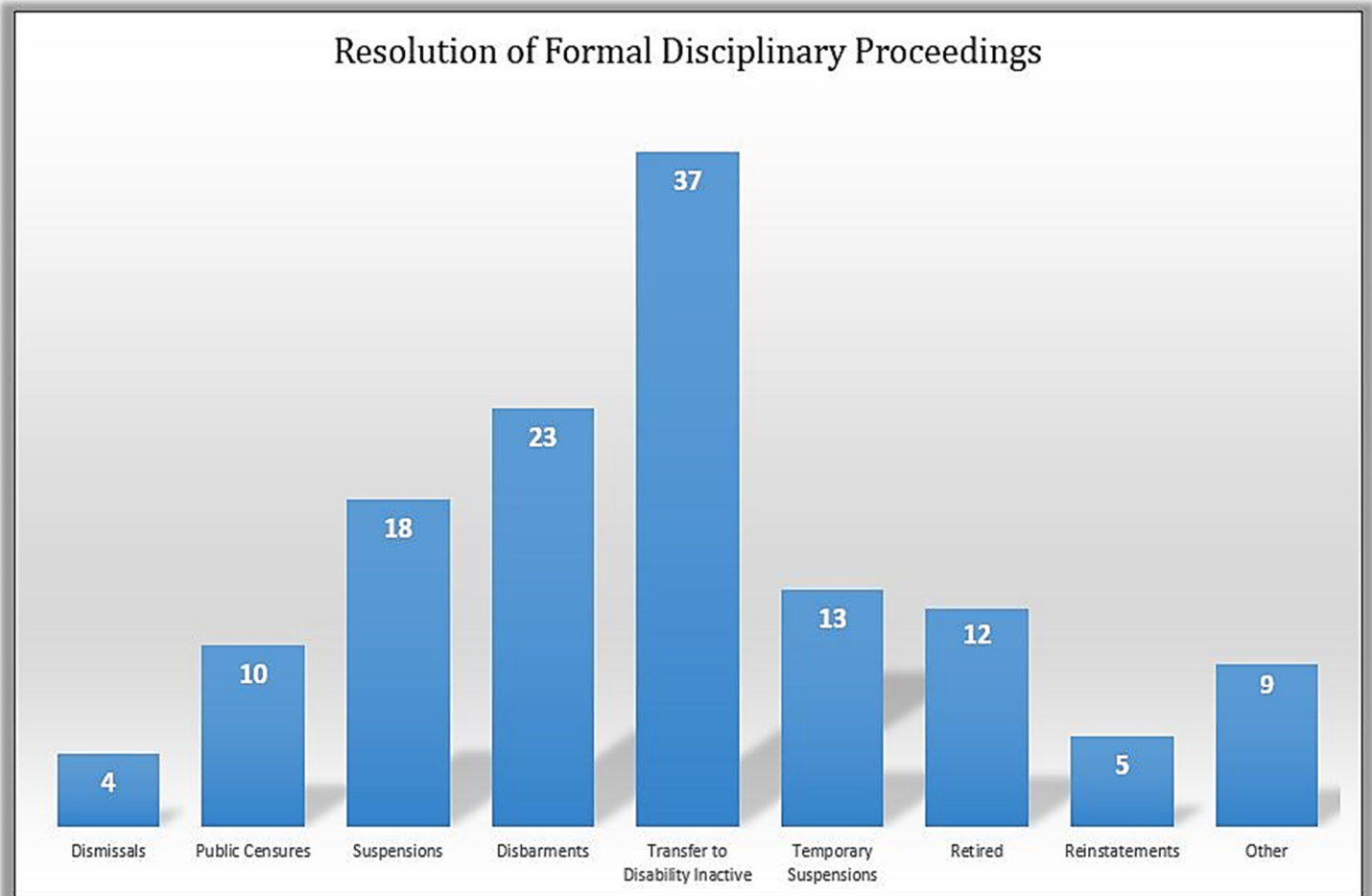
Formal cases filed during Fiscal Year:	136
Formal cases pending at beginning of Fiscal Year:	<u>109</u>
Total formal proceedings:	245
Public hearings conducted in Fiscal Year:	55

¹ Abated by death; complaint withdrawn; duplicate file.

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B. Formal Disciplinary Proceedings Disposition:

Dismissals:	4
Public Censures:	10
Suspensions:	18
Disbarments:	23
Transfer to Disability Inactive:	37
Temporary Suspensions:	13
Retired:	12
Reinstatements:	5
Other ² :	9
Total:	131



² Abated by death; voluntary non-suited; denied; withdrawn.

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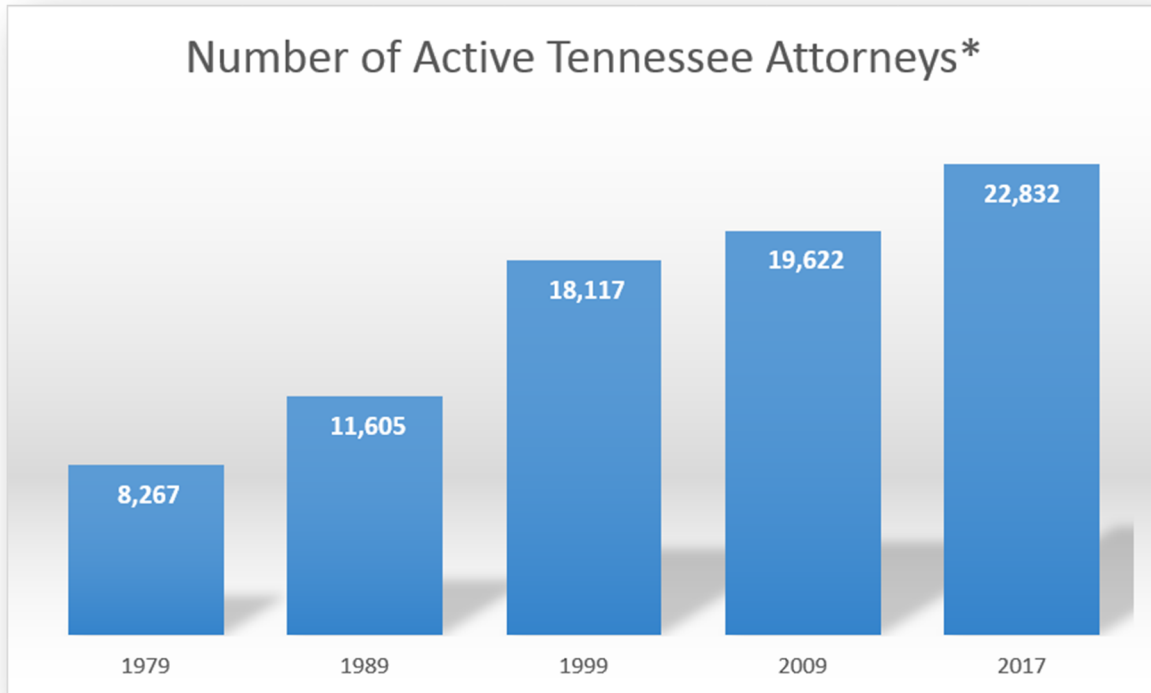
▪ **Non-disciplinary/Administrative Suspensions:**

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 were administratively suspended during fiscal year 2016-2017 as follows:

Non-payment of Annual Fee:	40
Continuing Legal Education non-compliance:	112
Interest on Lawyer's Trust Accounts non-compliance:	54
Professional Privilege Tax non-compliance:	0
Default on a Student Loan:	1
Total:	<u>207</u>

▪ **Current Number of Tennessee Attorneys**

Active Attorneys:	22,832
Inactive Attorneys:	4,560
Pro hac vice Attorneys:	690



*Attorneys not included in this chart: Inactive attorneys (4,560); Pro hac vice attorneys (690).

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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

i. Informal Opinions

Ethics Counsel and Disciplinary Counsel responded to 2,408 phone and internet inquiries from attorneys seeking ethical guidance.³

ii. Formal Opinions

2016-F-161: To the extent settlement provisions require attorneys to turn over documents protected by the lawyer work product doctrine, the provisions may be prohibited by Tennessee Rule of Professional Conduct 5.6(b). That is, a lawyer may not propose or agree to a settlement agreement that requires a lawyer to turn over any work product materials as part of the settlement if that action will restrict his representation of other clients.

