

old woman who was not of the African-American race.

II. DISCUSSION

Cooper sets forth the following claims: (1) race discrimination in violation of Title VII of the Civil Rights Act; (2) violations of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution, brought by way of 42 U.S.C. § 1983; (3) age discrimination in violation of the Age Discrimination in Employment Act ("ADEA"); (4) intentional infliction of emotional distress; and (5) negligent infliction of emotional distress. Defendants seek dismissal of the following claims for relief: (1) Cooper's Title VII and ADEA claims against Barry; (2) Cooper's ADEA claims against the State of Connecticut Office of the Public Defender; (3) Cooper's 42 U.S.C. § 1983 claims; and (4) Cooper's intentional and negligent infliction of emotional distress claims.

A. STANDARD

When considering a Rule 12(b)(6) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spaulding,

467 U.S. 69, 73 (1984); Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). In its review of a motion to dismiss, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

B. TITLE VII AND ADEA CLAIMS AGAINST BARRY

To the extent Cooper asserts Title VII and ADEA claims against Barry in his individual capacity, the court finds that the holding of the Court of Appeals for the Second Circuit in Tomka v. Seiler, 66 F.3d 1295, 1317 (1995), that "an employer's agent may not be held individually liable under Title VII," bars both claims against Barry. Given the similarity of purpose and in the statutory language used in the ADEA and Title VII, there is no reasoned justification for applying a different rule than that set forth in Tomka. See Stults v. Conoco, Inc., 76 F.3d 651, 655 (5th Cir. 1996). Therefore, the Title VII and ADEA discrimination claims against Barry fail to state a claim upon which relief may be granted and must be dismissed.

C. ADEA

Cooper's age discrimination claim against the State of Connecticut Office of the Public Defender must be dismissed because it is barred by the Eleventh Amendment and the doctrine of sovereign immunity. Generally, a suit for recovery of money may not be maintained against the state itself, or against any agency or department of the state, unless the state has waived its sovereign immunity under the Eleventh Amendment. See Florida Dep't of State v. Treasure Salvors, 458 U.S. 670, 684 (1982). Absent waiver or abrogation, the Eleventh Amendment bars suits brought in federal court against a state. See Mancuso v. New York State Thruway Auth., 86 F.3d 289, 292 (2d Cir. 1996) (citing Hans v. Louisiana, 134 U.S. 1, 10-11 (1890)). The U.S. Supreme Court has held that Congress' purported abrogation of the states' Eleventh Amendment immunity for claims brought pursuant to the ADEA was invalid. See Kimel v. Florida Board of Regents, 528 U.S. 62, 91 (2000). Cooper has not demonstrated that the State of Connecticut has waived its immunity. Therefore, Cooper may not maintain her ADEA claim against the State of Connecticut Public Defender's Office.

C. STATUTE OF LIMITATIONS

Defendants argue that Cooper's claims brought pursuant to 42 U.S.C. § 1983, her negligent infliction of emotional distress claims, and intentional infliction of emotional distress claims

fail as a matter of law because they are barred by the applicable statute of limitations. Cooper was informed of the fact that she was passed over for the position in question in February of 1998. Because the governing statute of limitations sets forth a three-year limitations period, see Conn. Gen. Stat. § 52-577, Cooper had to file her claims before February 28, 2001. Cooper filed her claims on December 29, 2003.

Cooper contends that the court should toll the limitations period pursuant to the doctrine of equitable tolling. "The essence of the doctrine [of equitable tolling] 'is that a statute of limitations does not run against a plaintiff who is unaware of his cause of action.'" Cerbone v. International Ladies' Garment Workers' Union, 768 F.2d 45, 48 (2d Cir. 1985) (quoting Long v. Abbott Mortgage Corp., 459 F. Supp. 108, 113 (D. Conn. 1978)). Here, Cooper does not argue that she was unaware of her cause of action, but rather that the court should toll the limitations period during the time she was exhausting her administrative remedies with respect to her Title VII discrimination claims. Although her argument has superficial appeal, there is no support for this position pursuant to the doctrine of equitable tolling or otherwise. Further, adopting Cooper's position would be inconsistent with the Supreme Court's holdings on similar issues. See Johnson v. Railway Exp. Agency, Inc., 421 U.S. 454, 465-66 (1975) (holding that not tolling the governing statute of

limitations for a 42 U.S.C. § 1981 claim during the pendency of administrative exhaustion proceedings on a Title VII claim was not contrary to federal policy). Therefore, Cooper's § 1983 claims, her negligent infliction of emotional distress claims, and intentional infliction of emotional distress claims are barred by the applicable statute of limitations.

III. CONCLUSION

For the reasons set forth herein, (1) Cooper's Title VII and ADEA claims against Barry; (2) Cooper's ADEA claims against the State of Connecticut Office of the Public Defender; (3) Cooper's 42 U.S.C. § 1983 claims; and (4) Cooper's intentional and negligent infliction of emotional distress claims fail to state a claim upon which relief may be granted, and defendants' motion to dismiss (dkt. # 11) is **GRANTED** with respect to these claims.

So ordered this 11th day of March, 2005.

/s/DJS

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE