

## **CHILD SUPPORT CONTEMPT AND THE MOSS CASE**

The California Supreme Court published the Moss case on February 2, 1998. In that case the Father did odd jobs to sustain himself while his mother provided most of his needs when he was there. The basic outcome of this case is that a parent who claims an inability to pay court-ordered child support can be punished for contempt if the inability is caused by a willful failure to work. The court said that this case only applies to child support contempt cases rather than spousal support contempt cases.

The Court also clarified what procedures should be followed in a child support contempt case. The person bringing the case must show beyond a reasonable doubt that (1) there was a valid court order, (2) that the other party knew about the order, and (3) that the other party didn't pay what was ordered.

The person who is defending against the contempt case then has to prove any affirmative defenses by a preponderance of the evidence. The most common affirmative defense is an inability to pay the court-ordered support.

These new procedures only apply to counts that occur after February 2, 1998, otherwise the old procedures and law apply.

The Feiock case is the one that has been in effect regarding support cases since it was published in 1989. That case stated that the person bringing the action had to prove beyond a reasonable doubt that (1) there was a valid court order, (2) that the other party knew about the order, and (3) that the other party did not comply with the order. The person defending then could raise an affirmative defense (i.e., inability to pay the amount ordered) with sufficient evidence. The original person then has to prove beyond a doubt that the affirmative defense doesn't exist.

The statute of limitations (SOL) on when a count can be brought is three (3) years from the date the payment was due. The SOL remains the same under both cases.

Contempt punishments stays the same under either case. For a first case (no matter how many counts) the person can be put in county jail for up to 5 days **or** do up to 120 hours of community service, and pay a fine of \$1000.00 for each count. (In Santa Clara County the court very rarely imposes the fine.) For a second case (again, no matter how many counts) the person can be put in county jail for up to 5 days **and** do up to 120 hours of community service, and pay a fine of \$1000.00 for each count. For a third and subsequent cases (no matter how many counts) the person can be put in county jail for up to 10 days **and** do up to 240 hours of community service and pay a fine of \$1000.00 for each count. In Santa Clara County the person is also on informal probation for a period of 3 years.

The Court can also order the person found in contempt to pay attorney fees and costs to the other person.

If jail and/or community service is ordered, the court has to take into account the person's work schedule. Additionally, if the person cannot afford an attorney the court has to appoint an attorney to represent them on the contempt case.