

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 105 DB 2023
Petitioner	:	
v.	:	Attorney Registration No. 30321
MARK STEVEN PEARLSTEIN	:	
Respondent	:	(Delaware County)

**ORDER**

AND NOW, this 4<sup>th</sup> day of August, 2023, in accordance with Rule 215(g), Pa.R.D.E., the three-member Panel of the Disciplinary Board having reviewed and approved the Joint Petition in Support of Discipline on Consent filed in the above captioned matter; it is

ORDERED that MARK STEVEN PEARLSTEIN be subjected to a **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(9) of the Pennsylvania Rules of Disciplinary Enforcement.

BY THE BOARD:



\_\_\_\_\_  
Board Chair

TRUE COPY FROM RECORD

Attest:



\_\_\_\_\_  
Marcee D. Sloan  
Board Prothonotary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner	:	No. <b>105</b> DB 2023
	:	
	:	
v.	:	Attorney Reg. No. 30321
	:	
MARK STEVEN PEARLSTEIN,	:	
Respondent	:	(Delaware County)

**JOINT PETITION IN SUPPORT  
OF DISCIPLINE ON CONSENT  
PURSUANT TO Pa.R.D.E. 215(d)**

Petitioner, the Office of Disciplinary Counsel (“ODC”) by Thomas J. Farrell, Chief Disciplinary Counsel, and Marie C. Dooley, Disciplinary Counsel and Mark Steven Pearlstein, Esquire (“Respondent”), respectfully petition the Disciplinary Board of the Supreme Court of Pennsylvania (“Disciplinary Board”) in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

<b>FILED</b> <b>07/20/2023</b> <b>The Disciplinary Board of the Supreme Court of Pennsylvania</b>
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2. Respondent was born May 30, 1954 and was admitted to practice law in the Commonwealth on October 17, 1979. Respondent is on active status and his last registered address is 175 Strafford Avenue, Suite One, Wayne, PA 19087

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. Respondent has no other record of discipline.

### **SPECIFIC FACTUAL ALLEGATIONS ADMITTED**

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 27 herein.

6. On August 11, 2020, following a traffic accident with 43-year-old Philadelphia resident, Daniel Berry, on Route 202/DeKalb Pike in Lower Gwynedd Township, Montgomery County, PA, Respondent brandished and discharged his licensed handgun across the two-lane road.

7. At least one other driver in the vicinity called police to report the gunshot and that two males were arguing on the shoulder of Route 202.

8. Respondent's misuse of his firearm required police to employ enhanced protocols when responding to the "shots fired" traffic accident.

9. There were no eyewitnesses to the collision or the gun discharge.

10. There was no northbound traffic on the road when the gun was discharged. Southbound traffic had stopped before reaching Respondent's car.

11. Respondent believed Mr. Berry acted in an aggressive manner and averred that Mr. Berry leaned against the car door to prevent Respondent's exit.

12. Respondent showed his gun and Mr. Berry said it was a "toy."

13. Respondent believed Mr. Berry was going to punch him and discharging the firearm was in self-defense.

14. Respondent fired the gun parallel to Mr. Berry's ear into grass and dirt across the road.

15. Respondent surrendered his firearm to the police without incident at the scene.

16. Following the incident Mr. Berry and Respondent provided very different narratives to the police about the collision and the events leading to Respondent's firing the gun.

17. Respondent signed a police statement that expressly stated "I grab[bed] my weapon . . . I said something to the effect of 'Back the hell off'. He comes forward toward the window and I'm still sitting in the car. I said 'Back off or you're going to get shot.' He didn't back off so I **whizzed one past his ear.** . . . I discharged my weapon once in the direction past his ear so that he would not get struck." *Emphasis added.*

18. Respondent admitted that he brandished his weapon in other road incidents but never discharged it.

19. On September 17, 2020, Lower Gwynedd Township police filed a criminal complaint that initially charged Respondent with recklessly endangering another person ("REAP") and simple assault attempt by menace.

