TO: John Disraeli, Senior Partner at Disraeli Law Firm

FROM: Eric Komar, Senior Paralegal

RE: Clyde Wilson’s case regarding age-related discrimination in the workplace

DATE: August 1, 2019

1. The Legal Issue/Questions Presented:

Does Clyde Wilson’s dismissal from his job at Dice & Jacobs Law constitute an instance of age-related discrimination[[1]](#footnote-1)? Is our client’s claim of wrongful termination vis-à-vis ageist discrimination legitimized through the application of state and/or federal laws proscribing such discrimination? Furthermore, assuming a satisfactory demonstration of the matter in question, does our client have a legal mechanism he can utilize to regain his prior employment?

1. Brief Answer:

To the first point: Yes. To the second point: Yes. To the third point: Yes. With respect to all three points, our client has a valid case to make against his employer and has, at his disposal, a legally-sanctioned means of redress. The issue has two components. The first element lay in the determination of an age-related discriminatory grievance. Upon satisfaction, this element is complimented with the restoration of the illicitly-aborted employment. Both elements have their superstructure in Federal Civil Rights law[[2]](#footnote-2). Both elements have ultimate antecedents (their base) in the Fourteenth Amendment to the Constitution[[3]](#footnote-3). The circumstances informing this particular discrimination suit will, in all likelihood, not require an eventual Constitution challenge. Based on the law, our case does not prescribe an eventual translation of jurisdiction from U.S. Federal District Court to the Supreme Court.

1. Prefatory Remarks:

Dr. Robert N. Butler, the first director of the National Institute on Aging, coined the term "ageism" in 1968. Butler defined ‘ageism’ as "a process of systematic stereotyping of and discrimination against people because they are old…Just as racism and sexism accomplish this with skin color and gender . . . ageism allows the younger generation to see older people as different from themselves; thus they subtly cease to identify with their elders as human beings."[[4]](#footnote-4) As a rule, prejudicial attitudes are inimical to the meritocratic praxis of American society[[5]](#footnote-5). American public policy (which has manifestation in the law), prohibits racial and sexual discrimination. The law has also been amended to proscribe age-related discrimination -- all three, of course, within the purview of the workplace. Legally protected immutables such as race and sex also include age; one cannot “choose” to turn a particular age but rather does so through his own continuous existence along the infinite arrow of time.[[6]](#footnote-6)

Demonstrating ageism, however, relies on more than just a suspicion evinced from a lengthy and fruitless job search; or, after many years of loyal, steadfast service, a dismissal from employment which is ostensibly congruent to the law. Two concrete methods are employed when building a *prima facie* case of age-related prejudice: (1) one’s citation of direct discriminatory evidence[[7]](#footnote-7), or, if the circumstances surrounding the alleged discrimination are more nebulous, (2) an achievement of the four requisites which are to serve as the first burden in an indirect *prima facie* case of discrimination. This precedent was established by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)[[8]](#footnote-8).

While it will be necessary to fully explicate all discriminatory mechanics as the issue is litigated, the heuristic used to determine legal merit at this time is:

1. Are the causal circumstances of the dismissal-in-question *prima facie* discriminatory or; if not,
2. Are the general contextual circumstances of discharge, while not *prima facie* discriminatory are ones which legal precedent has established as circumstance where age-related discrimination can be adduced?

The former is the direct approach; the latter is the indirect approach. Our approach will be the direct one.

III. Statement of Facts:

Our client, Clyde Wilson, was employed at Dice & Jacobs Law as a file clerk for exactly twenty years. Over the course of his career, he received only sparkling reviews from his superiors. He was undoubtedly an integral asset to the company. On his twentieth work-anniversary, he was invited into the office of his superior, Charles Jacobs. While Wilson expected a raise on what he believed to have been an auspicious day, Jacobs informed Wilson of two things which were to serve as the legal foundation of this suit. Wilson was told that (a) his twenty-years of service was to come to immediate stop and that (b) Wilson’s post– that of filing clerk – was one to be filled by a younger hiree. Wilson, for over the past year, has spent his time fruitlessly looking for work – no doubt a continual victim of the same discriminatory attitude[[9]](#footnote-9) which led to his untimely, unfair, and illegal dismissal.

