

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
MICHIGAN, SOUTHERN DIVISION

Mark P. Donaldson and Vera Bay v. Nick Lyon, Julie McMurtry,  
Meridian Health Plan of Michigan, Inc., Michigan Administrative  
Hearing System, Michigan Department of Health and Human  
Services, Robert Gordon, Laurie Sauer, NEMCSA, and Peggy  
Hampel

Donaldson · No. 18-13994 · Decided December 10, 2025

SUMMARY

The United States District Court for the Eastern District of Michigan adopts the magistrate judge’s report and recommendation, overrules the plaintiff’s objections, and denies the motion to settle the appellate record. The court holds that the existing scheduling and dismissal orders adequately document the relevant proceedings and constitute the best available means of presenting the record, making further reconstruction under Federal Rule of Appellate Procedure 10(c) unnecessary.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of Michigan, Southern Division                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | David M. Lawson                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | United States District Court for the Eastern District of Michigan, Southern Division                                                                                                                                                                                                                                                                                        |
| DECIDED               | December 10, 2025                                                                                                                                                                                                                                                                                                                                                           |
| DOCKET                | 18-13994                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | After the district court dismissed the action under Federal Rule of Civil Procedure 41(b), the plaintiff appealed and moved under Federal Rule of Appellate Procedure 10(c) to settle the record concerning an earlier off-the-record telephonic scheduling conference. The court reviewed the magistrate judge's report and recommendation and the plaintiff's objections. |
| STANDARD OF REVIEW    | The district court reviewed the magistrate judge's report and recommendation and the plaintiff's objections; the opinion does not                                                                                                                                                                                                                                           |

|                           |                                                                                                                                                                                                                                               |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | state a separate formal standard of review.                                                                                                                                                                                                   |
| <b>PRECEDENTIAL VALUE</b> | Unknown                                                                                                                                                                                                                                       |
| <b>PARTIES</b>            | Mark P. Donaldson, Vera Bay v. Nick Lyon, Julie McMurtry, Meridian Health Plan of Michigan, Inc., Michigan Administrative Hearing System, Michigan Department of Health and Human Services, Robert Gordon, Laurie Sauer, NEMCSA, Peggy Hampel |

## TOPICS

appellate procedure civil procedure preservation of error

## PRACTICE AREAS

civil procedure appellate procedure

## QUESTIONS PRESENTED

1. Whether Federal Rule of Appellate Procedure 10(c) applied to the off-the-record telephonic scheduling conference.
2. Whether the district court needed to use the Rule 10(c) procedure to settle the appellate record when the scheduling conference and the dismissal proceedings were fully described in court orders.

## HOLDINGS

1. The court assumed without deciding that a request to complete the record of the telephonic scheduling conference was nominally governed by Federal Rule of Appellate Procedure 10(c).
2. No further Rule 10(c) settlement of the record was necessary because the court orders memorializing the scheduling conference and the dismissal provided the best available means of presenting the relevant proceedings for appellate review.

## KEY QUOTATIONS

*“Where, as here, no transcript exists because the parties appeal an order that was decided without a hearing, Rule 10(c) is inapposite.”*

*“Where the issues addressed in a proceeding are thoroughly summarized by subsequently-issued orders of the Court, there is no need for substitution of the parties’ recollections via the Rule 10(c) procedure, because the Court’s orders themselves constitute the “best available means” of presenting the record for appellate review.”*

## FACTUAL BACKGROUND

The magistrate judge held an off-the-record telephonic scheduling conference on September 19, 2024, and subsequently issued an eight-page scheduling order summarizing the procedural history, the parties' positions, and the reasons for setting deadlines. No audio recording or transcript of the conference existed. After the case

was dismissed under Rule 41(b) and the plaintiff appealed the dismissal, he sought to reconstruct and settle the record of the scheduling conference under Rule 10(c).

## PROCEDURAL HISTORY

The court referred pretrial matters to a magistrate judge, who held a telephonic scheduling conference and issued an order summarizing the conference and setting deadlines for defendants' renewed motions to dismiss. After the plaintiff refused to respond to dispositive motions despite extensions, the district court dismissed the case under Rule 41(b), denied post-dismissal motions, and the plaintiff appealed. The magistrate judge recommended denial of the plaintiff's motion to settle the appellate record, and the district court adopted the recommendation, overruled the objections, and denied the motion.

## DISPOSITION

other

## CASES CITED

- United States v. Locust, 95 F. App'x 507, 511 (4th Cir. 2004)
- Athridge v. Rivas, 141 F.3d 357, 361-62 (D.C. Cir. 1998)
- Foley v. Orange County, Florida, No. 12-269, 2013 WL 12158615, at \*1 (M.D. Fla. Nov. 4, 2013)
- Blakely v. CarMax Auto Superstores, Inc., No. 23-2272, 2024 WL 1869366, at \*2 (D. Kan. Apr. 29, 2024)
- Brown Inv. Advisory & Tr. Co. v. Allen, No. 19-2332, 2021 WL 2141377, at \*2 (D. Md. May 26, 2021)

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