20. On November 1, 2022, at a hearing before Montgomery County Common Pleas Court Judge, Steven T. O'Neill, Respondent pled guilty to an amended count of disorderly conduct pursuant to 18 Pa.C.S.A. § 5503(a)(4) ("...creat[ing] a hazardous or physically offensive condition by any act **which serves no legitimate purpose** ..."), as a

third degree misdemeanor under 18 Pa.C.S.A. § 5503(b), which applies when there is intent to “cause substantial harm or serious inconvenience” and is punishable by a term of up to one year imprisonment. *Emphasis added.*

21. Although the Montgomery County District Attorney’s Office, represented by Assistant District Attorney Gabrielle Hughes, consented to the amended charge, the DA’s Office did not agree that Respondent was in reasonable fear for his safety and had a viable self-defense.

22. By letter dated November 10, 2022, Respondent timely reported his criminal conviction to ODC in accordance with Pa.R.D.E. 214(a), averred he acted in self-defense and insisted he would handle himself in the same way again under similar circumstances.

23. On February 15, 2023, ODC filed the Notice of Criminal Conviction with the Pennsylvania Supreme Court, Case No. 2961 DD 3, and issued to Respondent a DB-7 Request for Statement of Position regarding the criminal conduct.

24. On March 16, 2023, Respondent submitted his Statement of Position, which repeated his self-defense claims and averred “he was simply a citizen, with the absolute right to take action to avoid being injured.”

25. Respondent maintains he took steps that were incremental and solely in self-defense.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED**

26. Respondent’s criminal conduct violated the following Rule of Professional Conduct and Rule of Disciplinary Enforcement:

- a. RPC 8.4(b) – “It is professional misconduct for a lawyer to: . . . commit a criminal act that reflects adversely on the lawyer’s . . . fitness as a lawyer in other respects;”
- b. Pa.R.D.E 203(b)(1) – “The following shall also be grounds for discipline: . . . [c]onviction of a crime.”

**SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE**

27. Respondent hereby consents to a public reprimand being imposed upon him by the Disciplinary Board for the mishandling of his firearm. Attached to this Petition is Respondent's executed affidavit required by Pa. R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215 (d)(1) through (4).

28. In support of the Joint Recommendation, it is respectfully submitted that the following mitigating circumstances are present:

- a. the severity of Respondent’s misconduct is tempered by the fact that he fired the gun in an unpopulated area when there was no vehicle traffic;
- b. Mr. Berry had no personal injuries from the incident;
- c. Respondent:
  - i. was not convicted of REAP or an assault charge;
  - ii. received probation only;
  - iii. forfeited his firearm;
  - iv. is a military veteran with firearm training;

- v. has no record of discipline or other criminal convictions;
- vi. fully cooperated with police at the scene;
- vii. relinquished his firearm without incident;
- viii. timely reported his conviction in accordance with Pa.R.D.E. 214(a); and
- ix. fully cooperated with ODC and its investigation.

29. Respondent herein:

- a. admits he engaged in misconduct and violated the charged Rules of Professional Conduct and Disciplinary Enforcement;
- b. expresses sincere remorse; and
- c. accepts public discipline in the form of a Public Reprimand.

30. Respondent is aware that any future misconduct involving a firearm would result in substantial discipline.

**Relevant Disciplinary Authority**

31. Generally, criminal conduct involving a firearm results in public discipline ranging from public reprimand to suspensions of varying lengths depending on the facts and circumstances and whether the conviction included REAP charges.

32. Notably, public reprimands have been imposed when the attorney is convicted of a crime involving the potential risk of harm to others, but no person was actually harmed. The below matters involve similar criminal conduct:

- a. In *Office of Disciplinary Counsel v. Jander*, 67 DB 2023 (D.Bd. Order 05/09/23), Jander entered a New Jersey courthouse with a concealed, loaded handgun he inadvertently left in his work bag after cleaning it. Jander, a licensed gun owner, explained that he had

placed the gun in his work bag out of sight in deference to his parents who disapproved of firearms. Jander forgot to return the licensed firearm to his safe prior to entering the courthouse. Jander did not have a license to carry a concealed firearm in New Jersey and thus, was convicted of unlawful possession. However, the conviction was viewed as an isolated incident. The Disciplinary Board granted a joint petition for a public reprimand on consent.

