

COMMUNITY

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YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & NANCY MILLER

Ignoring a notice to appear doesn't make the problem go away

proof that the notice was properly served and that the person named is removable, the court can hold a hearing and make a removal order *in absentia*. *In absentia* means in the person's absence. Proof of proper service can consist of showing that the notice was mailed, by regular mail, to the alien's last known address. If the alien did not get the notice because he failed to notify the government of his current address, his failure to appear is not excused.

A person who has a final order entered against her *in absentia* after receiving oral notice is barred from most forms of relief, including cancellation of removal, adjustment of status, change of status and voluntary departure for 10 years. The bar only applies where the failure to appear is not due to exceptional circumstances and the person received oral notice in her own language or in a language she understands regarding the time and place of the hearing and the consequences for failing to appear. Exceptional circumstances includes events such as serious illness and death in the family.

In absentia orders are not appealable. An *in absentia* order may only be rescinded by a motion to reopen. The filing of the motion stays the deportation order until the judge rules on it. If the alien did not receive notice of the hearing for reasons other than his own fault, the motion can be filed at any time. If the alien received notice of the hearing, the motion must be filed within 180 days of the date of the order. This 180 day period can be tolled (held) if the failure to appear was the result of ineffective assistance

of counsel. However, the tolling is not indefinite. The alien must act with due diligence after learning of the existence of the order.

The 9th Circuit has held that a judge can not issue an *in absentia* order where the alien arrived at court while the judge was still in the courtroom, even if the alien arrived late. The court distinguished between failing to appear and appearing tardy. Clearly, however, it is risky to arrive late and hope that the judge will still be on the bench. A miscalculation could result in an *in absentia* order.

A person who has an *in absentia* order is subject to being removed from the United States. Sometimes, a person learns about the *in absentia* order when Immigration and Customs Enforcement (ICE) takes them into custody. Anyone who has ever filed an application for an immigration benefit may be at risk. Denials of applications are often followed by a notice to appear. Anyone who suspects that proceedings may have been instituted against them should consult a knowledgeable and experienced immigration lawyer.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City. Telephone: (800) 795-8009 E-mail: immigration@rreeves.com Website: www.rreeves.com

The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case.

(Advertising Supplement)



ATTY. RAY BULAON

"5 Facts You Should Know About Bankruptcy"

1. Bankruptcy is not always your fault.

If you are overwhelmed with debt problems, you may feel alone, depressed, guilty or all of the above. In most cases, bankruptcy is caused by events beyond your control- job loss, sickness, disability, divorce, to name a few. In others, it is simply due to poor financial planning. Don't be too hard on yourself. Life is not perfect- and neither are you.

2. There is life after bankruptcy.

Some people have the mistaken belief that once they file, life will never be "normal" again and that their credit is ruined forever. The truth is that most people who file bankruptcy are able to rebuild credit very quickly only after a few years and buy a home like everyone else.

3. Bankruptcy provides immediate debt relief.

The day you file bankruptcy, creditors have no choice but to leave you alone. That means no more harassment from creditors, lawsuits, judgments or wage garnishments. The relief is immediate. Suddenly you can breathe better and feel like a human being again.

4. Most people who file bankruptcy keep everything and lose nothing.

Some people are worried that once they file, they will automatically lose everything that they have worked so hard for. The truth is that in most cases, you get to protect your home, car, bank account and all other assets. You lose nothing but your debts.

5. Choosing the right bankruptcy attorney to help you is essential.

Choose a lawyer who not only has the knowledge and experience to handle your case (the "legal side") but also one who has your best interests at heart- someone who will take time to listen, answer your questions, and someone who understands the "human side" of bankruptcy.

(Important: None of the information herein is intended to give legal advice for any specific situation. Bankruptcy laws are often complex and situations vary. For a FREE LEGAL ANALYSIS of your situation, please call for an appointment.)

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