1. Statement of Law and Policy:

Notwithstanding legally-mandated exceptions, New York State permits employers to dissolve relationships with employees at any time. The principle legitimizing this prerogative is exactly the converse: just as an employee may relinquish work at any time so, too, an employer is entitled to lay off whomever they desire. However, New York State’s at-will employment doctrine does not serve as a license for routine haphazard dismissal of the (formerly) employed: there are legally enumerated exceptions to this prerogative. One of these exceptions is age-related discrimination[[10]](#footnote-10). Age-related discrimination, while not initially under the penumbra of the 14th Amendment vis-à-vis the Civil Rights Act of 1964 came to be within its compass through The Age Discrimination in Employment Act (ADEA) of 1967. The ADEA prohibits age-related discrimination in the process of hiring, the disbursement of promotions, and the impositions of layoffs. The ADEA, a federal statute, has its analogue in NY CLS Exec § 291. NY CLS Exec § 291 asseverates that the “opportunity to obtain employment without discrimination because of age…is hereby recognized as and declared a civil right.”

We have direct and concrete evidence of an unbroken causal chain which led to the illegal dismissal of our client. The point which cannot be belabored enough is Jacobs’ explicit remark that our client would be replaced with someone younger; Jacobs made no attempt to present a pretext or utilize subterfuge of any kind in the illegal dismissal of our client. This saves us the trouble of our having to employ the latter approach as per McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) in adducing discrimination. Jacobs was blunt. Jacobs was direct. Jacobs was unambiguous. Jacobs’ actions were contrary to the law. Jacobs’ actions pass the litmus test of discrimination as alluded to earlier in the memo. The employer (Dice & Jacobs Law) did not articulate any legitimate, nondiscriminatory reason for the employee's (Clyde Wilson’s) loss of gainful employment. As any perfectly objective court of law will conclude, our client was subject to immediate illegal dismissal – full stop.

By that same token, our client, Clyde Wilson, has, at his disposal, a mechanism with which he can utilize regain his erstwhile employment. In the broadest (i.e. philosophical) sense, NY CLS Exec § 291 recognizes the right to a job as indefeasible to all able-bodied members of our society[[11]](#footnote-11). More concretely, this right is a *positive* right[[12]](#footnote-12). This entitlement can be (and usually is) adjudicated through voluntary and non-coercive negotiations between an employer and his employee. If, as in this case, the confounding variable of discrimination enters this necessarily asymmetrical power-relation, the prerogative is made absolute with the attendance of the state (along with its concomitant police powers) in the regulation, mediation, and successful adjudication of any corrupted negotiations. NY CLS Exec § 291 has its contemporary corollary in 2001 N.Y. A.N. 1971. The latter is a reaffirmation of the guiding principle animating the former. 2001 N.Y. A.N. 1971 states that the New York State government has a “responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life…[The successful execution of this legally-mandated responsibility includes, within its locus of influence, t]he opportunity [for one] to obtain employment without discrimination because of age.” Dice and Jacobs Law countermanded this public responsibility. Dice and Jacobs Law contravened the law. The state, in its various permutations from local-to-federal, recognizes our client’s right to his job; a right which, when gainsaid, “menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.” Taking this premise to its ineluctable conclusion leaves only this factum to the objective and dispassionate observer[[13]](#footnote-13): the discrimination that our client had been made subject to is legally proscribed not only for his own personal well-being; but, ultimately, for the imminent threat such actions pose to the public interest. Both the courts which interpret the law and legislatures which design the law operate with society’s benefit as the *summum bonum.*

This mechanism of re-employment has its consummation in the exhibition of the documentation provided by our client’s PCP (Primary Care Physician). Dr. Harold Jacobs (no relation) has been our client’s primary care physician for over twenty nine years. Prior to Dr. Harold Jacob’s designation as PCP, Jacob’s father, Dr. Kyle Jacobs, (no relation) was our client’s primary care physician. While the law is unequivocal in its prohibition of age-related discrimination and is salient in its own right, Dr. Harold Jacob has provided an additional “clean-bill-of-health” to any subjective human element threatening to influence objective legal relations as will be determined in this suit. Dr. Harold Jacob repeatedly accentuates the excellent health of our client. According to him, age, in this suit, *cannot* play any factor in any defense positing a legal dismissal of our client. Such a defense (as may be undertaken by the defense), according to Dr. Jacob, is medically meretricious; only under the most extreme and unrealistic circumstances – such as a future hypothetical work-schedule of over a hundred-hours a week without break for convalescence imposed on Mr. Wilson over a period of *years* or a sharply delineated reversal of Mr. Wilson’s strictly observed salubrious habits (his exercise and eating regimens) or the sudden appearance of a hypothetical drug habit (of which our client has no medical history; no medically-established proof of proclivity toward) waxing into long-term full-blown hypothetical drug abuse would impact our client’s health to such an extent that age would become a non-trivial factor. Only under these purely hypothetical and factually uncorroborated circumstances would a dismissal under the auspices of that particular variable be defensible (but not necessarily indefeasible!) in the court of law.

