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Execution method of lethal injection approved

Case changed lethal-injection process

by Michael Kiefer - Jul. 2, 2009 12:00 AM

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A federal judge Wednesday removed a major obstacle to executions in Arizona, ruling that the state's lethal-injection procedure is similar to one approved by the U.S. Supreme Court.

Executions have been on hold in Arizona since November 2007, when the Arizona Supreme Court postponed the death of convicted murderer Jeffrey Landrigan pending the U.S. Supreme Court's analysis of how inmates were put to death in Kentucky.

The high court's ruling approved the Kentucky protocol, but left the door open for other death-row defendants to question how it was done in their states.

Federal public defenders in [Phoenix](#) quickly filed such an appeal in Maricopa County Superior Court on Landrigan's behalf. And they ~~filed~~ a nearly identical suit in [federal court](#) on behalf of nine Arizona death-row prisoners who have not yet exhausted their appeals.

The two [cases](#) have been simultaneously working their way through the courts with similar arguments and nuances ~~tailored~~ to [state and federal law](#). But the federal case was decided first.

U.S. District Court Judge Neil Wake on Wednesday ruled in favor of the Arizona protocol.

The Superior [Court case](#) has yet to be decided, but its outcome likely will be influenced by the federal court decision.

Assistant federal public defender Dale Baich, who oversees both cases, said he will appeal Wake's decision to the 9th U.S. Circuit Court of Appeals.

But Assistant Arizona Attorney General Kent Cattani said he doubted the Appeals Court would overturn the decision, given the state's similarities to the Kentucky protocol.

"The intent is to have the process be as humane as possible," he said.

The Arizona protocol has changed considerably since the state's last execution because of arguments from Baich's office.

As in most states, Arizona's execution process depends on three drugs: a barbiturate to render the inmate unconscious and deaden the pain the other drugs cause; a paralytic to stop breathing and prevent witnesses from seeing involuntary spasms; and a chemical to stop the heart.

But the defense team assembled by the federal public defender objected to a technique that used an extra, false IV line that in fact emptied into a bucket so that the executioners could not be sure which of them administered a fatal dose.

They also argued against using an IV line into a groin artery that required a surgical insertion.

And after interviewing members of the execution medical team, the defense [attorneys](#) discovered that one of the nurses on the team had several DUI convictions, license suspensions and ~~suffered~~ from post-traumatic stress disorder.

In its last execution, in May 2007, the state had used a Missouri doctor who had been forbidden from carrying out executions in his home state by a federal judge after he admitted that he improvised doses, was dyslexic and kept no records.

However, the defense attorneys got most of what they asked for as the state moved its protocol closer and closer to one they felt would match or exceed the Kentucky model. The new protocol uses an IV catheter into an arm, and the state has agreed to do thorough background checks on its executioners. Furthermore, in future executions, a prison warden will remain in the execution chamber during the procedure, and a member of the medical team will examine the condemned person after the barbiturate is administered to make sure he or she is unconscious before the potentially painful drugs are given.

"We think the protocol from (the last execution) would have passed constitutional challenge," Cattani said. "If there's a better way out there, we'll adopt that procedure."

Baich countered, "If there weren't 'problems' with the old protocol, at least they had some concerns."