



POLICE DEPARTMENT

November 12, 2009

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Dennis Mogelnicki  
Tax Registry No. 937118  
Warrant Section  
Disciplinary Case No. 85136/08  
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The above-named member of the Department appeared before me on August 27, 2009, charged with the following:

1. Said Police Officer Dennis Mogelnicki, assigned to Queens Warrant Squad, on or about October 10, 2008, while off-duty, in New York County, after being involved in an unusual police occurrence, did fail and neglect to request the response of the Patrol Supervisor, precinct of occurrence, as required.

P.G. 212-32 Page 1, Paragraph (1) (2) COMMAND OPERATIONS

2. Said Police Officer Dennis Mogelnicki, assigned as indicated in Specification #1, while off-duty, on the date and location indicated in Specification #1, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer prevented [REDACTED] [REDACTED] from walking away from him by grabbing her and causing her to fall to the ground.

P.G. 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

3. Said Police Officer Dennis Mogelnicki, assigned as indicated in Specification #1, while off-duty, on the date and location indicated in Specification #1, did unlawfully supply alcoholic beverages to [REDACTED] [REDACTED], while she was not of a legal age to consume intoxicants.

N.Y.S. ALCOHOL BEVERAGE CONTROL LAW SECTION 65(1) AND SECTION 65a

The Department was represented by Amy Avila, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

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The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent, having pleaded Guilty, is found Guilty.

### SUMMARY OF EVIDENCE IN MITIGATION

The Respondent testified that on October 10, 2008, he took his girlfriend [REDACTED], and her friend [REDACTED], out to celebrate her 20<sup>th</sup> birthday. They went to see an "interactive play" which was being performed at a theater on East 15<sup>th</sup> Street, Manhattan. When they entered the theater, they went to the bar in the lobby. The Respondent purchased two alcoholic drinks for himself and two alcoholic drinks for [REDACTED], even though he was aware that the lawful drinking age in New York is 21. They were at the bar for about one hour. He did not believe that [REDACTED] was intoxicated but they had an argument about "a past relationship." As a result, they did not speak to each other while they were watching the play. During the play, a male performer stepped off the stage and entered the audience seeking females who would dance with him. [REDACTED] got out of her seat and danced with the performer.

When the performance ended, they left the theater and entered the Respondent's car. As he was driving toward the 59<sup>th</sup> Street Bridge, he chided [REDACTED] for being the first woman to volunteer to dance with the performer. They argued and [REDACTED] told him that she wanted to get out of the car immediately. He pulled over and stopped.



[REDACTED] got out of the car and began to walk away. The Respondent was concerned that [REDACTED] might get lost because she was not familiar with Manhattan. He got out of the car and grabbed her by her elbow. He acknowledged that "this was a mistake" because although he was not trying to knock her to the ground, his action put her off balance and this, combined with the fact that she was wearing high heel shoes, caused her to fall down. He helped her get back up.

Because a passerby called 911, two uniformed officers responded to the scene. The Respondent identified himself to the officers. He explained to them what had occurred and they drove off in their Radio Motor Patrol car. After [REDACTED] friend [REDACTED] assured the Respondent that she would go with [REDACTED] and make sure that she got home safely, he left and drove home alone to his residence [REDACTED].

The Respondent testified that he became upset at himself for the poor manner in which he had handled his verbal dispute with [REDACTED]. Four days after their dispute, he called LifeNet, New York City's counseling referral hotline. LifeNet personnel referred him to the Department's Employee Management Division (EMD). After he described his incident with [REDACTED] to an EMD counselor, he was told that he had the choice of

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The Respondent was placed on modified duty as a result of this incident. His current duty status is still modified duty.

On cross-examination, the Respondent testified that while the uniformed officers were still at the scene, he handed [REDACTED] a fifty dollar bill so that she would be able to pay for a cab ride home [REDACTED]. When she threw the bill onto the ground, he asked one of the officers if he would hand the bill to [REDACTED] so that she would accept it. He did not request that officers notify a supervisor. When the Respondent reiterated that he and [REDACTED] had not conversed during the play, he was confronted with a statement he made at his official Department interview that when [REDACTED] started dancing with the performer he had yelled at her, "Who is this?" The Respondent confirmed that he had asked [REDACTED] that question but that she apparently did not hear him because the music in the theater was so loud. The Respondent denied that he was drunk during the play. The Respondent recalled that when he grabbed [REDACTED] elbow he said to her, "Listen," and "Come on," because she was not sober and he did not want her to walk away in an unfamiliar area. The Respondent denied having a drinking problem, he denied that he had been driving in a drunken, erratic manner just before [REDACTED] demanded that he stop the car so that she could get out, and he denied that he was drunk at any point in time on that evening.

#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pleaded guilty to failing to request the response of the Patrol Supervisor, precinct of occurrence, after he became involved in an unusual police occurrence; engaging in conduct prejudicial to the good order, efficiency or discipline of the Department by grabbing his girlfriend who was walking away from him causing her to fall to the ground; and unlawfully supplying alcoholic beverages to his girlfriend who was not of a legal age to consume intoxicants.

The Assistant Department Advocate (ADA) recommended that the Respondent be required to forfeit 30 vacation days, that he also be required to serve one year on dismissal probation and that his probation include the condition that he comply with ordered breath testing. I cannot ascribe to the ADA's argument that probation is justified because the record shows that alcohol played a role in the misconduct the Respondent has admitted he committed. The circumstantial evidence on which the ADA bases her argument does not sufficiently establish that the Respondent's misconduct here was alcohol-fueled and neither the charged misconduct nor the Respondent's prior record cries out for the imposition of a period of dismissal probation.

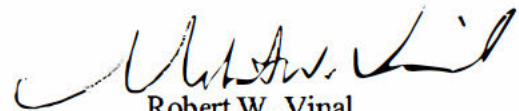
With regard to the Respondent's misconduct of providing alcoholic beverages to his underage girlfriend and failing to notify the Department about an altercation constituting an unusual occurrence, the ADA cited Disciplinary Case No. 81494/06 (approved on September 28, 2006) and Disciplinary Case No. 82043/06 (approved on March 5, 2008). In neither case did the member receive a penalty which included dismissal probation and in both cases the forfeiture of time imposed on the member was less than 30 days. Respondent's counsel cited Disciplinary Case No. 82808/07 (approved on September 24, 2008) where a member who had a prior disciplinary record pleaded

guilty to providing alcohol to an underage stranger, and to losing his Department shield and Department ID, forfeited 30 vacation days.

The Respondent here is a four-year member with no prior disciplinary record who has contritely acknowledged his misconduct and who reached out for help on his own volition before he was even charged with misconduct.

It is recommended that the Respondent be required to forfeit 20 vacation days.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner - Trials

**APPROVED**  
JAN 12 2010  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER