No. 29290 -- Irene Walker v. John Doe

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November 1, 2001
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OF WEST VIRGINIA

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Starcher, J., concurring in part and dissenting in part:

I concur with that portion of the majority's opinion which clarifies the application of *per curiam* opinions. A *per curiam* opinion is a vehicle whereby the Court applies existing, undisputed points of law to a particular set of facts -- if the Court addresses a novel legal issue or otherwise intends to change the law, it will do so in a signed opinion, not a *per curiam* opinion.

The majority opinion has "cleared up" a matter that has for some time either been misunderstood or misstated by the Court with respect to how *per curiam* opinions are to be considered. The current language should be helpful to students of the law, lawyers, and judges, as well as other readers of our opinions from this time forward.

I dissent, however, to that portion of the majority's opinion which rejects the retroactive application of *Hamric v. Doe*, 201 W.Va. 615, 499 S.E.2d 619 (1997). As Justice McGraw indicated in his dissent in *Dalton v. Doe*, 208 W.Va. 319, 540 S.E.2d 536 (2000) -- a dissent in which I joined -- *Hamric* did not mark a significant departure from previously settled law. I firmly believe, as with other cases involving statutory interpretation, that *Hamric* should have been applied retroactively by the circuit court in the instant case.