

Board of Professional Responsibility

35th Annual Discipline Report Fiscal Year July 1, 2015 – June 30, 2016

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 2015-2016, Board members volunteered 770 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)
Michael Callaway
Margaret Craddock (Lay Member)
Wade Davies
Dana Dye
Odell Horton, Jr.
John Kitch
Joe Looney
Jon Lundberg (Lay Member)
Jimmie Miller

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 2015-2016, 176 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 176 members, 154 reported volunteering 2,226 hours in 2015-2016 for which they received no compensation for their services. A roster of current district committee members is attached as Exhibit B.

35th Annual Discipline Report
Fiscal Year July 1, 2015 – June 30, 2016

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	2,743
------------------------	-------

Timeliness of Resolution

0 to 15 days	30.5%
16 to 30 days	13.4%
31 to 60 days	19.5%
61 or more days	36.6%

Actions Taken

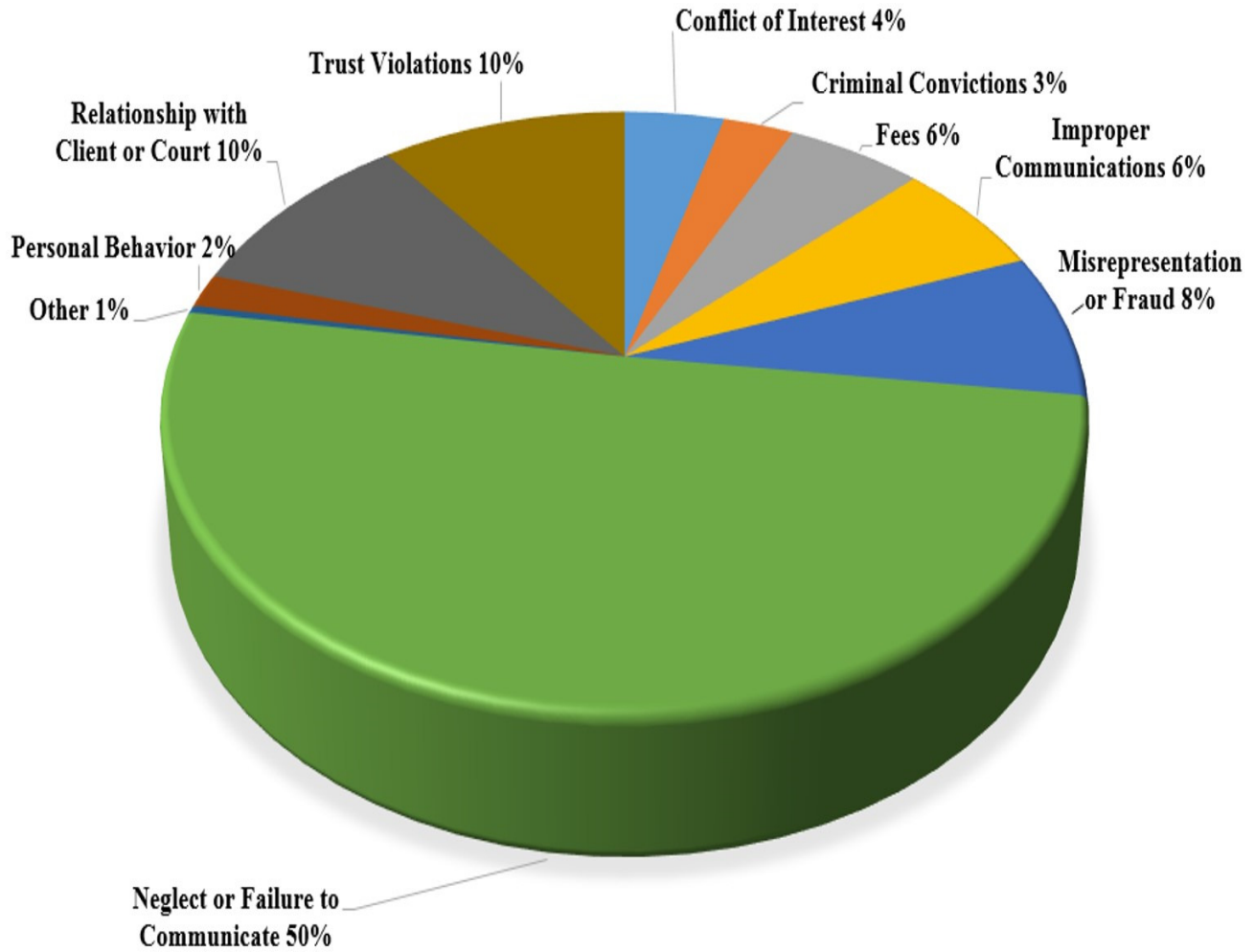
Mediate	31%
Advise	44%
Referrals	15%
Provide Information	10%

▪ **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.

35th Annual Discipline Report
Fiscal Year July 1, 2015 – June 30, 2016

A. Nature of Complaints



B. Investigative Complaint Caseload

Complaints Received:	1,086
Complaints Pending at beginning of Fiscal Year:	<u>420</u>
Total Complaints:	1,506

35th Annual Discipline Report
Fiscal Year July 1, 2015 – June 30, 2016

C. Investigative Complaint Disposition:

Administrative Dismissals:	293
Investigative Dismissals:	514
Diversions:	20
Private Informal Admonitions:	42
Private Reprimands:	14
Informal Public Censures:	35
Transfer to Disability Inactive:	27
Placed on Retired Status:	19
Other: ¹	11
Total:	975

▪ **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

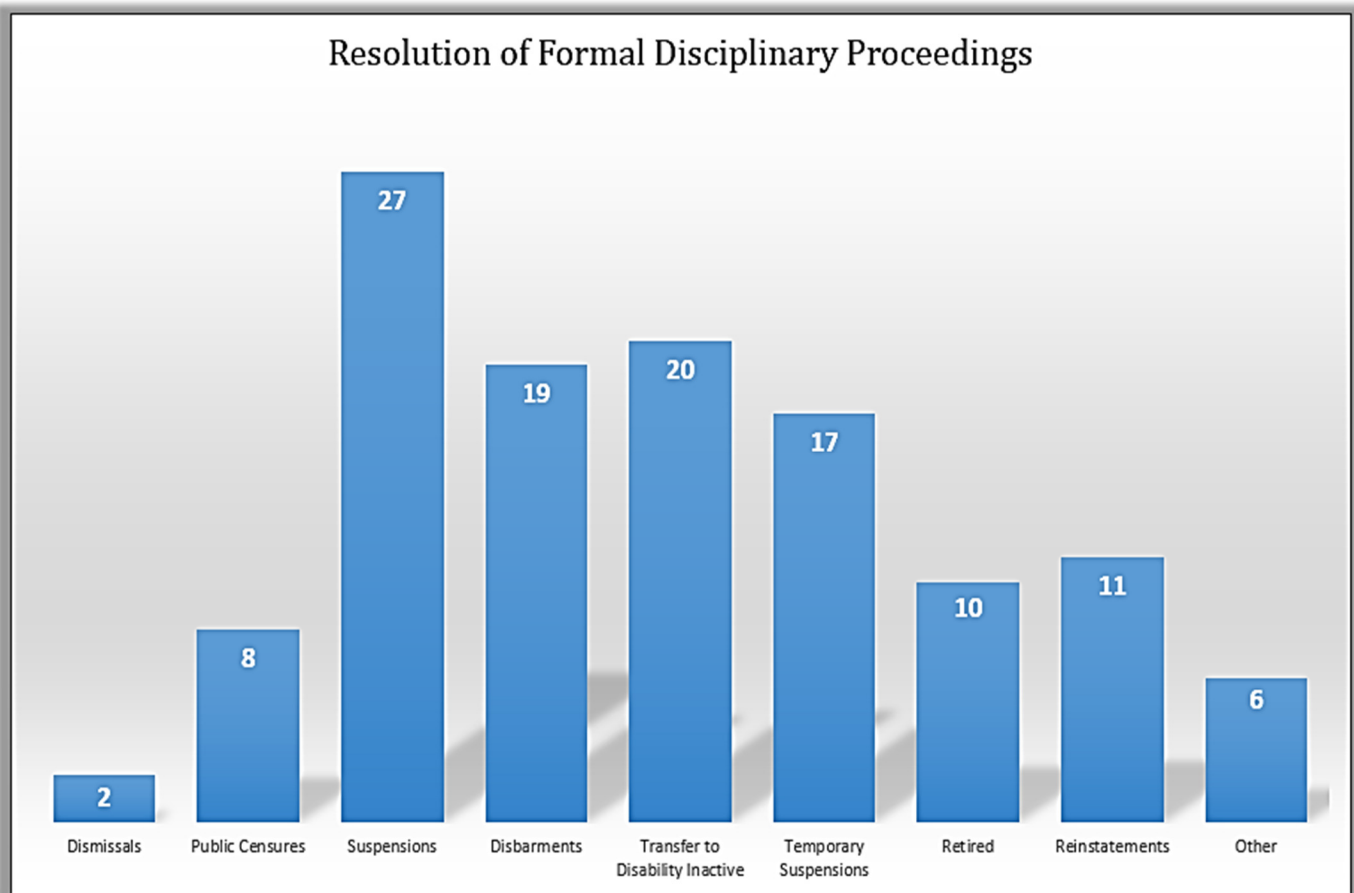
Formal cases filed during Fiscal Year:	139
Formal cases pending at beginning of Fiscal Year:	<u>102</u>
Total formal proceedings:	241
Public hearings conducted in Fiscal Year:	75

