

Board of Professional Responsibility

37th Annual Discipline Report Fiscal Year July 1, 2017 – June 30, 2018

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 2017-2018, Board members volunteered 770 hours and received no compensation for their service. Current members of the Board include:

Jimmie Miller (Chair)
Odell Horton, Jr. (Vice-Chair)
Dana Dye
Ruth Ellis
Floyd Flippin
John D. Kitch
Joe Looney
Jon Lundberg (Lay Member)
Tyreece Miller (Lay Member)
Juanita Patton (Lay Member)
Jody Pickens
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

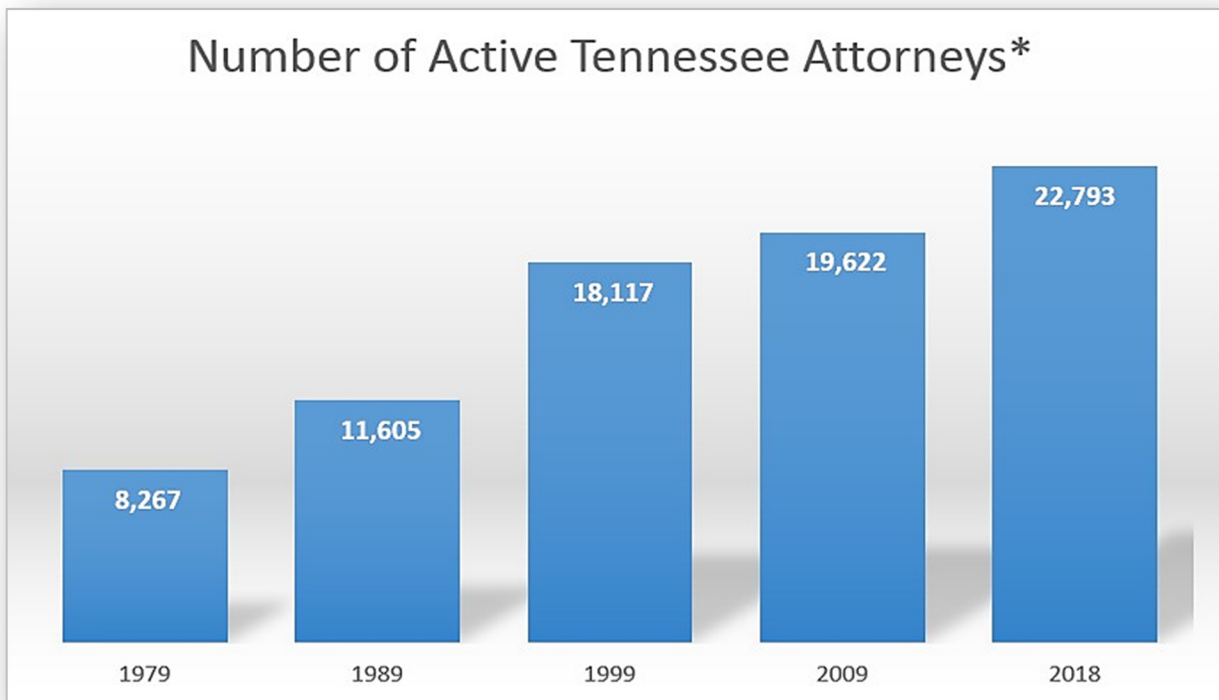
The Tennessee Supreme Court appoints attorneys to serve as district committee members from each disciplinary district in the state. In 2017-2018, 170 attorneys assisted the Court and the Board as district committee members reviewing Disciplinary Counsel's recommendations on investigative files and sitting on hearing panels conducting formal disciplinary charges. Of the 170 members, 160 reported volunteering 2,857 hours in 2017-2018 for which they received no compensation for their services. A roster of current district committee members is attached as Exhibit B.

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

Tennessee Attorney Information

The Board of Professional Responsibility provides an easy-to-use online registration system that allows lawyers to fulfill their annual registration requirements. We collect and make available public registration information on our website to allow the judiciary, lawyers and the public to access licensing, registration and contact information about lawyers.

