

Board of Professional Responsibility

38th Annual Discipline Report Fiscal Year July 1, 2018 – June 30, 2019

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 2018-2019, Board members volunteered 864 hours and received no compensation for their service. Current members of the Board include:

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

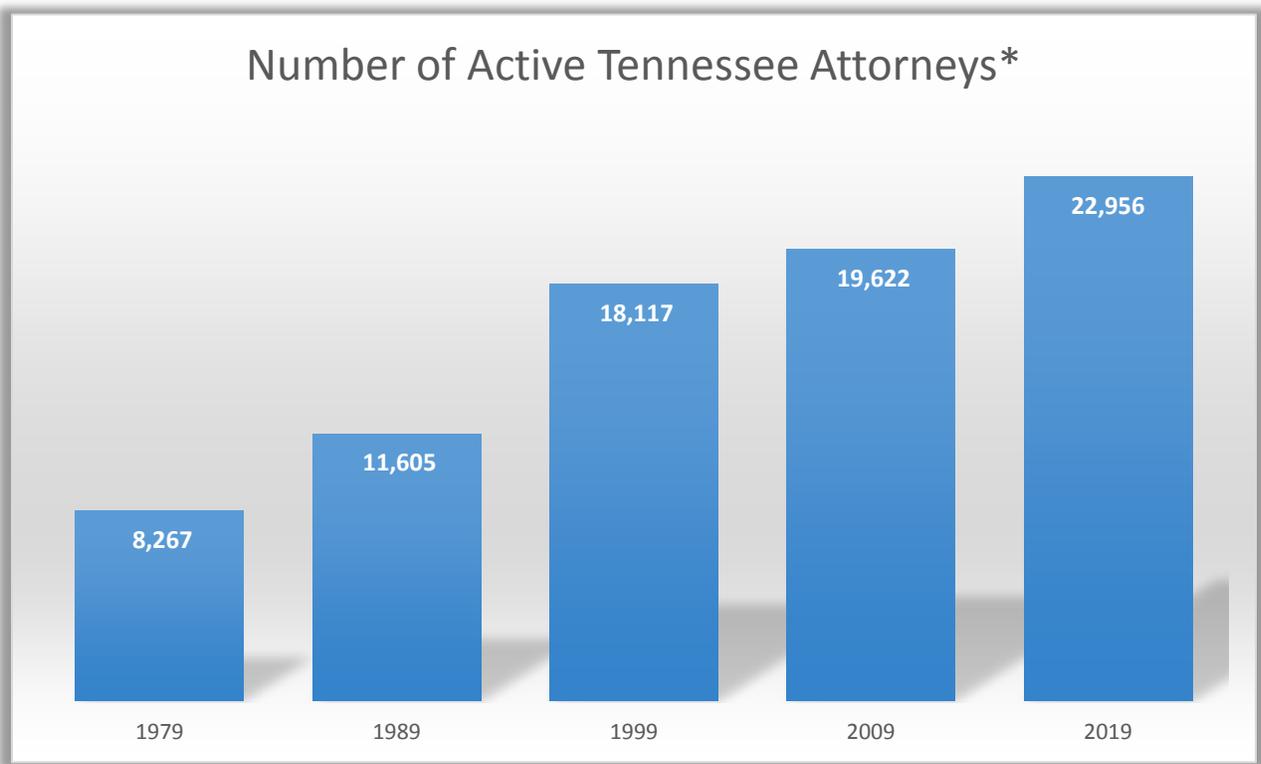
The Tennessee Supreme Court appoints attorneys to serve as district committee members from each disciplinary district in the state. In 2018-2019, 177 attorneys assisted the Court and the Board as district committee members reviewing Disciplinary Counsel's recommendations on investigative files and sitting on hearing panels conducting formal disciplinary charges. Of the 177 members, 170 reported volunteering 2,727 hours in 2018-2019 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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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: 22,956



Active Attorney Statistics:

- | | | | | | |
|-------------------|-------------|-----|-----------------------|---------------------------|-----|
| ▪ Years Licensed: | <5 yrs: | 16% | • Age: | 21-29 yrs: | 3% |
| | 5-10 yrs: | 16% | | 30-49 yrs: | 47% |
| | 10-20 yrs: | 27% | | 50-74 yrs: | 45% |
| | 20-30 yrs: | 18% | | 75+ yrs: | 5% |
| | >30 yrs: | 23% | | | |
| ▪ Gender: | Male: | 62% | • In-state Attorneys: | 82% | |
| | Female: | 34% | | • Out-of-state Attorneys: | 18% |
| | Unreported: | 4% | | | |

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Inactive Attorneys

Pursuant to Tennessee Supreme Court Rule 9, Section 10.3, inactive attorneys include attorneys serving as justice, judge or magistrate of a court of the United States of America or who serve in any federal office in which the attorney is prohibited by federal law from engaging in the practice of law; retired attorneys; attorneys on temporary duty with the armed forces; faculty members of Tennessee law schools who do not practice law; and attorneys not engaged in the practice of law in Tennessee. In 2018-2019, 5,139 attorneys on inactive status were registered with the Board of Professional Responsibility.

