

IN THE
SUPREME COURT OF THE STATE OF UTAH

IN RE: PETITION FOR APPOINTMENT OF A PROSECUTOR PRO TEMPORE BY
JANE DOE 1, JANE DOE 2, JANE DOE 3, AND JANE DOE 4

**NOTICE OF WITHDRAWAL OF PETITION FOR APPOINTMENT OF
PROSECUTOR PRO TEMPORE**

On Original Jurisdiction to the Utah Supreme Court

Paul G. Cassell (6078)
UTAH APPELLATE CLINIC
S.J. Quinney College of Law
at the University of Utah
383 S. University St.
Salt Lake City, Utah 84112
(801) 585-5202
cassellp@law.utah.edu

Heidi Nestel (7948)
Bethany Warr (14548)
UTAH CRIME VICTIMS' LEGAL CLINIC
3335 South 900 East, Suite 200
Salt Lake City, Utah 84106
heidi@utahvictimsclinic.org
bethany@utahvictimsclinic.org

*Attorneys for Jane Doe 1, Jane Doe 2,
Jane Doe 3, and Jane Doe 4*

Additional counsel on the following page

Additional Counsel

Margaret Garvin (Oregon Bar 044650)
NATIONAL CRIME VICTIM LAW INSTITUTE
at the Lewis and Clark Law School
1130 S.W. Morrison Street, Suite 200
Portland, Oregon 97205
garvin@lclark.edu
(pro hac vice application to be filed)

(law schools above are contact information
only – not to imply institutional
endorsement)

Gregory Ferbrache (10199)
FERBRACHE LAW, PLLC
2150 S. 1300 E. #500
Salt Lake City, Utah 84106
gregory@ferbrachelaw.com
(801) 440-7476

Aaron H. Smith (16570)
STRONG & HANNI
9350 South 150 East, Suite 820
Sandy, Utah 84070
asmith@strongandhanni.com
(801) 532-7080

*Attorneys for Jane Doe 1, Jane Doe 2, Jane
Doe 3, and Jane Doe 4*

NOTICE OF WITHDRAWAL OF PETITION

The Jane Does, by and through undersigned counsel, hereby provide notice that they are withdrawing their petition to permit review of their cases by the Utah Attorney General's Office.

As this Court is aware, on October 16, 2018, four women (the "Jane Does") who were sexually assaulted filed a petition with this Court. Each of the four Jane Does alleged that the public prosecutor with jurisdiction to file criminal charges against their attackers had refused to file criminal charges. The four Jane Does sought appointment of a prosecutor by this Court to pursue their cases.

On October 23, 2018, the Court invited the Utah Attorney General and the Salt Lake County District Attorney to file briefs as *amicus curiae* and also invited other qualified and interested persons or entities to file a motion to file such briefs. The briefs were to be filed no later than January 22, 2019.

Thereafter, the Jane Does conferred with the Attorney General's Office and took the position that it would be appropriate to extend the deadline for any amici to respond until after the 2019 Utah Legislative Session. Such an extension would also (among other things) provide additional time for the Attorney General's Office to conduct historical research associated with the petition, as well as for the Jane Does to make the case to the Legislature for pass legislation addressing the issues raised by the petition. On December 14, 2018, the Utah Attorney General's Office filed a motion to extend the

briefing schedule in this case. On December 26, 2018, this Court granted an extension for any amicus briefs until May 22, 2019.

During the 2019 Utah Legislative Session, H.B. 281 – Prosecution Review Amendments - was introduced. The bill provided an opportunity for victims of first-degree felony crimes to have any declination decision made by a local county or district attorney reviewed by the Utah Attorney General’s Office. The review was to be conducted *de novo* (rather than under the current deferential “abuse of discretion” standard that the Office employs) to determine whether the filing of criminal charges was warranted.

The bill passed the House Judiciary Committee 10-0, the full House 68-0, the Senate Judiciary Committee 5-0, and the full Senate 27-0. On March 25, 2019, the Governor signed the bill into law.

In light of the availability of this new procedure that has just become available to the Jane Does to have their cases reviewed by the Attorney General’s Office, the Jane Does hereby give notice that they are withdrawing their petition from this Court to allow such review. Simultaneously with the filing of this notice before this Court, the Jane Does are transferring the materials that they filed with the Court to the Utah Attorney General’s Office with a request for a review.

The Court’s rules do not directly appear to cover a situation where a petition is being withdrawn. Rule 37 does provide procedures for a voluntary dismissal of an “appeal.” But, of course, this petition is not an appeal, because no trial court ruling

exists. Nor do provisions of the rule appear to apply in this circumstance. For example, the rule appears to “all parties” to the appeal stipulating to the voluntary dismissal. In this case, the only “parties” (if that is the correct word) are the four Jane Doe petitioners, as the participants in this case have all been described as amici curiae.

But the Court need not tarry at any length on such potentially complicated procedural issues, because it can simply take note of the fact that the four Jane Doe petitioners are now withdrawing their petition. In an effort to avoid inconveniencing any counsel for the various amici, the petitioners have also provided advance notice that this withdrawal was going to be filed.

CONCLUSION

This Court should take note of the fact that the Jane Does are withdrawing the above captioned petition.

DATED this 3rd day of April, 2019.

/s/ Paul G. Cassell

Paul G. Cassell

UTAH APPELLATE CLINIC

(counsel of record)

Heidi Nestel

Bethany Warr

UTAH CRIME VICTIMS' LEGAL CLINIC

Meg Garvin

NATIONAL CRIME VICTIM LAW INSTITUTE

(pro hac vice application to be filed)

Greg Ferbache

FERBRACHE LAW

Aaron Smith

STRONG AND HANNI

Attorneys for Jane Doe 1, Jane Doe 2, Jane Doe 3, and Jane Doe 4

Certificate of Service

As discussed in their petition, the petitioner-victims do not believe that any other entity or individual is a party of their petition. Nonetheless, and without prejudice to their right to assert that position, the petitioner-victims have today, April 3, 2019, provided a copy of this notice to the Appellate Section of the Utah Attorney General's Office via email to criminalappeals@agutah.gov; to the Utah Solicitor General at notices@agutah.gov; to the Salt Lake County District Attorney's Office at dgoddard@slco.org; and to the Utah Association of Criminal Defense Lawyers at ann@brownbradshaw.com.

/s/ Paul G. Cassell