Active Attorneys: 22,793



Active Attorney Statistics:

- Years Licensed: <5 yrs: 15%
 5-10 yrs: 32%
 10-20 yrs: 22%
 20-30 yrs: 15%
 >30 yrs: 16%
- Age: 21-29 yrs: 4%
 30-49 yrs: 48%
 50-74 yrs: 43%
 75+ yrs: 4%
- Gender: Male: 60%
 Female: 33%
 Unreported: 7%
- In-state Attorneys: 82%
- Out-of-state Attorneys: 18%

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

▪ **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 2017-2018 as follows:

Non-payment of Annual Fee:	59
Continuing Legal Education non-compliance:	128
Interest on Lawyer's Trust Accounts non-compliance:	21
Professional Privilege Tax non-compliance:	0
Default on a Student Loan:	<u>1</u>
Total:	209

Other Attorney Information:

- Inactive Attorneys:	4,908
- Pro hac vice Attorneys:	665
- Suspended Attorneys:	1,972
- In-house Counsel:	234

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

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	2,460
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Timeliness of Resolution

0 to 15 days	79.7%
16 to 30 days	11.8%
31 to 60 days	6.9%
61 or more days	1.7%

Actions Taken

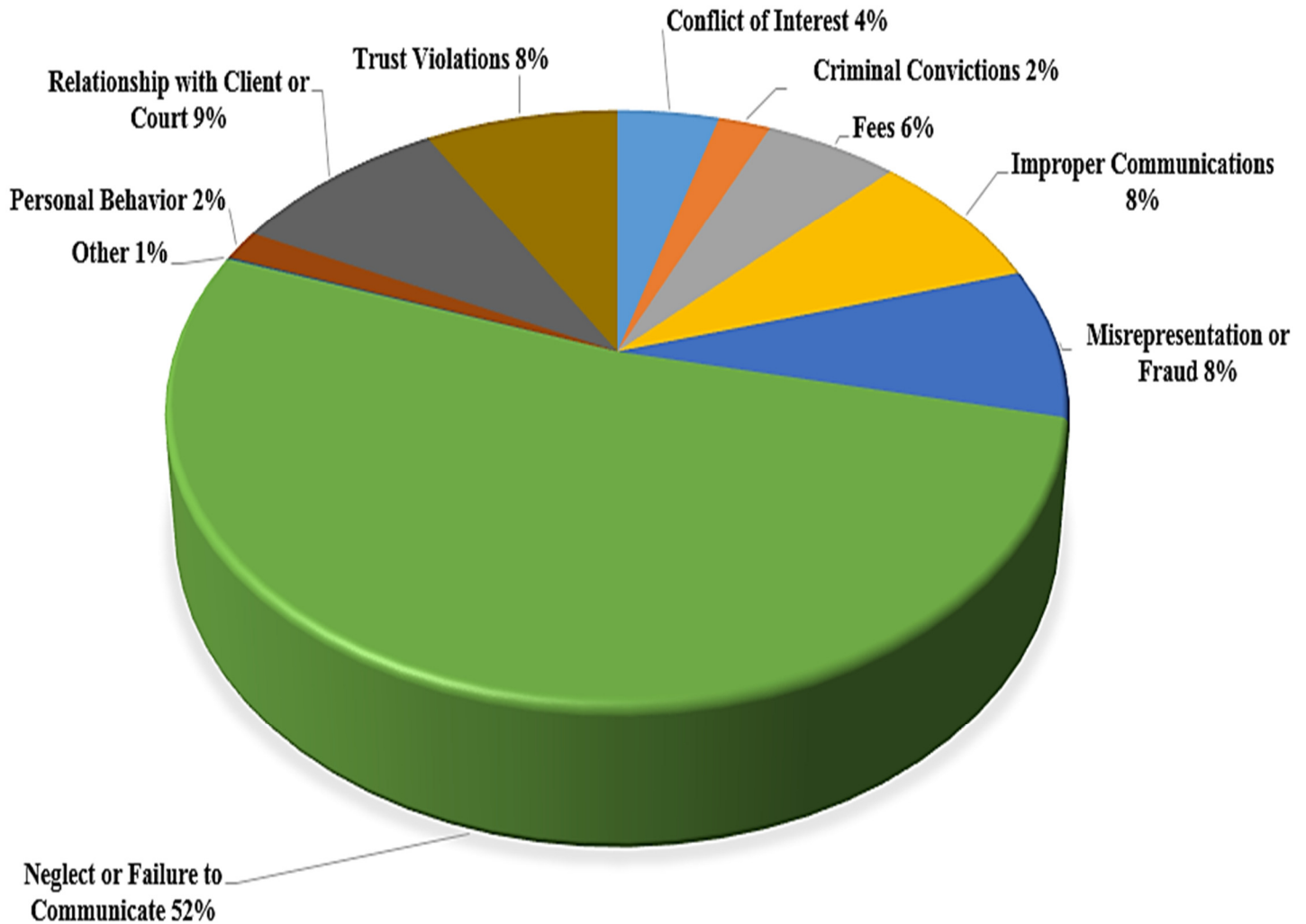
Mediate	36%
Advise	45%
Referrals	12%
Provide Information	7%

▪ **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.

