

#39.90

7/2/75

Memorandum 75-51

Subject: Study 39.90 - Claim and Delivery (Turnover Order)

Attached to this memorandum are two copies of a staff draft of the Recommendation Relating to Turnover Orders Under the Claim and Delivery Law. This recommendation implements the decision made at the last meeting regarding the notice provision in turnover orders under claim and delivery. We hope you will approve it for printing in the appendix to the Annual Report. Please make your suggested editorial changes on one copy and give it to the staff at the July meeting.

Respectfully submitted,

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Legal Counsel

STAFF DRAFT

RECOMMENDATION

relating to

TURNOVER ORDERS UNDER THE  
CLAIM AND DELIVERY LAW

The claim and delivery statute<sup>1</sup> includes a provision--Code of Civil Procedure Section 512.070--permitting the court to issue an order directing the defendant to transfer possession of the property described in the writ of possession to the plaintiff. Although the turnover order is directed only to the defendant, Section 512.070 requires that the order include a notice stating that failure to turn over possession of the property to the plaintiff may subject the defendant or person in possession to being held in contempt of court or arrest.<sup>2</sup> A person in possession of the property who is not a defendant in the action should not be subject to being held in contempt for failure to obey an order that is not directed to him. Accordingly, the Commission recommends that Section 512.070 be amended to delete the reference to the other person in possession.

In addition, the Commission recommends that the words "or arrest" be deleted from Section 512.070 to avoid the implication that the defendant may be subject to arrest independent of contempt proceedings.

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1. Code of Civil Procedure Sections 511.010-516.050 were enacted by the Legislature in 1973 (Cal. Stats. 1973, Ch. 526) on recommendation of the Law Revision Commission. See 11 Cal. L. Revision Comm'n Reports 301 (1973).

2. The notice provision was added by an amendment in the Assembly. See Assembly Bill 103 (1973 Reg. Sess.), as amended, April 23, 1973.

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The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 512.070 of the Code of Civil Procedure, relating to claim and delivery.

The people of the State of California do enact as follows:

SECTION 1. Section 512.070 of the Code of Civil Procedure is amended to read:

512.070. If a writ of possession is issued, the court may also issue an order directing the defendant to transfer possession of the property to the plaintiff. Such order shall contain a notice to the defendant ~~or the party in possession of such property,~~ that the failure to turn over possession of such property to plaintiff may subject the defendant ~~, or person in possession of such property,~~ to being held in contempt of court ~~or arrest~~ .

Comment. Section 512.070 is amended to delete the reference to the party or person in possession in the provision requiring the order to state that failure to comply may subject such person to contempt of court. Since the order is directed only to the defendant, it would be inappropriate to hold some other person in contempt for failure to obey it.

Section 512.070 is also amended to delete the words "or arrest" from the last sentence. This amendment makes clear that the defendant is not subject to arrest independent of contempt proceedings. See Code Civ. Proc. § 501 (civil arrest abolished). A person may still be arrested in the course of contempt proceedings. See Code Civ. Proc. §§ 1212, 1214.