¹ Abated by death; complaint withdrawn; duplicate file.

35th Annual Discipline Report
Fiscal Year July 1, 2015 – June 30, 2016

B. Formal Disciplinary Proceedings Disposition:

Dismissals:	2
Public Censures:	8
Suspensions:	27
Disbarments:	19
Transfer to Disability Inactive:	20
Temporary Suspensions:	17
Retired:	10
Reinstatements:	11
Other ² :	6
 Total:	 120



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

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

35th Annual Discipline Report

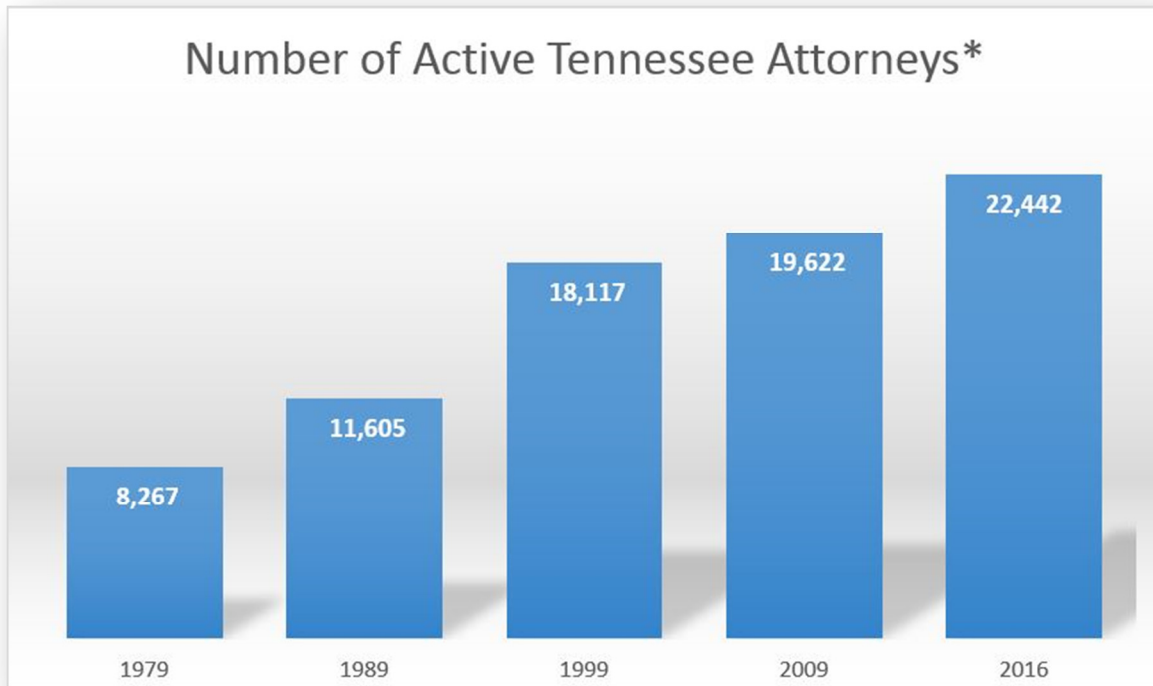
Fiscal Year July 1, 2015 – June 30, 2016

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 2014-2015 as follows:

Non-payment of Annual Fee:	152
Continuing Legal Education non-compliance:	91
Interest on Lawyer’s Trust Accounts non-compliance:	63
Professional Privilege Tax non-compliance:	54
Default on a Student Loan:	4
Total:	364

- **Current Number of Tennessee Attorneys**

Active Attorneys:	22,442
Inactive Attorneys:	4,473
Pro hac vice Attorneys:	745



*Attorneys not included in this chart: Inactive attorneys (4,473); Pro hac vice attorneys (745).