▪ **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 2018-2019 as follows:

Non-payment of Annual Fee:	636
Continuing Legal Education non-compliance:	180
Interest on Lawyer's Trust Accounts non-compliance:	94
Professional Privilege Tax non-compliance:	175
Default on a Student Loan:	<u>0</u>
Total:	1,085

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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	2,277
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Timeliness of Resolution

0 to 15 days	62.0%
16 to 30 days	27.0%
31 to 60 days	9.3%
61 or more days	1.7%

Actions Taken

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

▪ **Trust Account Overdraft Notifications**

Pursuant to Tennessee Supreme Court Rule 9, Section 35.1(b), financial institutions report to the Board whenever any properly payable instrument is presented against an attorney trust account containing insufficient funds. After receiving notification of an overdraft, Board Staff request financial information and explanation from the attorney.

<u>Total Notifications:</u>	104
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Actions Taken

Referred to Investigations:	18
Referred to Litigation:	0
Resolved without Investigation:	86

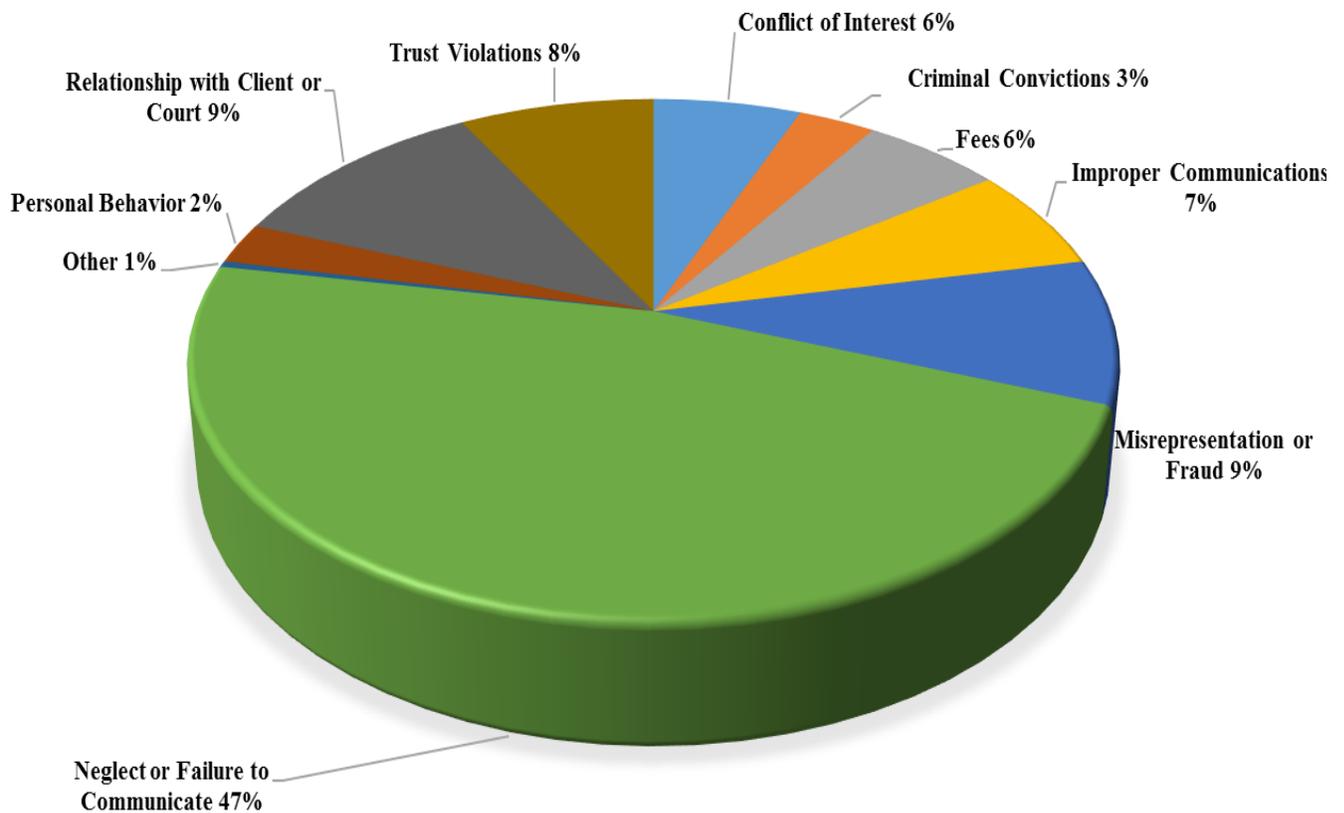
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▪ Investigation

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.