- b. In *Office of Disciplinary Counsel v. Todd Joseph Leta*, No. 153 DB 2021 (D.Bd. Order 12/27/2021), after becoming severely intoxicated, Leta mistakenly entered the property of another, attempted to leave but was confronted by the owner. In response, Leta became confrontational, displayed a handgun, and threatened the homeowner. Leta received a public reprimand with conditions following his guilty plea to terroristic threats, simple assault, loitering and prowling at nighttime, disorderly conduct, and public drunkenness.
- c. In *Office of Disciplinary Counsel v. Thomas L. Lightner*, No. 93 DB 2016 (D.Bd Order 6/29/16), Lightner received a public reprimand on consent approved by the Disciplinary Board for his conviction of multiple criminal offenses, including REAP, after he intentionally set fire to his own property- a camper and pavilion. Although convicted of REAP, no persons were injured by his criminal conduct.

33. In contrast, the below disciplinary matters resulting in law license suspensions involved more criminal charges and other factors weighing in favor of greater discipline including substance abuse and mental health concerns:

- a. In *Office of Disciplinary Counsel v. Kunkle*, 101 DB 2001 (D.Bd. Rpt. 4/1/2002) (S. Ct. Order 4/19/2002), while under the influence of marijuana, Kunkle attempted to rearrange his gun collection at his home. One of the guns discharged and the bullet came within five feet of a six-year-old girl in an adjacent residence and plaster from the wall hit the girl's mother. Kunkle was convicted of the REAP charge, received 2 years' probation and six (6) months law license suspension.
- b. In *Office of Disciplinary Counsel v. Ivan S. DeVoren*, No. 103 DB 2019 (D.Bd. Rpt. 1/21/2021) (S. Ct. Order 4/1/2021), DeVoren's law license was suspended for 2 years retroactive to the date of his temporary suspension. A police investigation commenced after DeVoren's neighbor filed a criminal complaint against him, revealed cocaine, heroin, marijuana, and drug paraphernalia inside DeVoren's



- residence found after a lawful search. While out on bond, DeVoren compounded his misconduct and criminal charges, by firing shots inside his Pittsburgh residence. DeVoren pled guilty to multiple charges including disorderly conduct, discharging a firearm within city limits, possession of controlled substances and possession of drug paraphernalia.
- c. In *Office of Disciplinary Counsel v. Vatche Kaloustian*, No. 76 DB 94, 26 Pa. D & C. 4th 350 (1995), Kaloustian's law license was suspended for one year following his conviction for terroristic threats made when he shouted from his home about killing someone. Kaloustian threatened police he intended to get his gun and kill them. He appeared in his foyer with a four-foot spear and again threatened to harm the officers. Kaloustian did not have a prior record of discipline but compounded his misconduct by failing to cooperate with law enforcement.
  - d. In *Office of Disciplinary Counsel v. Charles C. Daley, Jr.*, No. 2823 DD No. 3, No. 122 DB 2021 (S. Ct. Order 10/1/21), Daley knowingly brought a loaded concealed handgun containing banned hollow-point bullets into a New Jersey courthouse. Sheriff Deputies discovered the handgun when Daley attempted to pass through a metal detector. Daley entered a conditional guilty plea to unlawful possession of a handgun and was accepted into the PTI Program for 36 months. As part of the criminal conviction, Daley was required to continue psychotherapy and periodic psychiatric risk evaluation. Further, Daley admitted that he had illegally carried a concealed handgun into the courthouse on multiple occasions. Daley consented to a three-month license suspension that was stayed in its entirety.
  - e. In *Office of Disciplinary Counsel v. Lee Eric Oesterling*, 2898 DD3, No. 82 DB 2022 (S. Ct. Order 8/24/2022), the Pennsylvania Supreme Court suspended Oesterling for five years on consent after his 2014 conviction for brandishing a rifle and failing to surrender the weapon when ordered. A search of his townhouse revealed multiple bullet holes created when neighbors were in their adjacent townhomes. Oesterling pled guilty to simple assault and REAP. Oesterling received concurrent sentences of imprisonment up to 23 months; was required to pay the costs of prosecution and a \$100 fine. Oesterling had a prior suspension and failed to report his criminal conviction.

Unlike the above suspension cases, Respondent has not exhibited any additional concerning behavior involving substance abuse or other criminal misconduct. Respondent's criminal conviction is more similar to *Jander, Leta and Lightner* because, although reckless and unacceptable behavior, no person was injured by the criminal misconduct.

