Southern District of Texas Bench Bar Conference  
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1. Motions to Consolidate
   1. Rule 42(a) of the Federal Rules of Civil Procedure

If actions before the court involve a common question of law or fact, the court may:

* + - 1. join for hearing or trial any or all matters at issue in the actions;
      2. consolidate the actions; or
      3. issue any other orders to avoid unnecessary cost or delay.
  1. Case Law Interpreting Rule 42(a)
     1. The purpose of consolidation is to “expedite trial and eliminate unnecessary repetition and confusion.” *Miller v. U.S. Postal Serv*., 729 F.2d 1033, 1036 (5th Cir. 1984).
     2. Federal courts have broad discretion to consolidate or manage cases under Rule 42. *Botazzi v. Petroleum Helicopters, Inc.,* 664 F.2d 49, 50 (5th Cir. 1981).
     3. In evaluating whether consolidation is proper, courts in the Fifth Circuit have considered whether: (1) the actions are pending before the same court, (2) common parties are involved in the cases, (3) there are common questions of law and/or fact, (4) there is risk of prejudice or confusion if the cases are consolidated, and if so, whether the risk is outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are handled separately, (5) consolidation will conserve judicial resources and reduce the time and cost of handling the cases separately, and (6) the cases are at different stages of preparation. *Pasley v. CenterPoint Energy Houston Elec., LLC.*, No H-11-2341, 2012 U.S. Dist. LEXIS 12903, at \*3-4 (S.D. Tex. Feb. 1, 2012) (Ellison, J.).
  2. Southern District of Texas Local Rules
     1. LR 5.2. Related Litigation Policy

The parties must advise the Court of related current or recent litigation and of directly affected non-parties.

* + 1. LR 7.6. Consolidation

A motion to consolidate cases will:

Contain in the caption of the motion: (1) The case numbers; (2) Full styles; and (3) Judge to whom each of the cases is assigned.

Be filed only in the oldest case with a courtesy copy furnished to the other affected courts.

Be heard by the judge to whom the oldest case is assigned.

The term “oldest case,” as used in this Rule, means the case filed first in any court, state or federal, including cases removed or transferred to this Court.

1. Motions to Consolidate in Employment Discrimination Cases in Fifth Circuit Courts
   1. Same Plaintiff(s) – Same Defendant

*London v. U.S. Postal Serv.,* 2005 WL 4984382 (E.D. Tex. Nov. 2, 2006) (Consolidation granted)

Plaintiff, a pro se plaintiff, filed two separate cases under Title VII of the Civil Rights Act of 1964 (“Title VII”) alleging employment discrimination arising out of his employment with USPS. The second case was filed after the defendant filed a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Specifically, the defendant asserted that plaintiff had not named the correct defendant or properly served the defendant. Plaintiff did not respond to the motion to dismiss but rather filed a second lawsuit. Defendant, which was seeking consolidation, surmised that plaintiff was trying to remedy the alleged defects of his original complaint. The second lawsuit was filed almost a year after the first lawsuit was filed. Both lawsuits involved identical claims and arose out of the same incident. The court granted consolidation because both cases involved common issues of law and fact.

*Pugh v. Baker Hughes Oilfield Operations, Inc.,* 2007 WL 3378377 (S.D. Tex. Nov. 13, 2007) (Atlas, J.) (Consolidation denied)

Plaintiff filed a collective action under the Fair Labor Standards Act (“FLSA”) alleging unpaid overtime, and a few months later filed a separate lawsuit against her former employer alleging retaliatory termination under Title VII. While the court recognized that the two cases involved the same parties, the same lawyers, and some of the same witnesses, the court determined that they shared a common factual background on only a broad level. Additionally, the court could not identify any common questions of law between the two cases. Accordingly, the court denied consolidation.

*Harris v. Bexar Cty.*, 2009 WL 4059092 (W.D. Tex. Nov. 23, 2009) (Consolidation denied)

Plaintiff filed two separate Title VII cases. The first case was filed against Bexar County and an individual defendant alleging racial discrimination. The second case was filed about 9 months later alleging retaliation. Bexar County was the only defendant in the second case. Plaintiff filed a motion to consolidate the cases. After reviewing the factors for consolidation, the court noted that the cases involved distinct legal claims with only some factual overlap (i.e., the retaliation claim was premised on plaintiff’s claim of discrimination in the first lawsuit). The court also was persuaded by the fact that the cases were at distinct stages of litigation. Discovery in the first case was closed before the plaintiff filed the motion for consolidation and the defendant had already filed a motion for summary judgment in the first case. These factors weighed against granting consolidation.

*Gonzalez v. Arc Auto., Inc., et al.,* No. 7:14-CV-149, Order on Motion to Consolidate (S.D. Tex. April 21, 2015) (Crane, J.) (Consolidation granted)

Plaintiff filed two separate cases against the same four defendants. In the first case, plaintiff alleged that he was wrongfully terminated after he suffered a stroke at work. Defendants removed the case to federal court. Plaintiff later amended that lawsuit to assert an allegation of unpaid overtime under the FLSA. The court granted summary judgment on all claims, with the exception of the FLSA claim. A month before trial was supposed to start on the FLSA claim, plaintiff filed a second case against defendants in state court alleging claims of age and disability discrimination under the Age Discrimination and Employment Act (“ADEA”) and the Americans with Disabilities Act (“ADA”) based on almost identical facts that were asserted in the first lawsuit. Because both cases involved almost identical facts and allegations and arose out of plaintiff’s employment, the defendants filed a motion for consolidation. The court granted consolidation.

*Omutiti & Chemali v. Macy’s Dept. Store,* No. 4:15-CV-02167, Order on Motion to Consolidate (S.D. Tex. Nov. 13, 2015) (Atlas, J.) (Consolidation granted)

Plaintiffs filed a lawsuit in state court alleging state law tort claims of false imprisonment, intentional infliction of emotional distress, and defamation, as well as violations under the Texas Labor Code and the FLSA. The case was removed to federal court. Plaintiffs filed a motion to remand attaching an unfiled amended petition without the FLSA claim. Plaintiffs’ motion to remand was denied. Within days of filing their motion to remand, plaintiffs filed a second similar but separate case in federal court alleging FLSA claims, in addition to claims under Title VII, Section 1981, and the ADA. Because the two cases involved the same or similar causes of action arising out of plaintiffs’ employment with defendant, the court granted defendant’s motion to consolidate.

*Raimer v. Montgomery Cty. Hosp. Dist., et al.,* No. 4:17-cv-01258, Order on Motion to Consolidate Related Cases (S.D. Tex. Sept. 6, 2017) (Hittner, J.) (Consolidation granted)

Plaintiff filed a lawsuit in state court alleging claims under the Texas Whistleblower’s Act, as well as other claims related to her employment. Although plaintiff filed an EEOC Charge, plaintiff had not yet received the notice of right to sue related to her claims of age discrimination and retaliation. The case was removed to federal court. A few months later, the plaintiff filed a lawsuit against the same defendants in state court alleging age discrimination and retaliation. Plaintiff also alleged a claim for unpaid overtime. The second state law case was also removed to federal court. Consolidation was granted because of the similarity in the claims and the fact that both cases were in the initial stages of the proceedings.

* 1. Different Plaintiff(s) – Same Defendant

*Vance v. City of Nacogdoches*, TX, 198 F. Supp. 2d 858 (E.D. Tex. 2002) (Consolidation denied)

Plaintiffs brought two separate actions against the defendant, asserting different claims of employment discrimination. The first lawsuit alleged claims related to one plaintiff’s promotion. The second lawsuit alleged claims related to the treatment the other plaintiff claimed to have received while working for the defendant. The plaintiffs, who were represented by the same counsel, filed a motion to consolidate the cases. The court denied consolidation because plaintiffs were employed by different departments, asserted different discrimination claims, and sought different remedies.

*E.E.O.C. v. Coastal Transp. Servs., Inc.,* 2007 WL 2126609 (S.D. Tex. July 20, 2007) (Rainey, J.) (Consolidation denied)

An individual plaintiff filed a lawsuit against the defendant alleging unpaid overtime under the FLSA. Plaintiff filed a motion to amend her complaint adding individual defendants and adding an allegation that the office manager wrongfully accused her of stealing. The amended complaint also included an allegation of intentional infliction of emotional distress. More than a year after the individual plaintiff filed the case, the EEOC filed a lawsuit against the company on behalf of the original plaintiff and those similarly situated under Title VII alleging that the original plaintiff and other female employees were sexually harassed and that the original plaintiff was retaliated against for complaining of a hostile work environment. The original plaintiff filed a motion to consolidate the cases. The court denied consolidation finding that the claims in each case arose from separate facts and involved different issues of law. Moreover, the court considered the potential prejudice to the defendant resulting from consolidation of such dissimilar cases.

* 1. Same Plaintiff – Different Defendants

*Champlin v. Experis US, Inc.,* No. H-16-421, Order on Motion to Consolidate (S.D. Tex. Mar. 30, 2017) (Stacy, J.) (Consolidation granted)

Plaintiff filed two separate employment discrimination cases against two different defendants arising out of a job posting for a position. Plaintiff’s first lawsuit was against the recruiter alleging that the recruiter discriminated against the plaintiff based on his age. The case also included a disparate impact claim under the ADEA. Two weeks after his deadline in the first case to add additional parties, plaintiff filed a second almost identical lawsuit in state court against the company which was seeking to fill the position. The case was removed to federal court. Given the substantial overlap in the cases, including the fact that the plaintiff was represented by the same counsel and both cases involved employment discrimination claims arising out of the same job posting, the court granted consolidation.