35th Annual Discipline Report Fiscal Year July 1, 2015 – June 30, 2016

▪ 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

Disciplinary Counsel responded to 2,190 phone and internet inquiries from attorneys seeking ethical guidance.³

ii. Formal Opinions

2015-F-159: A lawyer may ethically allow confidential client information to be stored in "the cloud" if the lawyer takes reasonable care to assure that: (1) all such information or materials remain confidential; and (2) reasonable safeguards are employed to ensure that the information is protected from breaches, loss, and other risks. Due to rapidly changing technology, the Board doesn't attempt to establish a standard of care, but instead offers guidance from other jurisdictions.

2015-F-160: Lawyers have ethical obligations to preserve client files and to return them or permit access to them by the client if requested. There is no Rule of Professional Conduct in Tennessee that requires a lawyer to retain client files for more than five (5) years following termination of representation; however, the type of representation and file contents may require a longer retention time.

2015-F-160(a): The Board of Professional Responsibility recommends a lawyer retain client files for five (5) years after termination of representation; however, this is merely a guideline and may be altered by client agreement or the type of representation and contents of the file.

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.

35th Annual Discipline Report
Fiscal Year July 1, 2015 – June 30, 2016

B. Continuing Legal Education (CLE) Presentations:

Between July 1, 2016 and June 30, 2016, Disciplinary Counsel presented sixty-one (61) CLE seminars, attended by approximately 3,058 attorneys.

C. *Board Notes:*

In 2015-2016, the Board emailed *Board Notes*, the Board's semi-annual newsletter to all attorneys and judges and published it on the Board's website. The Board also partnered with the Tennessee Lawyers Assistance Program in publishing a Special Edition *Board Notes* focusing on addiction and mental health issues facing attorneys.

35th Annual Discipline Report
Fiscal Year July 1, 2015 – June 30, 2016

Board of Professional Responsibility
Staff Directory

Name	Title	Extension
Kristi Astafan	Registration Manager	213
Kevin Balkwill	Disciplinary Counsel	223
Eileen Burkhalter Smith	Disciplinary Counsel	210
Patty Burton	Assistant Manager	216
Melanie Cail	Legal Assistant - Litigation	237
Peyton Carr	Legal Assistant - Investigations	201
Steve Christopher	Disciplinary Counsel	203
Sandy Garrett	Chief Disciplinary Counsel	211
Reynold Gaulden, Jr.	Registration Assistant II	244
Elizabeth Gray	Administrative Scan Clerk	202
Candis Grooms	Case Manager	229
Krisann Hodges	Deputy Chief Disciplinary Counsel	214
Alan Johnson	Disciplinary Counsel	207
Soumya Kademakki	Lead Legal Assistant - Investigations	218
Jason Keeton	Registration Assistant 1	227
Mary McKnight	Paralegal	224
Carol Marsh	Receptionist	200
Bill Moody	Disciplinary Counsel	217
Tony Pros	Network Administrator	230
Suzanne Saucier	Lead Legal Assistant - Litigation	221
Zuzu Savage	Administrative Receivables Clerk	219
Jessica Schraw	CAP Intake Assistant	228
Beverly Sharpe	Director of Consumer Assistance Program	226
Preston Shipp	Disciplinary Counsel	222
Julie Turner	Executive Assistant	209
Joy Vaughn	Legal Assistant - Investigations	242
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

