



### **Sarbanes-Oxley Brain Twisters**

As if Sarbanes-Oxley itself isn't enough to digest, take a look at these additional considerations that could be raised in your practice:

**Too much information.** Are attorneys committing malpractice if they don't advise clients to be selective about what they tell them? Too much information in the hands of attorneys may place them in the position of being an adversary of their own client, requiring the attorney to disclose "confidential" information to the government. On the other hand, failure to obtain all the information may make the attorney's advice to the client inappropriate or actually wrong if all the circumstances had been known.

**Unrelated findings.** What happens if an attorney who represents the company on an unrelated employment or tax issue discovers evidence of a material violation? At the present time, it appears that such an attorney would be exempt from Sarbanes-Oxley reporting. However, would the exempt employment or tax attorney be required to disclose the same information to his or her partner who represents the company before the commission and is not exempt?

The answer may depend on whether a law firm or its partners are subject to penalties under the proposed SEC rules when one of its partners or associates who appears before the SEC fails to report known evidence of material violations.

**Outside consultants.** Attorneys may need to hire outside accountants, consultants or other attorneys to provide objective opinions before taking action on a suspected violation. However, such multilayered participation is likely to raise attorney-client privilege issues.