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For Immediate Release

Arnstein Partner Appointed to ISBA Review Committee in Response to U.S. Department of Justice

Chicago, IL – Partner, William J. Anaya, was recently appointed to a Special Committee of the Illinois State Bar Association to review and develop recommendations for the ISBA to respond to the efforts of the United States Department of Justice in coercing waivers of the attorney-client and work product privileges from corporate officers, directors and employees. The federal government's privilege waiver policies have been articulated in two Justice Department Memoranda (the 1999 "Holder Memorandum" and the "2003 Thompson Memorandum"), and are described in the November 2004 commentary provided by the United States Sentencing Commission to Section 8C2.5 of the Federal Sentencing Guidelines (the "2004 Privilege Waiver Amendment"). In April 2005, the Commission voted unanimously to reverse the 2004 Privilege Waiver Amendment, but unless Congress affirmatively modifies the Privilege Waiver Amendment, it will become law on November 1, 2006.

Under the guise of encouraging cooperation, these federal policies threaten to undermine sound corporate management and compliance programs, and create an unreasonable risk for individual employees and managers within a company. Corporations under investigation for routine to significant violations of federal law are charged with being uncooperative and are subject to increased scrutiny and potential punishment if the corporations' employees seek to assert the attorney-client privilege or exercise their individual rights under the Fifth Amendment.

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