

Capital Litigation

[Robinson v. Shanahan](#), __ N.C. App. __, __ S.E.2d __ (Mar. 18, 2014). The court remanded to the trial court this case challenging North Carolina's drug protocol for lethal injections. The plaintiffs appealed a trial court order granting summary judgment to the defendants on the plaintiffs' challenge to North Carolina's previously used three-drug protocol for the administration of lethal injections ("the 2007 Protocol"). During the appeal, the 2007 Protocol was replaced by the "Execution Procedure Manual for Single Drug Protocol (Pentobarbital)" ("the new Manual") after a statutory amendment vested the Secretary of NC Department of Public Safety with the authority to determine execution procedures. As a result, the plaintiffs' only remaining contention on appeal was that the new Manual must be promulgated through rule-making under the Administrative Procedure Act. The court remanded so that the trial court could determine this issue in the first instance.