23. Based on Respondent's guilty plea, mitigating factors, lack of aggravating factors like those present in the above suspension cases, and precedent established by discipline imposed in comparable cases involving attorneys who engaged in misconduct or were convicted of crimes involving either non-violent offenses, or potentially violent offenses where no person was harmed, the parties recommend the appropriate discipline to be imposed in this matter is a public reprimand. A public reprimand will impress upon Respondent and all members of the bar that failure to responsibly handle a firearm reflects poorly on Respondent as an attorney and the entire legal profession and road rage-like incident place the public, and police in unnecessary harm.

WHEREFORE, ODC and Respondent respectfully request that your Honorable Board:

- a. review and approve this Joint Petition and schedule imposition of a public reprimand; and

- b. pursuant to Pa.R.D.E. 215(i), enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell,  
Chief Disciplinary Counsel



07-20-23  
DATE

MARIE C. DOOLEY, ESQUIRE  
Disciplinary Counsel  
Attorney Registration Number 203681  
Office of Disciplinary Counsel  
820 Adams Avenue, Suite 170  
Trooper, PA 19403

\_\_\_\_\_  
DATE

\_\_\_\_\_  
MARK STEVEN PEARLSTEIN, ESQUIRE  
Attorney Registration Number 30321  
Respondent

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820 Adams Avenue, Suite 170  
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18 JUL 23  
DATE

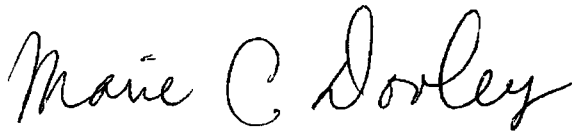
  
\_\_\_\_\_  
MARK S. PEARLSTEIN, ESQUIRE  
Attorney Registration Number  
Respondent

**VERIFICATION**

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

07-20-23

DATE



MARIE C. DOOLEY, ESQUIRE  
Attorney Registration Number 203681  
Disciplinary Counsel

DATE

MARK STEVEN PEARLSTEIN, ESQUIRE  
Attorney Registration Number 30321  
Respondent


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MARIE C. DOOLEY, ESQUIRE  
Disciplinary Counsel

  
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MARK S. PEARLSTEIN, ESQUIRE  
Attorney Registration Number 30321  
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
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OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner	:	No. DB 2023
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v.	:	Attorney Reg. No. 30321
	:	
MARK STEVEN PEARLSTEIN,	:	
Respondent	:	(Delaware County)

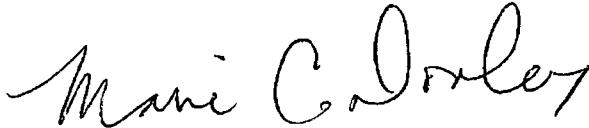
**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class, Overnight Mail and Email, as follows:

Mark Steven Pearlstein, Esquire  
175 Strafford Avenue Suite One  
Wayne, PA 19087  
mspearls@att.net

Dated: 07-20-23



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MARIE C. DOOLEY, ESQUIRE  
Disciplinary Counsel  
Attorney Registration Number 203681  
Office of Disciplinary Counsel  
820 Adams Avenue, Suite 170  
Trooper, PA 19403

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 2961 DD 3
	:	No. DB 2023
	:	Attorney Reg. No. 30321
v.	:	(Delaware County)
MARK S. PEARLSTEIN, Respondent	:	

**AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.**

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF DELAWARE:

MARK S. PEARLSTEIN, ESQUIRE, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the imposition a public reprimand in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 17, 1979.
2. He desires to submit a Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d).
3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware of the implications of submitting this affidavit.
4. He is aware that there is presently pending a proceeding into allegations that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d) to which this affidavit is attached.
5. He acknowledges that the material facts set forth in the Joint Petition are true.



6. He submits the within affidavit because he knows that if charges continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent her in the instant proceeding. He has not retained, consulted and acted upon the advice of counsel, in connection with his decision to execute the within Joint Petition.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

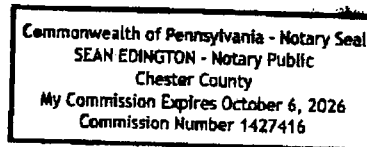
Signed this 17 day of July, 2023.



MARK S. PEARLSTEIN, ESQUIRE  
Attorney Registration Number 30321  
Respondent

Sworn to and subscribed  
before me this 17 day  
of July, 2023.

  
Notary Public



**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: office of Disciplinary Counsel  
Signature: Marie C. Dooley  
Name: Marie C. Dooley  
Attorney No. (if applicable): 203681