



**U.S. Department of Justice**  
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# NOTICE

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## **EOIR Publishes Proposed Rule Regarding Ineffective Assistance of Counsel**

FALLS CHURCH, Va. – The Executive Office for Immigration Review (EOIR) today announced the publication of a [proposed rule](#) addressing ineffective assistance of counsel. The proposed rule is titled *Motions to Reopen Removal, Deportation, or Exclusion Proceedings Based Upon a Claim of Ineffective Assistance of Counsel*.

In his decision in *Matter of Compean, Bangaly & J-E-C-*, 25 I&N Dec. 1 (A.G. 2009), former Attorney General Eric H. Holder Jr. directed EOIR to initiate rulemaking regarding the governance of motions to reopen based on ineffective assistance of counsel. Accordingly, EOIR has published a Notice of Proposed Rulemaking (NPRM), which proposes to set out standards for reopening EOIR proceedings based on ineffective assistance of counsel.

Under the proposed rule, individuals seeking to reopen proceedings based on ineffective assistance of counsel have to establish that their prior counsel represented them ineffectively and that, with limited exceptions, they were prejudiced as a result. The proposed rule provides guidelines for determining what qualifies a counsel's conduct as ineffective, and what circumstances point to an individual's having suffered prejudice. Under the proposed rule, a motion to reopen based on ineffective assistance of counsel must, absent circumstances noted in the rule, include:

- An affidavit, or a written statement executed under the penalty of perjury, providing certain information;
- A copy of any applicable representation agreement;
- Evidence that prior counsel was notified of the allegations and of the filing of the motion; and
- Evidence that a complaint was filed with the appropriate disciplinary authorities.

EOIR will accept comments from the public until Sept. 26, 2016. For details on how to submit comments, please see [NPRM](#).

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