

**FILED**

**July 8, 2004**

released at 10:00 a.m.

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Starcher, J., dissenting:

I dissent to the majority's opinion – although I recognize that it is based on sound legal reasoning. Statutes of limitation by their nature can lead to harsh results. They are not designed as rules of “fairness,” but are rather a legal tool designed to award the parties with repose. No matter the merit of one side's case, the other side – at some time – is free to move on without responsibility, merely because of the passage of time.

While statutes of limitation are effective legal rules that permit average citizens to move on, I am troubled by their application to wrongdoing by lawyers. Lawyers carry a heavy responsibility in our society, and that burden grows as legal transactions grow ever more complex. Citizens untrained in the legal arts necessarily rely on their chosen lawyers for honest, competent service. When those lawyers err, and in doing so thwart a citizen's ability to obtain relief through the legal process, the citizen should be permitted to obtain relief from the responsible lawyer through the same legal process.

I am troubled by the majority opinion, because I believe it uses a statute of limitation to create a patent unfairness in the law. A citizen who did nothing wrong was harmed by a lawyer's mistake. Rather than immediately sue the lawyer, the citizen sought the services of another lawyer and did everything possible to minimize or rectify the mistake. The citizen now seeks full recovery from his original lawyer, and the majority is saying that

the citizen's failure to promptly sue his original lawyer results in the citizen being barred by the legal system from a full recovery of his damages.

I dissent to such an unfair result.