1. Conclusion:

Our client, Clyde Wilson, has as solid a case as one could hope. All law prohibiting discrimination, from law currently in operation at the city and state-level to the 14th Amendment of the Constitution prohibit the kind of treatment our client endured at his former place of work. As it relates to us, a *prima facie* case of discrimination is established through the Green precedent. 2001 N.Y. A.N. 1971 is the means by which our client can regain his former job. All law, in this respect, is salient; it is up to us to structure our advocacy accordingly.

1. ‘Age-related discrimination’ is colloquially termed ‘ageism’. Ageism is prohibited by law and subject to legal redress. [↑](#footnote-ref-1)
2. The Age Discrimination in Employment Act of 1967 (81 Stat. 602), amending President Johnson’s Civil Rights Act of 1964, includes age-related discrimination within its regulatory compass. [↑](#footnote-ref-2)
3. While a memo of constitutional law may be both too long and too cursory for our purposes, it’s worth noting that anytime during the litigation process, we may case may directly appeal to the Constitution. [↑](#footnote-ref-3)
4. Quoting footnote 31 from In re Conservatorship Groves, 109 S.W.3d 317 [↑](#footnote-ref-4)
5. Prejudice has its heuristic-of-selection in the *stereotype*. [↑](#footnote-ref-5)
6. Summarizing p. 1165 from Stevenson v. Superior Court, 941 P.2d 1157 [↑](#footnote-ref-6)
7. ‘Direct evidence’ refers to evidence with immediate and unambiguous age-related discriminatory connotations. For instance, the most “the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of age" Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081-82 (11th Cir.1990) comport with the legal definition of ‘direct evidence’. Such evidence need not merely be verbal; written evidence, too, may meet the requirement age-related discrimination provided that such written evidence is as bald-faced as a management memorandum stating, ‘Fire Earley – he is too old.’ id. at 1081. [↑](#footnote-ref-7)
8. While the case deals directly with race-related rather than age-related discrimination, the case established the overarching framework through which today, in modified form, ***all*** discriminatory claims can be vetted. The three arches to the frame are as follows: First, the plaintiff establishes a *prima facie* case by providing a preponderance of evidence for alleged discrimination; at which point, the burden of production shifts to the employers to rebut the *prima facie* case by “articulat[ing] some legitimate, nondiscriminatory reason for the employee’s rejection”(p.802). The employee may only prevail if his rejoinder shows that the employer’s response was really behavior motivated by discrimination and the ostensible reason provided by the employer in step two a spurious pretext. [↑](#footnote-ref-8)
9. It would be difficult (if not impossible) for our firm to seek redress for our client from the numerous employers whom have denied our client the opportunity to work. We are obliged to undertake what we know for a fact to be concrete; we will litigate on behalf of the violation of our client’s civil rights against Dice & Jacobs Law. During our client’s year-long vain effort to find work, there may have been some instances where he was ***not*** qualified or otherwise a poor fit for the position advertised based on some extenuating circumstance. Dice & Jacobs Law, however, is not one of those instances. [↑](#footnote-ref-9)
10. The species of age-related discrimination which falls under the genus of discrimination. [↑](#footnote-ref-10)
11. “The opportunity to obtain employment without discrimination because of age, race, creed, color, national origin, sexual orientation, military status, sex, marital status, or disability, is hereby recognized as and declared to be a civil right.” [↑](#footnote-ref-11)
12. Positive rights enumerate entitlements *to* (like gainful employment via NY CLS Exec § 291). Negative rights enumerate ones entitlements *from* (like excessive bail via the 8th Amendment in the Bill of Rights). [↑](#footnote-ref-12)
13. The New York State Supreme Court [↑](#footnote-ref-13)