MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 25, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Weyant, Erich S. v. Dennis E. Ward and Ralph M. Mohr and Wallace C. Piotrowski, Paul T. Clark, Henry R. Pirowski, Timothy J. Elling*
Document Received:	Order to Show Cause
Name of Petitioner:	Erich S. Weyant
Petitioner's attorney:	John B. Licata, Esq. Dolce Panepinto 1600 Main Place Tower 350 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____
Jeremy C. Toth
Second Assistant County Attorney
jeremy.toth@erie.gov

JCT/dld
Enc.

Original

At a Special Term of the Supreme Court held in and for the County of Erie, at the Courthouse in the City of Buffalo, New York on the 23rd day of July, 2014.

FILED
JUL 23 2014
ERIE COUNTY CLERK'S OFFICE

PAID NO/FEE
07/23/2014/ 13:38:06
ERIE COUNTY CLERK
RCPT # 14112902
I 2014000117

HON. JAMES H DILLON, J.S.C.
PRESIDING JUSTICE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ERICH S. WEYANT

Objector-Petitioner,

INDEX NO. 2014/ 00117

vs.

ORDER TO SHOW CAUSE

IASJ HON. JAMES H. DILLON

DENNIS E. WARD and
RALPH M. MOHR, Commissioners
Of and Constituting the Erie County
Board of Elections

and,

WALLACE C. PIOTROWSKI
PAUL T. CLARK
HENRY R. PIROWSKI
TIMOTHY J. ELLING,
Judicial Delegate Candidates

Respondents.

This paper received at the
Erie County Board of Election's Office
From Mariss Bartolotta
On the 24 day of July 2014.
At 11:55 am/pm
Beth Bochiechio
Signature of BOE Employee

ERIE CO BOE JUL 24 '14 AM 11:55

216-NF.35

Upon the Verified Petition of Erich S. Weyant, Objector-Petitioner, duly verified on the 22st day of July, 2014, the general and specific objections previously filed by the Petitioner with the Respondent Erie County Board of Elections (incorporated by reference and made a part hereof) and upon all other papers and proceedings herein; and,

DUE DELIBERATION having been had, it is hereby,

ORDERED, that the Respondent candidates **WALLACE C. PIOTROWSKI, PAUL T. CLARK, HENRY R. PIROWSKI and TIMOTHY J. ELLING** and the Respondents **DENNIS E. WARD and RALPH M. MOHR**, as Commissioners of and Constituting the **ERIE COUNTY BOARD OF ELECTIONS,**

SHOW CAUSE BEFORE THIS COURT, at a Special Term thereof, in Supreme Court, to be held in and for the County of Erie, State of New York, in the Courthouse in the City of Buffalo, Part 4 thereof, on the 6th day of August, 2014 at 9:00 o'clock in the FORE noon of that day, or as soon thereafter as counsel can be heard,

Why an order should not be made and entered herein, pursuant to Election Law, Section 16-102, granting the following relief:

1. Invalidating the joint designating petitions containing the names of the Respondent candidates **WALLACE C. PIOTROWSKI, PAUL T. CLARK, HENRY R. PIROWSKI and TIMOTHY J. ELLING** for the party positions of Judicial Delegates, for the 8th Judicial District, for the Democratic Party, in the 142th Assembly District, as filed with the Respondent **ERIE COUNTY BOARD of ELECTIONS,** for a lack of sufficient number of valid signatures; and,

2. Directing the Respondent **ERIE COUNTY BOARD of ELECTIONS** to remove their names from the certification of the ballot for the September 9, 2014 Democratic Party primary election ballot, and from all paper ballots and machines to be utilized therein; and,

3. Granting such other, further and different relief as the Court may deem just and appropriate.

SERVICE OF PROCESS:

And it is further,

ORDERED, that service of a conformed copy of this Order and the underlying Verified Petition, together with a copy of the attached Exhibits (but not an additional set of the specific objections already served upon all parties) upon the Respondents, shall be deemed good and sufficient if accomplished as follows:

1. Respondent Candidates **WALLACE C. PIOTROWSKI, PAUL T. CLARK, HENRY R. PIROWSKI and TIMOTHY J. ELLING,** on or before Thursday, July 24, 2014 by:

    1. Personally serving such Respondent candidate; or,
    2. By serving a person of suitable age and discretion at such candidate's residential address, as listed upon the subject designating petition and by mailing a copy, by first class mail, to such candidate at the same residential address; or,
    3. By affixing a copy of such papers to the door of such candidate's residence and by mailing by first class mail, a copy of such papers to such candidate, at the same residential address.