2017-F-162: The Board of Professional Responsibility has been requested by the State of Tennessee Bureau of Workers’ Compensation Department of Labor and Workforce Development to issue a Formal Ethics Opinion regarding the extent to which an ombudsman attorney may provide “limited legal advice” within the meaning of Tenn. Code Ann. Section 50-6-216(e)(3) which provides that “[a]n ombudsman who is not a licensed attorney shall not provide legal advice however, an ombudsman who is a licensed attorney may provide limited legal advice however, an ombudsman who is a licensed attorney may provide limited legal advice but shall not represent any party as the party’s attorney. No ombudsman shall make attorney referrals.”

³ 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.

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B. Continuing Legal Education (CLE) Presentations:

Between July 1, 2016 and June 30, 2017, Disciplinary Counsel presented fifty-one (51) CLE seminars, attended by approximately 2,967 attorneys.

C. *Board Notes:*

In 2016-2017, the Board emailed both Fall and Spring issues of *Board Notes*, the Board's semi-annual newsletter to all attorneys and judges and published it on the Board's website.

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Board of Professional Responsibility
Staff Directory

Name	Title	Extension
Kevin Balkwill	Disciplinary Counsel	223
Carol Bershatsky	Receptionist	200
Patty Burton	Assistant Director	216
Melanie Cail	Legal Assistant - Litigation	237
Laura Chastain	Ethics Counsel	212
Steve Christopher	Disciplinary Counsel	203
Sandy Garrett	Chief Disciplinary Counsel	211
Reynold Gaulden, Jr.	Registration Assistant II	244
Elizabeth Gray	Administrative Assistant - Registration and Scanning	202
Candis Grooms	Case Manager	229
Kelly Heflin	Legal Assistant - Investigations	242
Krisann Hodges	Deputy Chief Disciplinary Counsel	214
Alan Johnson	Disciplinary Counsel	207
Soumya Kademakki	Lead Legal Assistant - Investigations	218
Cheryl Lang	Administrative Scan Clerk	234
Mary McKnight	Registration Manager	213
Bill Moody	Disciplinary Counsel	217
Dana Patrick	Paralegal	224
Tony Pros	Network Administrator	230
Suzanne Saucier	Lead Legal Assistant - Litigation	221
Jessica Schraw	CAP Paralegal	240
Beverly Sharpe	Director of Consumer Assistance Program	226
Preston Shipp	Disciplinary Counsel	222
Diane Thompson	Legal Assistant - Investigations	201
Suzie Thurber	Administrative Receivables Clerk	219
Julie Turner	Executive Assistant	209
Cheri Weaver	CAP Legal Assistant	208
Rita Webb	Executive Secretary	206
Lani White	Registration and Scan Clerk	234
Meghan Williams	CAP Intake Assistant	228
Russ Willis	Disciplinary Counsel	236
Beverly Yousefzadeh	Administrative Payables Clerk	241

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District Committee Member Roster

District	Last Name	First Name
1	Canter	Julie
1	Chitwood	Kent
1	Evans	Curtis
1	Haynes	Olen
1	Herndon, IV	Charles
1	Johnstone	Frank
1	Pierce	Nikki
1	Smith, Jr.	Marvin
1	Stone, III	Lee
1	Terry	Steven
1	Terry	Fred
1	Woods	Laura
2	Adams	Oliver
2	Alley	Gordon
2	Butler	John
2	Cole	Robert
2	Coleman	Gregory
2	Cone	James
2	Couch	Virginia
2	Crutchfield	Karen
2	Draper	David
2	Dreiser	John
2	Dyer	Alyson
2	Eldridge	John
2	Ford	Joseph
2	Gaby	Gene
2	Hall	Christopher
2	Irvine, Jr.	Kenneth
2	Johnson	Lawrence
2	King	Michael
2	Krumm	Brian
2	Morrison	Eric
2	O'Kane, Jr.	James
2	O'Rear	Carrie
2	Stackhouse	Mary
2	Stephens	Mark
2	Teeters	Kevin
2	Tonkin	Elizabeth
2	Ward, Jr.	Hugh
2	Winters	John
2	Woodfin	Clinton
2	Young	Broderick
3	Bennington Cannon	Lindsay
3	Blevins	Melissa
3	Buchanan	Ginger
3	Cash	Larry
3	Crump	Stephen
3	Easterly	Alan
3	Hill	Rosemarie
3	Hill	Cameron
3	Jacobs	Philip
3	Jenne	Michael
3	Killian	William
3	Smith	William
3	Swafford	Lynne
3	Weiss	William