A. Nature of Complaints



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B. Investigative Complaint Caseload

Complaints Received:	1,520
Complaints Pending at beginning of Fiscal Year:	<u>495</u>
Total Complaints:	2,015

C. Investigative Complaint Disposition:

Administrative Dismissals:	615
Investigative Dismissals:	510
Diversions:	32
Private Informal Admonitions:	39
Private Reprimands:	31
Informal Public Censures:	43
Transfer to Disability Inactive:	42
Placed on Retired Status:	24
Other: ¹	<u>24</u>
Total:	1,360

¹ Abated by death; complaint withdrawn; duplicate file.

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▪ **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

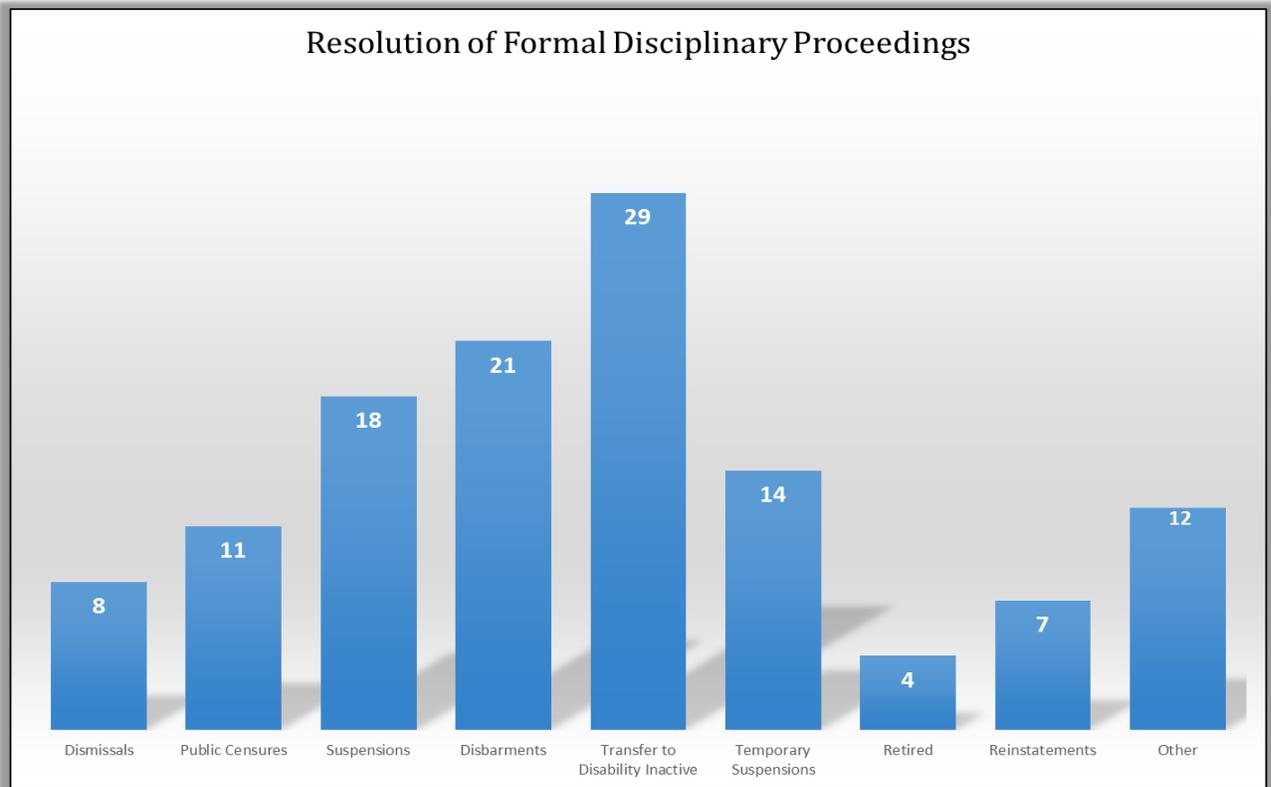
Formal cases filed during Fiscal Year:	130
Formal cases pending at beginning of Fiscal Year:	<u>112</u>
Total formal proceedings:	242
Public hearings conducted in Fiscal Year:	47