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

A. Nature of Complaints



B. Investigative Complaint Caseload

Complaints Received:	1,542
Complaints Pending at beginning of Fiscal Year:	<u>579</u>
Total Complaints:	2,121

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

C. Investigative Complaint Disposition:

Administrative Dismissals:	570
Investigative Dismissals:	651
Diversions:	29
Private Informal Admonitions:	58
Private Reprimands:	26
Informal Public Censures:	35
Transfer to Disability Inactive:	19
Placed on Retired Status:	12
Other: ¹	<u>13</u>
Total:	1,413

▪ **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

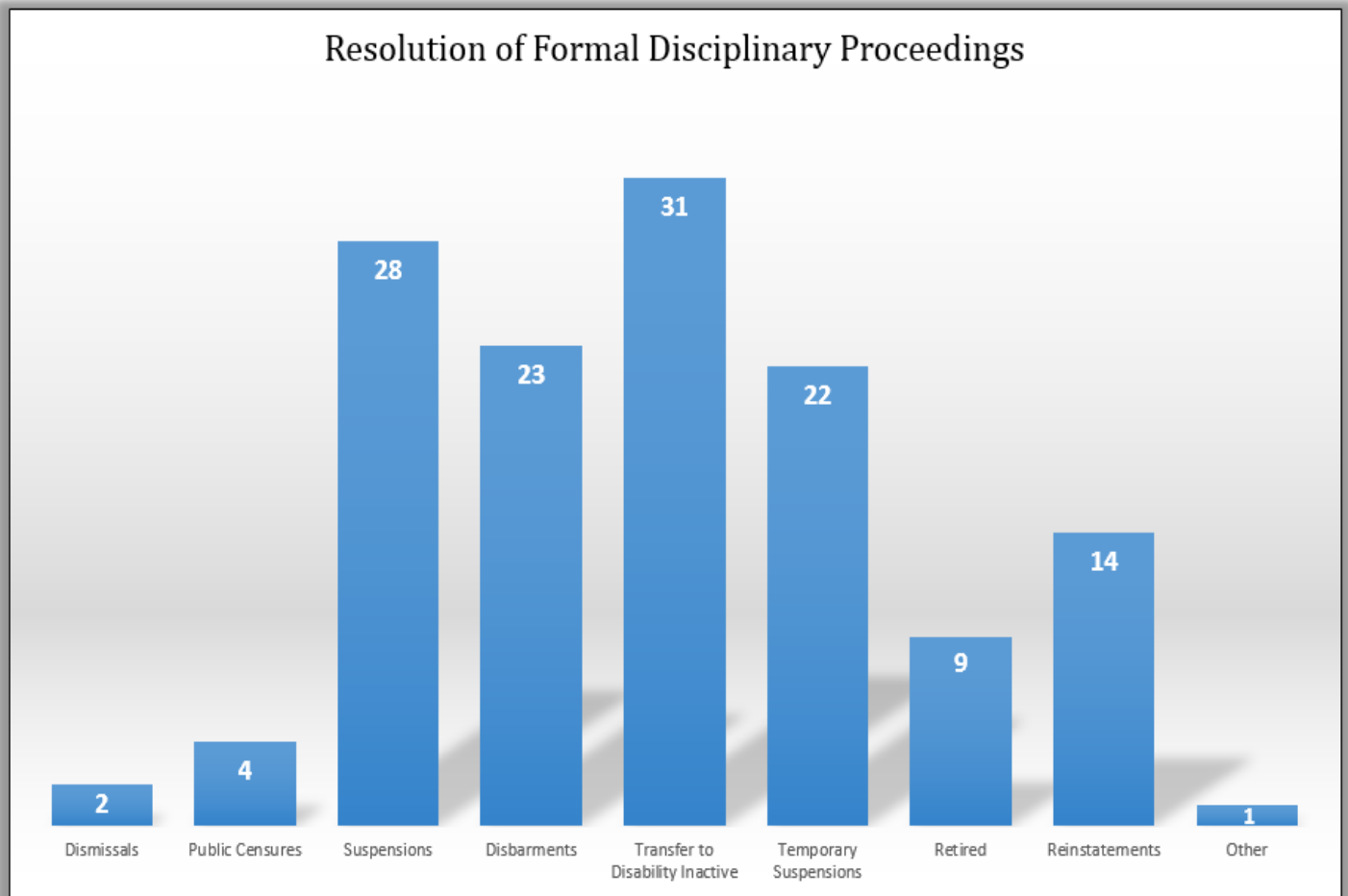
Formal cases filed during Fiscal Year:	144
Formal cases pending at beginning of Fiscal Year:	<u>112</u>
Total formal proceedings:	256
Public hearings conducted in Fiscal Year:	53

¹ Abated by death; complaint withdrawn; duplicate file.

