6-21/220.00 Private Place

The provisions requiring a court order based on probable cause prior to levying on property in a private place should be complied with prior to levying on personal property physically on the person or held in the hands of a defendant.

Unless consent is freely, voluntarily and knowledgeably given, the levying officer is not authorized to enter any private place to seize property unless in possession of a writ or other order of court directing the officer to enter that specific private place.

Fourth Amendment protections against unreasonable searches and seizures extend to civil as well as criminal matters. Intrusions into private places in execution of process are searches and seizures within meaning of Fourth Amendment, and a search is unreasonable unless supported by a warrant (order) issued by a magistrate upon a showing of probable cause. Where government officials rely on consent to justify the lawfulness of a search, the burden is on them to show by clear and positive evidence that consent was freely, voluntarily and knowledgeably given. The occupant of the premises is confronted not only by the intimidating presence of an officer of law, but also by the existence of legal process which appears to justify the intrusion. In such a situation, acquiescence in the intrusion generally cannot operate as a voluntary waiver of Fourth Amendment rights. Although it is established that one may waive the Fourth Amendment right to be free from unreasonable searches and seizures, the courts indulge every reasonable presumption against waiver of fundamental constitutional rights. Invitations to enter one's house, extended to armed officers of the law who demand entrance, are usually to be considered as invitations secured by force. (Blair v. Pitchess, 5 Cal.3d 258)

The preceding paragraphs set forth objective standards to be followed by the levying officer in executing the officer's ministerial duties. These objective standards, however, are based upon the levying officer having knowledge of whether the property is located in a "private place," as such term is used in connection with the Fourth Amendment proscription against unreasonable searches and seizures. In this context the law, through the doctrine of stare decisis or case law, is continually changing. The situation is exacerbated by the fact that, although the courts look to objective factors to decide if the defendant exhibited an expectation of privacy in order to make a specific location a "private place," it is the defendant's subjective intent as demonstrated by these objective factors that are controlling. The following cases offer some insight into the uncertainty of what may or may not be found to be a "private place." In each and every case some independent judgment will be required based on the specific facts and circumstances. Each levy situation should be approached from the standpoint that if it is unclear whether the location is a "private place," the actions to be taken should be consistent with those that would be authorized if the location were a "private place."

Homes, offices and hotel rooms fall within the category of maximum protection from unreasonable searches. Certain places carry with them expectation of privacy which, although considerable, is less intense and insistent than in the case of homes, offices and hotel rooms; such places may be searched upon probable cause alone under circumstances of less demanding urgency, and include automobiles, and trunks consigned to common carrier. Some sites are regarded as so public in nature that searches are justifiable without any particular showing of cause or exigency, and include places which might be classified as open fields and places in which the defendant has not exhibited a subjective expectation of privacy or where such an expectation would be unreasonable. (People v. Dumas, 9 CA 3d 871)

A resident of a house may justifiably rely upon privacy of surrounding areas as protection from peering of officers, unless the resident is exposed to that intrusion by existence of public pathways or other invitations to

the public to enter upon the property. (Lorenzana v. Superior Court, 9 CA 3d 626)

A fenced front yard does not necessarily show an expectation of privacy. The determining factor in considering whether an individual's yard is protected by the Fourth Amendment is what reasonable expectation of privacy was exhibited, not what the defendant subjectively claimed. There is no reasonable expectation of privacy in a front yard of a residence in the absence of a locked gate, high solid fence blocking the front yard from view, a written notice to keep out or beware of a dog, or perhaps a doorbell at the front gate. (People v. Mendoza, Super., 122 CA 3d Supp. 12)

In People v. Moreno (204 CA Rptr. 17), the court held that an attached garage, whether or not it has a common entry, is considered an integral part of the house and is simply one room of several which together compose the dwelling. Consequently, attached garages may not be entered to make a levy or for any other purpose unless the deputy has first obtained the occupant's consent or is in possession of a court order authorizing entry into the specified garage.

• 6-21/220.10 Private Place Endorsement

If the specified property or any part of it is in a private place, and the writ of possession includes an endorsement specifying any private place that may be entered to take possession of the property or some part of it, the levying officer shall at the time he demands possession of the property announce his identity, purpose, and authority. If the property is not voluntarily delivered, the levying officer may cause any building or enclosure where the property may be located to be broken open in such a manner as he reasonably believes will cause the least damage and may call upon the power of the county to aid and protect him, but, if he reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, he shall refrain from seizing the property and shall promptly make a return to the court from which the writ issued setting forth the reasons for his belief that the risk exists. In such case, the court shall make such orders as may be appropriate. (CCP 514.010(c), 512.080)

• 6-21/220.20 Private Place No Endorsement

If the personal property sought to be seized is located in a private place of the defendant, and the writ of possession does not specify a private place endorsement, the levying officer making the levy shall demand delivery of the property by the defendant and shall advise such person of potential liability for additional costs and attorney's fees that may be incurred in further proceedings to obtain delivery of the property. If the defendant does not deliver the property, the levying officer shall promptly notify the plaintiff of the failure to obtain custody of the property and shall make no further attempt to obtain custody of the property until a court order is delivered to the officer which states that there is probable cause to believe that the specific property sought to be levied upon is in a specific location described in the order.

The plaintiff in an ex parte motion may apply to the court for an order directing the levying officer to enter a private place to search for and seize the property. The plaintiff may also petition the court for an order to search for and seize the specified property in a different private place indicated on the writ of possession. (CCP 512.090)

Upon receipt of the ex parte court order, the levying officer may proceed with the levy in accordance with 6-21/220.10 Private Place Endorsement.