

No. 24-0452

**In The
Supreme Court of Texas**

**WARREN KENNETH PAXTON, JR.,
PETITIONER**

v.

**COMMISSION FOR LAWYER DISCIPLINE,
RESPONDENT**

*On Petition for Review from the
Fifth Court of Appeals, Dallas
Case No. 05-23-00128-CV*

**THE COMMISSION FOR LAWYER DISCIPLINE'S
OPPOSED MOTION TO DISMISS APPEAL AS MOOT**

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Texas Rule of Appellate Procedure 56.2, Respondent/Plaintiff, the Commission for Lawyer Discipline (the "Commission") files this motion to dismiss this appeal as moot.

The Commission is filing contemporaneously herewith, a notice of nonsuit with prejudice of its attorney disciplinary action against Petitioner/Defendant in this matter, which constitutes the only affirmative claim(s) for relief in this lawsuit. TEX. R. CIV. P. 162 ("At any time before the plaintiff has introduced all of his evidence

other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit, which shall be entered in the minutes.”); *Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon*, 195 S.W.3d 98, 100 (Tex. 2006) (per curiam); *see also Morath v. Lewis*, 601 S.W.3d 785, 787-89 (Tex. 2020) (per curiam).

This attorney disciplinary action raises identical separation of powers issues to those raised in the related attorney disciplinary action, *Webster v. Comm’n for Lawyer Discipline*, No. 23-0694, in the Supreme Court of Texas. Recently, in *Webster*, this Court determined that in circumstances similar to those found in the *Webster* case and in the instant case, principles of separation of powers preclude the attorney disciplinary actions brought by the Commission against those executive-branch attorneys. *Webster v. Comm’n for Lawyer Discipline*, No. 23-0694, 2024 WL 5249494 (Tex. Dec. 31, 2024). The Commission believes this Court’s recent decision in *Webster* calls for its nonsuit of this related attorney disciplinary action.

Because the Commission’s nonsuit disposes of the only affirmative claims in this lawsuit, any case or controversy has been extinguished, and the Court may, upon notice to the parties, grant the petition and dismiss this appeal as moot. TEX. R. APP. P. 56.2; *see also Blackmon*, 195 S.W.3d at 100; *Morath*, 601 S.W.3d at 787-89.

Prayer

The Commission requests that the Court dismiss this appeal as moot in light of its contemporaneously-filed notice of nonsuit.

RESPECTFULLY SUBMITTED,

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CHIEF DISCIPLINARY COUNSEL

ROYCE LEMOINE
DEPUTY COUNSEL FOR ADMINISTRATION

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MICHAEL G. GRAHAM
STATE BAR CARD NO. 24113581
ATTORNEY FOR RESPONDENT

CERTIFICATE OF CONFERENCE

This is to certify that the undersigned attorney conferred with Petitioner's counsel, Mr. Aaron L. Nielson, on January 22, 2025, regarding the relief sought herein. Mr. Nielson indicated that Petitioner opposes this motion.



MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Opposed Motion to Dismiss Appeal as Moot of Plaintiff/Respondent, the Commission for Lawyer Discipline, has been served on all counsel of record by electronic service through this Court's electronic filing service provider on the 22nd day of January 2025.

A handwritten signature in black ink, appearing to read "Michael G. Graham", written over a horizontal line.

MICHAEL G. GRAHAM
APPELLATE COUNSEL
STATE BAR OF TEXAS

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

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Filing Description: The Commission for Lawyer's Discipline's Opposed

Motion to Dismiss Appeal as Moot

Status as of 1/22/2025 12:11 PM CST

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