

In re Marriage of Schnabel (1994 - 30 Cal. App.4th 747, 36 Cal.Rptr.2d 682)

This much litigated case confirms that perquisites received by H as a result of his employment and ownership in the corporate business are includible in the calculation of income for purposes of support.

This was a 25 year marriage. H was an employee and 30% owner of the corporate business. In seeking adequate records to establish income for support and division of property, the appellate court affirmed W's right to corporate records to make such determination. W's need for information trumped the corporation's right to privacy insofar as it did not encroach on the rights of the other shareholder and other employees' privacy rights under the U.S. Constitution.

W's CPA determined the following line items to be included in income available for support:

- W-2 wages.
- W-2 allowance for auto mileage.
- Personal expenses paid by a corporate credit card.
- Medical and life insurance premiums.
- 30% of attorney fees for a motion by the corporation to quash discovery and for fees paid by the corporation for H's divorce attorney.

H objected to the inclusion of health insurance premiums because the premiums included coverage for W. The court rejected this on the grounds that H did not bring this up in the hearing by the trial court.

H objected to inclusion of the attorney fees because he signed a promissory note to the corporation for those payments. The appellate court rejected this because the note was signed right before the OSC hearing whereas the fees were incurred a long time prior to the hearing. The trial court also noted the substantial retained earnings of the corporation as evidence of H's ability to pay the attorney fees.

Overall, the appellate court found the line items included by W's CPA as income includible for purposes of support to be proper.

As indicated earlier, one of the “chapters” of this case deals extensively with the “out spouse’s” need for documents weighed against a corporation and shareholders’ right to privacy. This case removes the roadblock posed by *Rifkind* in determining the right of access to information by a non-shareholder spouse.