

**BBO File No. C1-09-0142****MATTER OF JOHN DOE¹****Order Entered by the Board on September 13, 2010 Dismissing Petition for Discipline**

Bar counsel commenced expedited proceedings pursuant to S.J.C. Rule 4:01, § 8(4) by filing the summary of an admonition it had issued to the respondent, John Doe, Esquire, along with the objections and matters in mitigation presented by the respondent. Pursuant to S.J.C. Rule 4:01, §§ 8(2) and 8(4), and B.B.O. Rules, § 2.12, the matter was assigned to a special hearing officer.

During 2009, the respondent obtained a writ of execution against a former client based on a default judgment for unpaid legal fees. A sheriff levied on a house the former client owned. The respondent sent his former client a letter demanding payment of the judgment to avoid the sale of the former client's home. The letter contained the following statements:

“... despite what you might be advised, this is completely legal and the only way to stop it is to pay what is owed.”

“Taking my services without paying is stealing.”

The former client then filed a motion for relief from the default judgment, which the court allowed.

Bar counsel charged that the statements in the respondent's letter constituted advice to an unrepresented person whose interests reasonably conflicted with the interests the respondent was representing, in violation of Mass. R. Prof. C. 4.3(b).

The special hearing officer found that bar counsel has not sustained the burden of proving this charge because the respondent's letter did not constitute “advice” within the meaning of Rule 4.3(b). Further, the special hearing officer credited the respondent's statement during closing argument that he has learned a valuable lesson from his experience with the disciplinary system and concluded that even if the respondent's letter constituted “giving advice,” discipline is not warranted.

¹ A pseudonym. See S.J.C. Rule 4:01, §20(3)(d).

On September 13, 2010, the matter came before the Board of Bar Overseers without objection or appeal by either party. The board voted to adopt the report of the special hearing officer and dismissed the matter.