District	Last Name	First Name
4	Aaron	Douglas
4	Bobo	Stephen
4	Corley	William
4	Duncan	Christina
4	Gothard	Joy
4	Hagan, Jr.	Anthony
4	Heckman	Kyle
4	Henry	Jeffrey
4	Newman	Robert
4	Omohundro	Lynn
4	Thompson, Jr.	Tom
4	York	Randall
5	Aden	Gareth
5	Bigelow	Robert
5	Boyd	Martha
5	Bryant	Kenneth
5	Campbell	Andrew
5	Carpenter	Brigid
5	Castellarin	Michael
5	Dowlen	Nathan
5	Gabbert, Jr.	Craig
5	Grant	Charles
5	Kinslow	Rhonda
5	Kweller	Stanley
5	McGee	Richard
5	McLemore, III	Claiborne
5	Mendes	Robert
5	Milam	James
5	Ney, Jr.	Paul
5	O'Bryan, Jr.	William
5	Perry	Andrea
5	Potempa	Patrick
5	Raney	Aaron
5	Rubinfeld	Abby
5	Shockley	Gary
5	Shulman	Rebekah
5	Simmons	Janelle
5	Sowell	Alan
5	Sweeney, III	Matthew
5	Todd	Daniel
5	Welch	Mary
5	Wigger	Gerald
6	Bateman	Robert
6	Bates, III	Douglas
6	Brown	Nathan
6	Bryan	Vanessa
6	Burlison	John
6	Coffinberry	Anita
6	Durham	Ryan
6	Fahey, II	Michael
6	Flynn	Patrick
6	Free	Mark
6	Garner	Samuel
6	Helper	Kim
6	Henry, Jr.	Joseph
6	Holt	Charles

District	Last Name	First Name
6	Kelly	Clinton
6	Kozlowski	David
6	McWherter	James
6	Mounger	Dalton
6	Plant	Paul
6	Schell	Philip
6	Smith	Jerry
6	Spitzer	Michael
6	Underwood	Timothy
6	Walker	Jeffery
7	Finney, III	Richard
7	Floyd	Matthew
7	Hessing	Paul
7	Maddox, III	Dwayne
7	Marshall	Teresa
7	Reynolds	William
7	Scott	Clinton
7	Thorne	Candace
7	Townsend, Jr.	Edwin
8	Bivens	Charles
8	Bowen	William
8	Jenkins, Jr.	William
8	Maness	Charles
8	Unger, Jr.	Langdon
8	Warner, III	John
9	Abdullah	Imad Al-Deen
9	Bearman	David
9	Branch	Thomas
9	Campbell	Karen
9	Canale	Stuart
9	Cassidy, Jr.	Thomas
9	Childress, Jr.	Edward
9	Click	Ricky
9	Diggs	Asia
9	Donelson	Vivian
9	Ferrante	Jessica
9	Floyd	Amber
9	Halmon	Harriett
9	Isaacman	Leslie
9	Jones, Jr.	William
9	Jordan, III	Loys
9	Kavanagh	Julia
9	Kellum	Timothy
9	Mathis	Andre
9	Morrow	Charles
9	Mullins	Kimbrough
9	Patterson	Ashley
9	Patton	Michael
9	Podesta, Jr.	Eugene
9	Reed	Terrence
9	Savory	Russell
9	Sink	Jennifer
9	Turner	Kamilah
9	Wellford	Buckner
9	Wharton	Andre