2. Respondent Erie County Board of Elections:

By delivering a copy to a person authorized to accept service, at the offices of the Erie County Board of Elections, at 134 W. Eagle Street, Buffalo, New York 14202, on or before Thursday, July 24, 2014; and it is further,

ORDERED, that the Erie County Board of Elections shall produce in Court on the return date hereof, the original designating petition and general and specific objections filed against it, together with the Board's worksheets, decision and any other relevant papers; and it is further,

ORDERED, that the Respondents shall submit any responding papers to the Court and to Petitioner's counsel, no later than 5:00 p.m. on the 4th day of August, 2014.

Justice of the Supreme Court
County of Erie

JAMES H. DILLON

GRANTED: July 22, 2014

Court Clerk

GRANTED
JUL 23 2014
BY Susan M Monan
SUSAN M. MONAN
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ERICH S. WEYANT
Objector-Petitioner,

vs.

DENNIS E. WARD and
RALPH M. MOHR, Commissioners
of and Constituting the Erie County
Board of Elections

VERIFIED PETITION

INDEX NO. 2014/ _____

and,

WALLACE C. PIOTROWSKI
PAUL T. CLARK
HENRY R. PIROWSKI
TIMOTHY J. ELLING,
Judicial Delegate Candidates
Respondents.

TO THE NEW YORK STATE SUPREME COURT, ERIE COUNTY:

Petitioner, Erich S. Weyant, as and for his Verified Petition in this petition invalidation proceeding pursuant to Election Law, Section 16-102 , does hereby allege, by his attorney, John B. Licata, Esq.:

1. This anticipatory proceeding is brought pursuant to the authority of the New York State Election Law, Section 16-102, for the purpose of invalidating certain Democratic Party designating petitions filed by the Respondent candidates, for the party positions of Judicial Delegates (4) from the 142th Assembly District, to the 8th Judicial District Supreme Court Convention, for the Democratic Party.

I. PETITIONER ERICH S. WEYANT:

2. The Petitioner, Erich S. Weyant, is a registered voter and an enrolled member of the Democratic Party who resides at 1805 Abbott Road, Apartment 1, Lackawanna, New York 14218, and which is located in the County of Erie and within the 142nd Assembly District.

3. Petitioner has previously timely filed with the Respondent Erie County Board of Elections (hereinafter the "**BOARD**"), under the authority of Election Law, Section 6-154(2), general objections, dated on or about July 14, 2014 and specific objections, dated on or about July 21, 2014, to the Democratic Party joint designating petitions filed for each of the four (4) herein named Respondent candidates for Judicial Delegate, as included on the sheets of such designating petition.

4. Under the authority of Election Law, Section 16-102, the Petitioner thus has standing to timely commence this invalidation proceeding, no later than Thursday, July 24, 2014 – on which date the statute of limitations for seeking the invalidation of said designating petitions expires.

II. RESPONDENTS:

5. Respondents **WALLACE C. PIOTROWSKI, PAUL T. CLARK, HENRY R. PIROWSKI AND TIMOTHY J. ELLING** are all currently candidates for such Democratic Party positions at the September 9, 2014 Primary Election.

6. The Respondent **ERIE COUNTY BOARD OF ELECTIONS** is the administrative agency with business offices located at 134 W. Eagle Street, Buffalo, New York 14202, and with which designating petitions for any political subdivision wholly within Erie County are filed.

7. The Respondent candidates for the 142th Assembly District (which is entirely within Erie County) have thus previously filed their Democratic Party designating petitions with that **BOARD**, which are the subject of the general and specific objections filed by the Petitioner and which are also the subject of this invalidation proceeding.

8. The **ERIE COUNTY BOARD OF ELECTIONS** has the sole responsibility to rule upon the objections filed by the Petitioner herein against the Respondent candidates' designating petitions.

9. As of this date, the Respondent **BOARD** has not yet ruled on Petitioner's objections and it is therefore necessary to properly commence this anticipatory invalidation proceeding to comply with the statute of limitations provisions of Election Law, Section 16-102.

