

## SUPPORTING STATEMENT

OMB No. 1125-0007

### Immigration Practitioner Complaint Form Form EOIR-44

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#### Part A. Justification

1. Necessity of Information Collection - Any individual may file a complaint against an immigration practitioner authorized to practice before the Board of Immigration Appeals (Board) and the immigration courts of the Executive Office for Immigration Review (EOIR), or the U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Complaints may be made regarding an immigration practitioner=s criminal, unethical, or unprofessional conduct, or frivolous behavior. See 8 C.F.R. ' 1003.104(a)(2). Complaints are directed to the agency where the alleged misconduct occurred. An individual filing a complaint regarding a practitioner=s behavior in proceedings before EOIR must file the complaint in writing with EOIR=s Office of the General Counsel and use Form EOIR-44. The completed form must state in detail information certain information supporting the complaint, including the name and addresses of the complainant and the practitioner, the date and nature of the conduct or behavior, the individuals involved, the complainant=s harm or damages, and any other relevant information. See 8 C.F.R. ' 1003.104(a)(2).

Following receipt of a completed complaint or by its own initiative, the Office of General Counsel will launch a preliminary inquiry to determine whether it should conduct a preliminary disciplinary inquiry, request additional information from the

responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action. *See* 8 C.F.R. ' 1003.104(b).

2. Needs and Uses - The form is filed and considered in the context of a disciplinary complaint against an immigration practitioner pursuant to 8 C.F.R. ' 1003.104.

Accordingly, EOIR=s Office of General Counsel considers the information contained in the form to the extent necessary to process the disciplinary complaint and determine appropriate future action. Use of the Form-44 ensures complete collection of necessary information, allowing EOIR to more effectively evaluate new disciplinary complaints for merit and timely administrative processing. Moreover, the form also provides a helpful, clear, and concise summary of the regulations guiding the practitioner disciplinary program.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-44 is available on EOIR=s website for printing. Information can be typed into the online form which is then printed out for submission to EOIR. In addition, an applicant may print the form in its entirety to complete by typing or printing legibly. Currently, EOIR does not have the automated capability in place to accept electronic submission of forms. However, EOIR continues to explore the implementation of a number of electronic document initiatives, including electronic submission of EOIR forms.

4. Efforts to Identify Duplication - The only form for filing a complaint against an immigration practitioner authorized to practice before the Board or the immigration courts is the Form EOIR-44. A review of EOIR=s existing forms revealed no duplication of effort, and there is no similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect this information would inhibit an individual=s ability to file a complaint regarding an immigration practitioner=s criminal, unethical, or unprofessional conduct, or frivolous behavior. It also would hinder substantially EOIR=s ability to effectively administer the policy activities pursued under this federal disciplinary program.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation- A 60-day notice covering this collection was published in the Federal Register. A 30-day notice covering this collection was published in the Federal Register. No public comments were received.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to individuals in exchange for the information provided in Form-44.

10. Assurance of Confidentiality - EOIR's Office of General Counsel maintains the original complaint. Those EOIR staff members processing the complaint may access the Form EOIR-44. To the extent law permits, EOIR protects the confidentiality of the contents of the Form EOIR-44 and its attachments. EOIR would release information in accordance with the Privacy Act and the Freedom of Information Act.

Notably, under 8 C.F.R. ' 1003.108(a), except as otherwise provided by law or regulation, information concerning disciplinary complaints or preliminary inquiries is confidential. Under the regulation, exceptions to the confidentiality rule include, but are not limited to, disclosures that are necessary to conduct a preliminary inquiry (e.g., disclosures by the practitioner in the course of a disciplinary investigation), to protect the public (e.g., where the practitioner has caused, or is likely to cause, harm to the public, clients, or the administration of justice), and to refer factual allegations and supporting documentation to third parties (e.g., law enforcement and state attorney discipline authorities). *See* 8 C.F.R. ' 1003.108. To the extent that EOIR requests otherwise confidential information that may be disclosed to their parties as permitted by law or regulation, EOIR-44 explains the confidentiality limitations and provides a clause permitting respondents to expressly waive confidentiality during the preliminary inquiry phase of a disciplinary proceeding.

11. Justification for Sensitive Questions - As explained above, to the extent that EOIR-44 requests information of a sensitive nature, including information normally held inviolate under the attorney-client privilege and other applicable law, EOIR-44 provides a signature clause allowing respondents to expressly waive any such confidentiality limitations. Questions of a sensitive nature, including, for example, eliciting information relating to an immigration practitioner's handling of a respondent's asylum case, are necessary to evaluate the merits of the disciplinary complaint (e.g., whether the practitioner misled the respondent or charged a grossly excessive fee, which are both grounds for seeking imposition of disciplinary sanctions).

12. Estimate of Hour Burden

a. Number of Respondents	500
b. Number of Responses per Respondent	1
c. Total Annual responses	500
d. Hours per response	2 hours
e. Total annual hourly reporting burden	1000

The total annual reporting burden is derived by multiplying the number of respondents (500) by the frequency of response (1) by the number of hours per response (2 hours):

500 respondents x 1 response per respondent x 2 hours per respondent = 1000 burden hours.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection. There are also no fees associated with filing this information collection, Form EOIR-44. The only costs to the respondent are the photocopying and mailing costs, which are estimated to be no more than \$2500. This estimate is derived by multiplying the approximate photocopying and mailing costs, which should be at most \$5.00 per application, by the number of total annual responses, which is 500:

\$5.00 photocopying and mailing costs x 500 annual responses = \$2500.00 total cost burden.

14. Estimated Cost to Federal Government - It is estimated that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-44 is \$50.00 (derived by multiplying the 2 pages of the form by an estimated \$.10 per copy by the estimated 500 respondents per year).

15. Reason for Change in Burden - The hour burden did not change in this information collection request (ICR). Accordingly, the cost burden, calculated above, is \$2,500.

16. Plans for Publication - The EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. Approval to Not Display the Expiration Date - EOIR is seeking OMB approval to not display the expiration date for this collection instrument. The display of the expiration date would require EOIR to pull and destroy current forms in its inventory (e.g., headquarters, field offices throughout the country), which otherwise could still be used by the public except for the outdated expiration date. EOIR forms are in wide distribution. Parties in proceedings before EOIR, attorneys and practitioners, organizations who assist individuals in proceedings before EOIR, and other government agencies all would be similarly required to replace forms otherwise acceptable except for the outdated expiration date. It is also costly to destroy useable forms and then reprint and restock them. Therefore, EOIR requests that the display of the expiration date be waived. The EOIR has in place a forms calendar to ensure that all forms remain active and future applications for OMB approval are planned.

18. Exceptions to Certification Statement - The EOIR does not request an exception to the certification of this information collection.

#### **Section B. Collection of Information Employing Statistical Methods**

This collection does not employ statistical methods.

## PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. ' 1320.

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Executive Office for Immigration Review

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Date