

SUPREME COURT OF LOUISIANA

No. 02-B-0257

IN RE: BARRY W. BOLTON

ATTORNEY DISCIPLINARY PROCEEDINGS

VICTORY, J., dissenting.

I must respectfully dissent from the majority’s finding that while respondent “knowingly intended to enter into ex parte communications with Judge Garcia” about a case pending in Judge Garcia’s court, there was nonetheless “a lack of clear and convincing evidence respondent intended to offer a campaign contribution to Judge Garcia with the intention of improperly influencing the outcome of the case.” Per Curiam Opinion at p. 8.

The facts are basically undisputed. Respondent was waiting at the judges’ parking lot at the Franklinton courthouse for Judge Garcia to arrive. When Judge Garcia arrived with his law clerk, respondent asked to speak to the judge alone, whereupon the law clerk went into the courthouse. Over the course of a conversation lasting only minutes, respondent, a former assistant district attorney and city councilman, asked Judge Garcia how to give a gift to a judge, and how to make a campaign contribution to a judge. Respondent then proceeded to tell Judge Garcia that he had a personal injury case in his court involving a “badly hurt” plaintiff and a defendant with “deep pockets” and that he needed a friend. Immediately after speaking of his case, respondent inquired of Judge Garcia: “what if I wanted to give you \$5,000?” Subsequently, while motioning with his hands, respondent said “this

[conversation] is just between me and you,” whereupon Judge Garcia terminated the conversation and went inside the courthouse.

The Hearing Committee found only that respondent was negligent “in crafting a conversation with Judge Garcia that had the appearance of impropriety.” The Disciplinary Board went one step further, finding that respondent’s conduct was intentional, specifically finding:

Having this political experience, along with his experience as an Assistant District Attorney, the respondent’s assertion that he sought to only impress Judge Garcia or to obtain information about how to make a campaign contribution to a judge is not credible. Further, Respondent’s comments to Judge Garcia that ‘this [the conversation] is just between us,’ coupled with the fact that he wanted to speak to the judge alone, had asked the judge’s law clerk to leave so he could speak to the judge by himself, and had a case pending before the judge, support the finding that the respondent intentionally engaged in improper ex parte communication with Judge Garcia.

Apparently, the Disciplinary Board, and now the majority of this Court, finds a lack of clear and convincing evidence that respondent was attempting to bribe the judge because respondent did not come right out and say “I’ll give you \$5,000.00 if you rule in my client’s favor in the case before you.” However, such flagrant evidence is not required, as even in a criminal case, specific intent is inferred from the circumstances. Here, Judge Garcia, who both the Hearing Committee and the Disciplinary Board found to be totally credible, testified:

And it was a physical thing that I tried to describe in my statement to your and I made a motion. *It was almost like he shifted position and faced me and got into a personal contact with me and said, now, what if I wanted to give you — or donate —, I don’t want to cast that in the wrong way, \$5,000 and he looked down at the ground and went — drew a little square and said this is just between me and you.*

Finally, when Judge Garcia was asked to describe the context within which the comment was made and the motions he described, Judge Garcia stated:

But insofar as a time line is concerned, the reference to the money was not — to me, was not made until after he made the statement to me that he had a personal injury case pending. That's when he turned to me and started talking about this is just between me and you.

The Court's failure to call this blatant and egregious conduct what it is, e.g., attempted bribery of a judge, is regrettable. Further, if the evidence presented in this case does not amount to clear and convincing evidence of attempted bribery, the Court is *de facto* creating a burden of proof which will be all but impossible for the Office of Disciplinary Counsel to meet.

For all of the above reasons, I respectfully dissent.