35th Annual Discipline Report Fiscal Year July 1, 2015 – June 30, 2016

District Committee Member Roster

District	Last Name	First Name	District	Last Name	First Name	District	Last Name	First Name
1	Canter	Julie	4	Bobo	S. Todd	6	Underwood	Timothy
1	Chitwood	Kent	4	Hagan, Jr.	A. Ensley	6	Vandivort	Kirk
1	Evans	Curtis	4	Heckman	Kyle B.	6	Walker	Jeffery
1	Haynes, Jr.	Olen	4	Henry	Jeffrey	7	Finney	Lowe
1	Herndon, IV	Charles	4	O'Mara	Thomas M.	7	Floyd	Matthew A.
1	Johnstone	Frank	4	Taylor	John C.	7	Gray	Bob
1	Pierce	Nikki C.	4	Thompson	Tommy	7	Hessing	Paul
1	Smith	M. Neil	4	Tucker	Adam F.	7	Maddox, III	Dwayne
1	Stone	Danny	4	Wright, Jr.	Phillip A.	7	Marshall	Teresa
1	Terry	Braxton	5	Aden	Gareth S.	7	McLean, Jr.	Hugh
1	Terry	Steve	5	Bigelow	Robert C.	7	Reynolds	Jay
1	Woods	Laura	5	Campbell	Andrew	7	Scott	Clint
2	Adams	Oliver D.	5	Carpenter	Brigid	7	Thorne	Leanne A.
2	Alley	Keith	5	Castellarin	Michael M.	7	Townsend, Jr.	Edwin C.
2	Barcus	Heidi	5	Dowlen	Zale	7	Wilkinson	Guy T.
2	Berez	Ellen	5	Gabbert, Jr.	Craig V.	8	Bivens	Phillip
2	Cole	R. Deno	5	Grant	Charles	8	Dedmon	Dean
2	Coleman	Greg	5	Harris	Matthew	8	Flippin	Floyd
2	Compher-Rice	Sara E.	5	Kinslow	Rhonda	8	Jenkins, Jr.	William L.
2	Cone	James C.	5	Kweller	Stanley A.	8	Maness	Tony
2	Couch	Virginia	5	McGee	Richard	8	McEwen	Jennifer D.
2	Crutchfield	Karen	5	McLemore	C.K.	8	Taylor, IV	Jasper
2	Draper	David A.	5	Mendes	Robert	8	Unger, Jr.	Langdon
2	Dreiser	John P.	5	Milam	James W.	8	Washburn	Jeffery
2	Dyer	Alyson	5	Ney, Jr.	Paul	9	Babaoglu	Rehim
2	Ford	Joe	5	O'Bryan	Bill	9	Beard	Craig
2	Gaby	Gene P.	5	Perry	Andrea P.	9	Bearman	David
2	Hall	Christopher	5	Potempa	Matthew	9	Branch	Thomas
2	Irvine, Jr.	Kenneth	5	Raney	Aaron	9	Campbell	Karen M.
2	Johnson	Russell	5	Sales	Peter	9	Canale	Stuart
2	King	Michael J.	5	Shockley	Gary	9	Cassidy, Jr.	Tom
2	Krumm	Brian K.	5	Shulman	Rebekah	9	Click	Rick
2	Morrison	Eric J.	5	Simmons	Janelle	9	Diggs	Asia
2	O'Kane	James	5	Sowell	Alan M.	9	Elder	Alex
2	O'Rear	Carrie	5	Sweeney	Matthew	9	Ferrante	Jessica
2	Stackhouse	Mary Ann	5	Todd	Daniel	9	Floyd	Amber
2	Stephens	Mark	5	Welch	Bernadette	9	Halmon	Harriett
2	Ward	Hugh B.	5	Wigger	Gerald C.	9	Jones	Les
2	Winters	John	6	Bateman	Robert	9	Jordan	Trey
2	Woodfin	Clint	6	Bates, III	Douglas T.	9	Kellum	Timothy
2	Young	Broderick	6	Baugh, Jr.	Joseph	9	Mangrum	Gregory
3	Blevins	Melissa	6	Boston	Ben	9	Mathis	Andre
3	Buchanan	Ginger	6	Bryan	Vanessa	9	McNabb	Leland
3	Cannon	Blair	6	Burlison	Greg	9	Mullins	Kimbrough
3	Cash	Larry	6	Coffinberry	Anita Lynn	9	Patton	Michael C.
3	Crump	Stephen D.	6	Durham	Ryan P.	9	Podesta	Eugene
3	Easterly	Alan	6	Fahey, II	Michael	9	Quinn	Arthur
3	Greer	Stephen	6	Flynn	Patrick	9	Reisman	Marc
3	Hill, Sr.	Cameron S.	6	Free	Mark	9	Savory	Russell
3	Hill	Rosemarie	6	Garner	Samuel	9	Sink	Jennifer
3	Jacobs	Philip	6	Helper	Kim	9	Tauer	Michael
3	Jenne	Michael	6	Henry, Jr.	Joseph	9	Turner	Kamilah
3	Killian	Bill	6	Holt	Charles	9	Vincent	Scott
3	Smith	W. Holt	6	Jack	Claudia	9	Waddell	Amanda
3	Swafford	Lynne	6	Kozlowski	David	9	Walsh	John Kevin
3	Weiss	Tyler	6	Plant	Paul	9	Wellford	Buckner
3	Willhite	Bridget	6	Schell	Edward	9	Wharton	Andre
4	Aaron	Doug	6	Smith	Jerry V.			
4	Bean	Melanie	6	Spitzer	Michael			

Exhibit B