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

B. Formal Disciplinary Proceedings Disposition:

Dismissals:	2
Public Censures:	4
Suspensions:	28
Disbarments:	23
Transfer to Disability Inactive:	31
Temporary Suspensions:	22
Retired:	9
Reinstatements:	14
Other ² :	1
 Total:	 134



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

37th Annual Discipline Report Fiscal Year July 1, 2017 – June 30, 2018

▪ 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 a total of 2,332 phone and internet inquiries from attorneys seeking ethical guidance.³

ii. Formal Opinions

2017-F-163: The Board of Professional Responsibility issued a Formal Ethics Opinion regarding the Prosecutors’ Ethical Obligations to Disclose Information Favorable to the Defense.

2017-F-164: The Board of Professional Responsibility issued a Formal Ethics Opinion regarding the opening and operation of a proposed interstate law firm, using a trade name, SETCO Law (the “Firm”). Interstate law firm partnerships are permitted if they comply with The Tennessee Rules of Professional Conduct. Such interstate law firm partnerships may use a tradename if it complies with RPC 7.1 and RPC 7.5. Interstate law firm partnerships may lease space from a title company if there is a distinct separation between the law firm and the title company with regard to entry way, signage, letterhead, business cards, etc., and the customers of the law related services are advised that the protections of the client-lawyer relationship do not apply to the provision of the law related services of the title company, preferably in writing.

2018-F-165: This Formal Ethics Opinion is regarding the ethical implications of a website owned and operated by a company on which businesses and individuals may post a description of legal services for which they are seeking representation and lawyers/law firms may subsequently submit quotes for the cost of the legal service.

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.

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

2018-F-166: Formal Ethics Opinion 2018-F-166 is regarding the ethical propriety of a settlement agreement which contains a confidentiality provision that prohibits any discussion of any facet of the settlement agreement with any other person or entity, regardless of the circumstances; and which prohibits the requesting attorney from referencing the incident central to the plaintiff's case, the year, make, and model of the subject vehicle or the identity of the Defendants.

B. Continuing Legal Education (CLE) Presentations:

Between July 1, 2017 and June 30, 2018, Disciplinary Counsel presented sixty (60) CLE seminars, attended by approximately 3,793 attorneys.

C. Board Notes:

In 2017-2018, 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.

37th Annual Discipline Report
Fiscal Year July 1, 2017 – June 30, 2018

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
Jennifer Croft	CAP Intake Assistant	228
Sandy Garrett	Chief Disciplinary Counsel	211
Reynold Gaulden, Jr.	Registration Assistant II	244
Elizabeth Gray	Administrative Assistant-Registration/ 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
Eileen Burkhalter Smith	Disciplinary Counsel	210
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
Russ Willis	Disciplinary Counsel	236
Beverly Yousefzadeh	Administrative Payables Clerk	241

