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 30, 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:	*Quinn, Michael and Kumiega, Mark W. v. Erie County Board of Elections, Ralph M. Mohr, Dennis E. Ward and Anthony Todorov*
Document Received:	Order to Show Cause
Name of Petitioners:	Michael Quinn, Mark W. Kumiega
Petitioners' Attorney:	James Ostrowski, Esq. 63 Newport Avenue Buffalo, New York 14216

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.

This paper received at the
Erie County Board of Election's Office
From Jim Ostrowski
On the 29 day of July 2014
At 4:53 am/pm
Signature of BOE Employee

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 29th day of July, 2014.

PRESENT: Hon. Christopher J. Burns

Matter of MICHAEL P. QUINN
MARK W. KUMIEGA,

Petitioners,

-against-

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR, As Commissioner of the Erie County Board of Elections,
DENNIS E. WARD, as Commissioner of the Erie County Board of Elections,
ANTHONY TODOROV, Objector,

Respondents.

Index No.2014-130

ORDER TO SHOW CAUSE

FILED
JUL 29 2014
ERIE COUNTY
CLERK'S OFFICE

Upon the annexed Verified Petition of MICHAEL P. QUINN, JR. and MARK W. KUMIEGA, duly verified the 29th day of July, 2014, and the affidavit of MARK WW. KUMIEGA, sworn to on July 24, 2014, it is hereby

ORDERED that the Respondents herein show cause before this Court at a Special Term, Part 19, to be held at 25 Delaware Ave, in the City of Buffalo, on the 7 th day of August, 2014, at 9:30 a.m., or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

FAID
07/29/2014/ 15:51:23
ERIE COUNTY CLERK
RCPT # 14116415
I 2014000130

1. Directing the respondents to validate the Democratic designating petition of the petitioners for the party position of Democratic Party County Committee Member, Hamburg, District 11.

2. Overturning the ruling of the Erie County Board of Elections and Commissioners, dated July 25, 2014 in all respects;

3. Granting all other, further, and/or alternative relief as it deems just and proper.

Sufficient cause appearing therefore, leave is hereby granted to the petitioner to submit upon the return day of this Order to Show Cause, and on the argument and hearing thereof, such additional affidavits, exhibits and other proof as may be necessary, and it is further

ORDERED that the respondent Board and respondent Commissioners produce in Court all original papers (or certified copies) related to this proceeding including their determination, any and all staff worksheets the determination is based on, the original objections and the designating petition.

ORDERED that good and sufficient service shall be had herein by the service of a copy of this Order to Show Cause together with the Petition and supporting papers upon which it was granted by the following:

1. Upon the ERIE COUNTY BOARD OF ELECTIONS and Commissioners MOHR and WARD, by delivering a copy for each of them to the Board of Elections by 5:00 p.m. on July 29, 2014.
2. Upon ANTHONY TODOROV, by personal delivery on or before July 30, 2014;

or

[by affixing a copy to the door at his residence, 3954 Nottingham Terr, Hamburg, NY 14075, by 9:00 p.m. on July 29, 2014;

and

by mailing him a copy by U. S. Express Mail to the residence address listed on his specific objections, 3954 Nottingham Terr, Hamburg, NY 14075, said mailing to be delivered to the Post Office by 7:00 p.m. on July 29, 2014.]

JUSTICE OF THE SUPREME COURT

M. WILLIAM BOLLER, J.S.C. c/b/o Hon. Christopher Burns

GRANTED

JUL 29 2014

BY ROBERT ADAMSKI
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Matter of MICHAEL P. QUINN
MARK W. KUMIEGA,

Petitioners,

Index No.2014-130

-against-

VERIFIED PETITION

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR, As Commissioner of the Erie County Board of Elections,
DENNIS E. WARD, as Commissioner of the Erie County Board of Elections,
ANTHONY TODOROV, Objector,

Respondents.

The Petitioners MICHAEL P. QUINN, JR., and MARK W. KUMIEGA, by their attorney, JAMES OSTROWSKI, for their verified petition, allege as follows:

1. This is a special proceeding pursuant to Election Law Section 16-102 seeking an order compelling respondents to validate the Democratic designating petition of the petitioners for election to the party position of Democratic Party County Committee Member, Hamburg, District 11 at the September 9, 2014 primary election.
2. This proceeding is being timely filed within the time limits set forth in Article 16 of the Election Law.
3. Petitioner MICHAEL P. QUINN, JR resides at 5573 Truscott Terr, Hamburg, New York.
4. Petitioner MARK . KUMIEGA resides at 6346 White Oak Way, Hamburg, New York.
5. Petitioners appeared on the same designating petition which was timely filed with the Erie County Board of Elections.

6. The Erie County Board of Elections is the agency charged with administering elections and petitions concerning County Committee Member.

7. The Board consists of the following Commissioners: RALPH M. MOHR and DENNIS E. WARD.

8. ANTHONY TODOROV filed objection to the petition.

9. He resides at 3954 Nottingham Terr, Hamburg, New York, 14075.

10. The Board of Elections ruled the petition invalid on July 25, 2014. See Exhibit "A".

11. The Board found that the Petition contained 25 valid signatures.

12. The law requires 31 valid signatures for the party position of committeeman.

13. The Board's determination is erroneous and invalid for the following reasons.

14. The Board struck 25 signatures due to alleged witness errors involving Mark Kumiega.

15. On information and belief, Mr. Kumiega inadvertently stated the date of the petition as "6/7" when he meant July 6.

16. His affidavit 15 attached.

17. In the absence of any indication of fraud or misconduct, those signatures should be validated by the Court upon de novo review.

