Ryan a pro bono problem

Magazine says law firm's representation of ex-governor doesn't meet the test

July 19, 2006 | By Susan Chandler, Tribune staff reporter

Winston & Strawn didn't get paid for defending former Gov. George Ryan in his high-profile public corruption case. Now it isn't getting any credit either.

The American Lawyer has decided that Winston & Strawn can't count the thousands of hours it spent representing the former Illinois governor as "pro bono" work for purposes of the magazine's annual rankings--even though the firm voluntarily did the work for free.

The result: Winston & Strawn ended up ranking 60th among major law firms in pro bono work, down from 39th place last year.

"The firm would have ranked higher if we had counted the Ryan hours, but for reasons we explained, we didn't think it was appropriate to count those hours" American Lawyer editor-in-chief Aric Press said in an interview Tuesday.

"It didn't seem to us to meet our definition. We went back to the firm and discussed it. They resubmitted their hours and those were the ones we published."

As previously reported, Winston devoted a team of 20 attorneys to Ryan's defense in a six-month trial that ended in a jury finding him guilty on all 18 counts. The firm's expense has been estimated at $20 million or more, most of that in forgone income from having its attorneys not working for paying clients.

When the top-drawer firm took on the case for free and appointed Dan Webb, its star litigator, to lead the defense, Winston & Strawn said it was doing so because Ryan could not afford to mount a competent defense on his own.

But others viewed Winston's unusual largess as a function of politics. The firm's chairman is James Thompson, a former Illinois governor himself. Ryan, in fact, served two terms as Thompson's lieutenant governor in the 1980s.

Some skeptics in the legal community complained that Ryan, who receives a $195,000 state pension and has a legal defense fund, was hardly poor enough in any objective sense to merit receiving pro bono legal services.

American Lawyer ended up agreeing with them. "Although Ryan needed vast resources to defend himself, the former governor . . . doesn't meet anyone's definition of `poor.' Could he afford Webb and Co.? No. But that's not the standard," the magazine wrote.

The magazine's editors also asked themselves "whether the firm was defending an important civil right that would trump the indigent requirement. Again the answer was no."

Barbara Sessions, Winston & Strawn's head of business development, said the firm remains "extremely proud of its pro bono record."

Winston & Strawn recently received an award from the American Bar Association for its pro bono work providing guardians to represent the best interest of children in contested custody cases at the Daley Center. Its Washington, D.C., office has been honored in the past year for its work on behalf of people seeking asylum in the U.S., and the New York office has been recognized for its services to non-profit groups.

According to its count, the firm devoted 38,000 hours to pro bono work last year, down slightly from 39,000 hours in 2004, said Greg McConnell, head of pro bono services.

"We're always trying to increase our pro bono work. That's a never-ending goal," said McConnell. "We don't have any control over where we stacked up in the rankings."

Winston & Strawn continues to represent Ryan for free as he appeals his conviction.

The Ryan case is prompting new thinking about the definition of pro bono services, legal experts said.

Traditionally, pro bono work has been defined as legal work for people of limited means or organizations that assist them. The definition used by the Pro Bono Institute, a non-profit group in Washington, D.C., also covers work on civil rights issues and for civil liberties organizations.

"We've got a definition the firms sign on to, but there's nothing that says firm can't have a different or broader definition," said Esther Lardent, the institute's president.

For instance, some firms count attorneys' work on non-profit boards as pro bono hours, but that work does not count under the Pro Bono Institute's definition, which specifies it must be legal work.

The acceptable level of a client's poverty is a gray area, Lardent said. "A `person of limited means' does not mean the federal poverty threshold. That is way, way too low, way too limited. It's not a hard line. . . . Studies

have found that people who are just over the poverty threshold have more legal problems than low-income people."

Still, a person in the country's top income bracket--like Ryan--wouldn't qualify under the institute's definition, she said.

Who is poor enough to qualify for free legal services isn't always clear, says Barry Levenstam, co-chairman of the pro bono committee at Jenner & Block, a Chicago firm that ranked seventh on American Lawyer's list of pro bono providers.

"It's a judgment call and it's not always an easy call," Levenstam said.

"I tell folks around here that the standard isn't whether they can afford Jenner & Block or not," he said. "We do occasionally get requests from people who could afford competent criminal defense counsel. Indigency is easy. Most of our cases, they live in the projects. There is no job, no family."

In June the Illinois Supreme Court issued new rules that may be a reaction to the Ryan case. It clarified its view that pro bono work on behalf of individual clients should be "rendered to persons of limited means."

The court said it considers its definition to cover not only "those persons whose household incomes are below the federal poverty standard, but also those persons frequently referred to as the "working poor."

However, a lawyer need not ask his client to present a W-2 wage statement. "A good-faith determination by the lawyer of client eligibility is sufficient," the court wrote.

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