B. Formal Disciplinary Proceedings Disposition:

Dismissals:	8
Public Censures:	11
Suspensions:	18
Disbarments:	21
Transfer to Disability Inactive:	29
Temporary Suspensions:	14
Retired:	4
Reinstatements:	7
Other ² :	<u>12</u>
Total:	124

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

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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 and workshops, 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 2,543 phone and internet inquiries from attorneys seeking ethical guidance.³

ii. Formal Opinions

The Board of Professional Responsibility revised Board Policy 3.15(B), with approval of the Tennessee Supreme Court, to solicit comments from judges, attorneys and the public regarding proposed formal ethics opinions. Formal Ethics Opinion 2019-F-167 was issued by the Board after soliciting and receiving comments.

2019-F-167: The Board of Professional Responsibility issued a Formal Ethics Opinion regarding the ethical propriety of a settlement agreement, in a products liability case, which contains as a material condition of the settlement that the subject vehicle alleged to be defective be destroyed within 180 days with certification to defendant's counsel of record of the destruction.

B. Continuing Legal Education (CLE) Presentations:

Between July 1, 2018 and June 30, 2019, Disciplinary Counsel presented sixty (69) CLE seminars, attended by approximately 3,680 attorneys.

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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C. *Board Notes:*

In 2018-2019, 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.

D. **Workshops**

- a. The Board of Professional Responsibility hosted its annual Ethics Workshop on November 2, 2018 at the Nashville School of Law with over 400 attorneys attending. This year's Ethics Workshop is scheduled for October 25.
- b. Since August, 2018, the Board of Professional Responsibility has offered a Trust Account workshop to attorneys receiving diversion and/or discipline for trust account violations. Two trust account workshops were held in 2018/2019.

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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	Deputy Chief Disciplinary Counsel - Investigations	203
Jennifer Croft	Legal Assistant - Investigations	201
Sandy Garrett	Chief Disciplinary Counsel	211
Reynold Gauden, Jr.	Registration Assistant II	244
Elizabeth Gray	Administrative Assistant-Registration/ Scanning	202
Penny Greene	Administrative Receivables Clerk	219
Candis Grooms	Case Manager	229
Kelly Heflin	Legal Assistant - Investigations	242
Alan Johnson	Disciplinary Counsel	207
Soumya Kademakki	Lead Legal Assistant - Investigations	218
Travis Lampley	Disciplinary Counsel	236
Cheryl Lang	Administrative Scan Clerk	234
Mary McKnight	Registration Manager	213
Jerry Morgan	Disciplinary Counsel	245
Dana Patrick	Executive Assistant	209
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
Marcy Shelton	Disciplinary Counsel	222
Eileen Burkhalter Smith	Disciplinary Counsel	210
Giselle Sutherland	Paralegal	224
Suzie Thurber	CAP Intake Assistant	228
Cheri Weaver	CAP Legal Assistant	208
Rita Webb	Executive Secretary	206
Lani White	Registration and Scan Clerk	234
Russ Willis	Deputy Chief Disciplinary Counsel - Litigation	214
Beverly Yousefzadeh	Administrative Payables Clerk	241

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District Committee Member Roster