18. The petition substantially complies with the Election Law and should be validated in the absence of any indication of fraud.

19. Thus, if this Court rules that the witness statement substantially complies with the statute, the petitioners will have enough valid signatures to qualify for ballot status.

20. The Court, upon review of the records, should validate such signatures.

Wherefore, we respectfully request that the Court;

1. grant the relief requested in the attached order to show cause;

2. order the respondents to validate the designating petition and place petitioner on the primary election ballot; and

3. grant such other and further relief as the Court deems proper.

Dated: Buffalo, New York
July 29, 2014

JAMES OSTROWSKI
Attorney for Petitioners
MICHAEL P. QUINN, JR.
MARK W. KUMIEGA
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
Jameso@apollo3.com

VERIFICATION

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

Michael Quinn, being duly sworn, deposes and says that he is petitioner in the within proceeding; that deponent has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief and that, as to those matters, he believes them to be true.

Subscribed and sworn to before
me this 29th day of July, 2014

JAMES OSTROWSKI
Notary Public
Qualified in Erie County
My Commission Expires 7/5/15

NOTICE OF DETERMINATION
BOARD OF ELECTIONS, COUNTY OF ERIE, STATE OF NEW YORK
(Pursuant To §6-154(3) of the Election Law)

Name and Address of Candidate:

Michael P Quinn Jr
5573 Truscott Terr
Lakeview NY 14085

Mark W Kumiega
6346 white Oak Way
Lakeview NY 14085

Name and Address of Objector:

Anthony Todorov
3954 Nottingham Terr
Hamburg NY 14075

Petition Being Objected To: Member of County Committee Hamburg District 11

Party: Democratic

Board Employees Assigned to Review: DM/EM

Number of Signatures Required: 31

Petition No.: 25-1024

Date General Objection Filed/Postmarked: 7-16/7-14

Date Specifications Filed/Postmarked: 7-21

UPON EXAMINATION WE REPORT THE FOLLOWING:

Signatures - Invalidated on a Line-by-Line Basis:

1A.	without proper date of signing	1A.	
2A.	dated prior to first day for signing	2A.	
3A.	dated prior to preceding date(s) listed on petition	3A.	
4A.	dated after date set forth in affidavit of subscribing witness	4A.	25
5A.	of persons whose signatures are not identifiable	5A.	
6A.	of persons with unidentifiable or missing given name	6A.	
7A.	of persons with initials not identifiable with register	7A.	
8A.	of persons whose names are hand printed	8A.	
9A.	of persons with incomplete or no residence address set forth	9A.	
10A.	of persons not registered at address set forth in petition	10A.	
11A.	of persons with mailing address rather than residence address set forth	11A.	
12A.	of persons who do not reside in political unit	12A.	
13A.	of persons with no town or city set forth	13A.	
14A.	of persons not registered in town or city as set forth	14A.	
15A.	of persons who witnessed own signature	15A.	
16A.	of persons who signed petition for office on same or earlier date	16A.	
17A.	of persons who are not enrolled in political party making designation	17A.	
18A.	of persons written in lead pencil	18A.	
19A.	of persons who fail to initial modifications of the date or signature	19A.	
20A.		20A.	
21A.		21A.	
99A.	lines invalidated on the basis of multiple "A" type objections (Board use only)	99A.	

4 A 4

Subscribing Witness - Signatures Voided by Invalidity of Witness Statement:

1B.	who is not a registered voter	1B.	
2B.	who is not enrolled in political party making designation	2B.	
3B.	who is not otherwise qualified to circulate the petition	3B.	
4B.	who fails to set forth correct residence address	4B.	
5B.	who fails to set forth correct number of signatures subscribed to	5B.	
6B.	who fails to set forth a proper date of signing	6B.	
7B.	who is not identified by correct city or town, or county	7B.	
8B.	of notary public or commissioner of deeds who fails to set forth official title	8B.	
9B.	who fails to initial modifications	9B.	
10B.		10B.	
11B.		11B.	

Recapitulation:

Total Actual Signatures on Petition:	50
Less Total Invalid Signatures:	25
Total Remaining Valid Signatures:	25

Findings of Other Objections Raised:

DETERMINATION

_____ **Petition is Qualified**

✓ **Petition is Rejected**

Commissioner Dennis E. Ward
votes to: reject **petition**

Commissioner Ralph M. Mohr
votes to: reject **petition**

Date: July 25 2014

Revised May 16, 2007

AFFIDAVIT

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

Mark W. Kumiega, being duly sworn, deposes and says:

1. I reside at 6346 White Oak Way, Lakeview, New York 14085. (Town of Hamburg)

2. In the month of June I solicited 50 signatures in order to qualify myself and Michael P. Quinn, Jr. as candidates for Democratic Party County Committee in the 11th Election District, Town of Hamburg, County of Erie, and State of New York.

3. I solicited two (2) petition sheets with twenty-five (25) signatures on each sheet.

4. On July 6, 2014 I signed the witness statements on both petition sheets, but accidentally transcribed the date as 6/7 onto one of the petition sheets instead of 7/6.

5. This was a mere typographical error, and not an attempt of any fraud.

MARK W. KUMIEGA

Subscribed and sworn to before me
this 24 day of July, 2014.

NOTARY PUBLIC

MICHAEL P. QUINN, JR.
No. 02QU6215495
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 12/28/2017