10. Such provision requires the commencement of such an invalidation proceeding within fourteen (14) days of the last date for the filing of designating petitions – which was Thursday, July 10, 2014 this year. Thus, such statute of limitations expires on Thursday, July 24, 2014.

11. The bases for the objections to the validity of the subject joint designating petition are clearly outlined in the "Specific Objections" which the Petitioner has previously filed with the **BOARD** and which each of the Respondent candidates has received a copy thereof.

12. Such General and Specific Objections, previously filed with the **BOARD**, are thereby specifically incorporated by reference herein and made a part of this proceeding.

13. Since all parties have already received copies thereof, it is requested that the Court not require the service of yet another copy thereof on each of the parties, along with these court papers. A copy will be made available to the Court on or before the return date hereof and the **BOARD** will be able to make the original General and Specific Objections, together with its worksheets, relevant Board records and the Board's decision available to the Court on the return date hereof.

14. The number of valid signatures of Democratic voters within the 142th Assembly District which are required for a valid petition is five hundred (500). See Election Law, Section 6-138.

15. The designating petition of the candidates herein which is the subject of this invalidation proceeding contains 582 signatures, as submitted.

III. ISSUES BEFORE THE COURT:

16. As noted in the Specific Objections, there are numerous pages and individual signatures which are invalid for any number of the standard defects, including but not limited to, the omission of required correct information, signature does not match the poll card signature improper alterations, printed names, uninitialed alterations, voters outside the 142nd Assembly District and the signatures of voters who had signed previously on another designating petition for the same party positions in the same Assembly District.

17. Objections have been made against 148 of the total of 582 signatures submitted and whereby the Petitioner believes that the subject designating petition falls well short of the required 500 valid signatures,

18. By any combination of these alleged defects in the noted signatures, as more particularly outlined in the Specific Objections as filed with **BOARD**, the remaining number of valid signatures on the subject petition herein is well below the five hundred (500) number required under Election Law, Section 6-138.

IV. SCHEDULING OF THIS COURT PROCEEDING:

19. Although required to be commenced no later than Thursday, July 24, 2014, it is not anticipated that the ruling of the **BOARD** will be finalized until later in the week of July 28th.

20. It is therefore suggested that, for efficiency purposes, that the return date of this matter should be calendared during the week of August 4, 2014, in order to have the **BOARD'S** determination before this Court when this matter is scheduled to proceed.

21. No previous request has been made to this or any other court for the relief of invalidation sought against the Respondent candidates' Democratic Party designating petitions herein.

WHEREFORE, the Petitioner herein requests that this Court issue an order, pursuant to the authority of Election Law, Article 16, granting the following relief:

1. Invalidating the joint designating petitions containing the names of the Respondent candidates **WALLACE C. PIOTROWSKI, PAUL T. CLARK, HENRY R. PIROWSKI and TIMOTHY J. ELLING** for the party positions of Judicial Delegates, for the 8th Judicial District, for the Democratic Party, in the 142th Assembly District, as filed with the Respondent **ERIE COUNTY BOARD of ELECTIONS,** for a lack of sufficient number of valid signatures; and,

2. Directing the Respondent **ERIE COUNTY BOARD of ELECTIONS** to remove their names from the certification of the ballot for the September 9, 2014 Democratic Party primary election ballot, and from all paper ballots and machines to be utilized therein; and,

3. Granting such other, further and different relief as the Court may deem just and appropriate.

Erich S. Weyant, Petitioner

Dated: July 22, 2014
Buffalo, New York

Yours, etc.

John B. Licata, Esq.
Attorney for Petitioner Erich S. Weyant
1600 Main Place Tower
350 Main St. Suite [redacted] 1600
Buffalo, New York 14202
(716) 852-1888

VERIFICATION:

STATE OF NEW YORK))
COUNTY OF ERIE)) ss.:

Erich S. Weyant, being duly sworn deposes and says that he is the Petitioner in this proceeding; that he has read the foregoing **Verified Petition** and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

ERICH S. WEYANT

Sworn to before me this
22nd day of July, 2014.

~~Notary Public~~ Commissioner of Deeds

Name: Erin O'Brien
Commissioner of Deeds, in and for
The City of Buffalo, County of Erie
State of New York
My commission expires 12/31/14