37th Annual Discipline Report Fiscal Year July 1, 2017 – June 30, 2018

District Committee Member Roster

District	Last Name	First Name
1	Canter	Julie
1	Dunn	James B.
1	Evans	Curtis Dwaine
1	Harrison	James W.
1	Haynes, Jr.	Olen
1	Herndon, IV	Charles
1	Ladd, Jr.	Richard E.
1	Peterson	Polly A.
1	Pierce	Nikki C.
1	Skelton	Mark A.
1	Smith	M. Neil
1	Terry	Steve
1	Woods	Laura
2	Adams	Oliver Dawson
2	Alley	Keith
2	Amburn	Wm. Dale
2	Butler	John W.
2	Carpenter	Robert
2	Cone	James C.
2	Couch	Virginia
2	Crutchfield	Karen
2	Draper	David A.
2	Dreiser	John Paul
2	Eldridge	John E.
2	Ford	Joe
2	Gaby	Gene Paul
2	Hall	Christopher
2	Irvine, Jr.	Kenneth
2	Johnson	Russell
2	Krumm	Brian K.
2	Marcum	Stephen A.
2	Morrison	Eric J.
2	O'Kane	James
2	Peterson	Marshall H.
2	Stackhouse	Mary Ann
2	Stephens	Mark
2	Teeters	Kevin
2	Tillman	Victoria B.
2	Tipton	Hanson R.
2	Tonkin	Elizabeth
2	Ward	Hugh B.
2	Woodfin	Clint
2	Young	Broderick
3	Blevins	Melissa
3	Buchanan	Ginger
3	Cannon	Blair
3	Carson III	John M.
3	Crump	Stephen D.
3	Hill	Rosemarie L.
3	Hill, Sr.	Cameron S.
3	Jacobs	Philip
3	Jenne	Michael
3	Killian	Bill
3	Kimball	John F.
3	Swafford	Lynne
3	Trew	H. Chris
3	Weiss	William

District	Last Name	First Name
4	Aaron	Doug
4	Bobo	S. Todd
4	Corley	Michael
4	Duncan	Christina
4	Gothard	Joy
4	Hagan, Jr.	A. Ensley
4	Heckman	Kyle B.
4	Henry	Jeffrey
4	Newman	Robert W.
4	Omohundro	Lynn
4	Thompson	Tommy
4	York	Randall
5	Bigelow	Robert C.
5	Boyd	Martha
5	Bryant	Kenneth
5	Castellarin	Michael M.
5	Dowlen	Zale
5	Ellis	John
5	Fowler	Christopher B.
5	Gabbert, Jr.	Craig V.
5	Kweller	Stanley A.
5	McGee	Richard
5	Mendes	Robert
5	Ney, Jr.	Paul
5	O'Bryan	Bill
5	Parman	Steven D.
5	Perry	Andrea P.
5	Potempa	Matthew
5	Prince	Raymond G.
5	Raney	Aaron
5	Rubenfeld	Abby
5	Sabis	Christopher C.
5	Sheppard	Jennifer Lynne
5	Shockley	Gary
5	Shulman	Rebekah
5	Skoney	Lesa
5	Sweeney	Matthew
5	Tarpley	David J.
5	Welch	Bernadette
5	Wigger	Gerald C.
6	Bates, III	Douglas T.
6	Brown	Nathan
6	Bryan	Vanessa
6	Burlison	Greg
6	Catalano	Jim
6	Coffinberry	Anita Lynn
6	Durham	Ryan P.
6	Fahey, II	Michael
6	Flynn	Patrick
6	Hassell, II	Robert H.
6	Helper	Kim
6	Henry, Jr.	Joseph
6	Holt	Charles
6	Kelly	Clint
6	Kozlowski	David
6	McWherter	James Brandon
6	Milam	James W.

District	Last Name	First Name
6	Moore	Tracy
6	Mounger	Dalton
6	Plant	Paul
6	Schell	Edward
6	Smith	Jerry V.
6	Spitzer	Michael
6	Underwood	Timothy
6	Walker	Jeffery
6	Wolaver	Jake
7	Finney	Lowe
7	Floyd	Matthew A.
7	Gray	Bob
7	Hessing	Paul
7	Maddox, III	Dwayne
7	Marshall	Teresa
7	Milam	William J.
7	Reynolds	Jay
7	Scott	Clint
7	Thorne	Leanne
7	Townsend, Jr.	Edwin
8	Bivens	Phillip
8	Bowen	Bill
8	Maness	Tony
8	Shaw	Amber
8	Warner, III	John
8	Webb	Vanedda
9	Abdullah	Imad
9	Bearman	David
9	Branch	Thomas
9	Campbell	Karen
9	Canale	Stuart
9	Cassidy, Jr.	Tom
9	Chesney	Margaret
9	Childress	Frank
9	Click	Rick
9	Deakins	Laura
9	Diggs	Asia
9	Diggs	Asia
9	Donelson	Vivian Ray
9	Floyd	Amber
9	Halmon	Harriett
9	Hunt	Sean A.
9	Kavanagh	Julia
9	Kellum	Timothy
9	Mathis	Andre
9	Morrow	Charles
9	Mullins	Kimbrough
9	Patterson	Ashley
9	Patton	Michael C.
9	Podesta	Eugene
9	Reed	Terrence
9	Savory	Russell
9	Sink	Jennifer
9	Turner	Kamilah
9	Wellford	Buckner
9	Wharton	Andre

Exhibit B