District	First Name	Last Name	District	First Name	Last name	District	First Name	Last name
1	McKenna L.	Cox	4	W. I. Howell	Acuff	6	Michael "Jay"	Fahey, II
1	James W.	Harrison	4	Michael	Corley	6	Kim (Ms.)	Helper
1	Julie	Canter	4	Kyle B.	Heckman	6	James W.	Milam
1	Mark A.	Skelton	4	S. Todd	Bobo	6	Michael Stuart	Saylor
1	James B.	Dunn	4	Lynn (Ms.)	Omohundro	6	Edward	Schell
1	K. Kidwell	King, Jr.	4	Tommy	Thompson	6	Caroline G.	Beauchamp
1	Nikki C.	Pierce	4	Jeffrey	Henry	6	Clint	Kelly
1	Guy W.	Blackwell	4	Robert W.	Newman	6	Dalton	Mounger
1	William B.	Harper	4	Randall	York	6	Jake	Wolaver
1	Laura	Woods	4	Joy	Gothard	6	Jim	Catalano
1	Andrew T.	Wampler	5	Christopher C.	Sabis	6	Nathan	Brown
1	Olen	Haynes, Jr.	5	Richard	McGee	7	Clint	Scott
1	Polly A.	Peterson	5	David J.	Tarpley	7	William J.	Milam
1	Richard E.	Ladd, Jr.	5	Bill	O'Bryan	7	Leanne	Thorne
2	Russell	Johnson	5	Craig V.	Gabbert, Jr.	7	Paul	Hessing
2	Carl P.	McDonald	5	Robert C.	Bigelow	7	Dwayne	Maddox, III
2	Victoria B.	Tillman	5	Jad A.	Duncan	7	Lowe	Finney
2	Robert "Scott"	Carpenter	5	Raymond G.	Prince	7	Teresa	Marshall
2	Mark	Stephens	5	Abby	Rubinfeld	7	Matthew A.	Floyd
2	John Paul	Dreiser	5	Martha	Boyd	7	Jay	Reynolds
2	Eric J.	Morrison	5	Gary	Shockley	7	Edwin	Townsend, Jr.
2	Brian K.	Krunm	5	Jennifer Lynne	Sheppard	8	Bill	Bowen
2	James C. "Chris"	Cone	5	Steven D.	Parman	8	Amber	Shaw
2	John W.	Butler	5	Stanley A.	Kweller	8	Vanedda	Webb
2	Kenneth	Irvine, Jr.	5	Kenneth	Bryant	8	Joseph E.	Tubbs
2	Kevin	Teeters	5	J. Patrick	Warfield	8	Allison S.	Whitledge
2	Gene Paul	Gaby	5	Taylor C.	Sutherland	8	Phillip	Bivens
2	Virginia	Couch	5	Christopher B.	Fowler	8	John (Jack)	Warner, III
2	Karen	Crutchfield	5	Lesa	Skoney	8	Tony	Maness
2	Marshall H.	Peterson	5	Gerald C.	Wigger	9	Holly J.	Renken
2	Amanda M.	Busby	5	John	Ellis	9	Jennifer	Sink
2	Loretta G.	Cravens	5	John M.	Baird	9	Rick	Click
2	Wm. Dale	Amburn	5	Candi R.	Henry	9	Andre (Mr.)	Wharton
2	Lisa J.	Hall	5	Michael J.	Sandler, Jr.	9	Eugene	Podesta
2	Oliver Dawson	Adams	5	James Lee	Pope	9	Frank	Chidress
2	Christopher	Hall	5	Rebekah	Shulman	9	Michael C.	Patton
2	David A.	Draper	5	Bernadette	Welch	9	Leslie (Ms.)	Yohey (Isaacman)
2	Mary Ann	Stackhouse	5	Keene W.	Bartley	9	Stuart	Canale
2	Elizabeth	Tonkin	5	Peter C.	Robison	9	Karen	Campbell
2	John E.	Eldridge	5	Andrea P.	Perry	9	E. Patrick (Pat)	Lancaster
2	Clint	Woodfin	5	Edgar M.	Rothschild	9	Kamilah (Ms.)	Turner
2	Broderick	Young	5	Michael M.	Castellarin	9	Thomas	Branch
2	Hanson R.	Tipton	5	Zale	Dowlen	9	Jessica	Ferrante
2	Stephen A.	Marcum	6	James Y.	Ross, Sr.	9	Sean A.	Hunt
3	Peter	Allinan	6	David	Kozlowski	9	Terrence	Reed
3	John M.	Carson III	6	Timothy	Underwood	9	Ashley (Ms.)	Patterson
3	Kathaleen Ann	Barker	6	Jeffery	Walker	9	Harriett	Halmon
3	H. Chris	Trew	6	Vanessa	Bryan	9	Julia	Kavanagh
3	Bill	Killian	6	Greg	Burlison	9	Laura	Deakins
3	John H. (Cam)	Cameron, Jr.	6	Jennifer F.	Franks	9	Timothy	Kellum
3	Philip	Jacobs	6	Tracy (Mr.)	Moore	9	Asia (Ms.)	Diggs
3	William	Weiss	6	Paul	Plant	9	Margaret	Chesney
3	John F.	Kimball	6	Robert H.	Hassell, II	9	Anne B.	Davis
3	Rosemarie L.	Hill	6	Patricia A. (Pat)	McDade	9	Tom	Cassidy, Jr.
3	Cameron S.	Hill, Sr.	6	Ryan P.	Durham	9	Andre (Mr.)	Mathis
3	Blair (Ms.)	Cannon	6	Anita Lynn	Coffinberry	9	Amber	Floyd
3	Stephen D.	Crump	6	Jerry V.	Smith	9	Charles "Chip"	Morrow
4	Doug	Aaron	6	James Brandon	McWherter	9	Kimbrough (Ms.)	Mullins
4	Christina	Duncan	6	Douglas T.	Bates, III	9	Imad (Mr.)	Abdullah