

**Public Policy Position****ADM File No. 2019-40 - Proposed Adoption of Administrative Order No. 2026-X, Proposed Rescission of Administrative Order No. 2012-7, and Proposed Amendments of MCR 2.407 and 8.110**

The Negligence Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 1,623 members. The Negligence Law Section is not the State Bar of Michigan and the position expressed herein is that of the Negligence Law Section only and not the State Bar of Michigan. The State Bar's position is to support ADM File No. 2019-40 in principle and underscore SBM's previous position that attorneys and parties should not be required to appear in person if the judicial officer is participating remotely in a proceeding. The State Bar has authorized the Negligence Law Section to advocate its inconsistent position.

The Negligence Law Section has a public policy decision-making body with 12 members. On February 25, 2026, the Section adopted its position after a discussion and vote at a scheduled meeting. 10 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 2 members did not vote.

**The section is recommending more clarity on types of proceedings that will require attorneys to be present in the courtroom rather than participating remotely.**

**Contact Person:** Todd Tennis

**Email:** [ttennis@capitol-services.org](mailto:ttennis@capitol-services.org)

## **Negligence Law Section Position on Proposed Amendments to MCR 2.407 and Related Orders (ADM File No. 2019-40)**

The Negligence Law Section of the State Bar of Michigan values courtroom integrity, professional advocacy, and meaningful access to justice. We appreciate the role that remote proceedings can play in improving accessibility — particularly for litigants with limited means or mobility and in nonsubstantive matters such as scheduling conferences or routine pretrial check-ins. However, the Section has significant concerns about the broad and permanent expansion of remote judicial presiding authorized by the proposed amendment of MCR 2.407, the adoption of Administrative Order No. 2025-X, and the rescission of Administrative Order No. 2012-7.

### **Judges Should Generally Be Physically Present in the Courtroom**

The Section believes that judicial officers should be physically present for court proceedings as a rule, absent clearly defined and compelling exceptions. These may include disability, emergency matters, or inclement weather, provided there is transparency and uniform application of such exceptions. The courtroom is a public institution—open, observable, and anchored by the presence of a judge who maintains order, assesses credibility, and embodies the authority of the judicial system.

Canon I of the Michigan Code of Judicial Conduct provides that “a judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary.” The physical presence of the judge ensures that courtroom decorum is upheld, that the judge is fully engaged in the proceedings, and that the public maintains confidence in the transparency and seriousness of the process.

We are also concerned about the ambiguity in the proposed language allowing judges to preside remotely in any proceeding that “does not require the judicial officer’s in-person presence.” This phrase is undefined and subjective, leaving the determination to individual judicial officers without clear standards or guidance. Such ambiguity risks inconsistent application across courts and could result in judicial officers presiding remotely in matters where their in-person presence would materially impact the fairness, decorum, or perceived legitimacy of the proceeding. To maintain public trust and consistency in court operations, any rule permitting remote judicial participation must set forth explicit and narrowly tailored exceptions.

### **Remote Access for Litigants in Nonsubstantive Matters**

We recognize that remote participation by litigants can reduce barriers and increase efficiency, particularly for routine or nonsubstantive matters. When used thoughtfully and under appropriate judicial supervision, remote access for litigants can promote access to justice. However, this

flexibility should not be conflated with allowing judicial officers to routinely preside remotely, particularly in matters involving testimony, significant evidentiary rulings, or trial.

### **Maintaining Fairness and Consistency**

A primary concern with broadening remote presiding is the potential erosion of uniformity and predictability in courtroom procedure across jurisdictions. We urge the Michigan Supreme Court to prioritize statewide consistency and safeguard litigants' ability to rely on standard practices, regardless of geography or judicial preference.

Moreover, while technology can improve efficiency for some, it can disadvantage others. Not all participants have access to reliable internet or technology, and reliance on videoconferencing platforms may unintentionally exclude those without resources or digital literacy. In-person courtrooms help ensure that everyone can meaningfully participate, regardless of their technological capacity.

### **Protecting the Development of Young Trial Lawyers**

In-person courtroom proceedings are essential for the development of young trial lawyers. Open proceedings, with the Judge presiding in the courtroom, allow newer attorneys to observe and absorb the nuances of courtroom advocacy—how experienced litigators interact with judges, navigate difficult witnesses, discourteous opposing counsel, or even a bad outcome. These lessons are difficult, if not impossible, to replicate in a virtual format. The Section believes we have an obligation to preserve this environment for the next generation of attorneys.

### **Conclusion**

For these reasons, the Negligence Law Section opposes the proposed amendments in ADM File No. 2019-40. To the extent the Court continues remote presiding, the Section urges the Court to provide narrowly defined exceptions under compelling circumstances such as disability or emergency. At the same time, the Section supports continued remote participation options for litigants in nonsubstantive matters, provided that access remains fair, consistent, and does not compromise due process or the quality of courtroom advocacy.

We thank the Court for the opportunity to provide comment on this important matter.

State Bar of Michigan  
Board of Commissioners  
[ntriplett@michbar.org](mailto:ntriplett@michbar.org)

Re: Negligence Law Section Comment on Proposed Adoption of *Revised* ADM File No. 2019-40

The Negligence Law Section submits the following revised comments regarding the Michigan Supreme Court's December 26, 2025 proposal in ADM File No. 2019-40.

Although the proposal has been revised, the central concern raised in the Section's prior comment remains unresolved. The proposed Administrative Order continues to authorize remote judicial presiding "*in any proceeding that does not require the judicial officer's in-person presence.*"

This operative sentence is materially unchanged from the Court's March 12, 2025 proposal. While the revised version adds geographic and procedural safeguards, it does not define what proceedings require in-person judicial presence, nor does it articulate objective criteria for making that determination.

As drafted, the rule leaves the scope of remote presiding to the individual discretion of each judicial officer. Without defined standards, the rule permits potentially inconsistent application across courts and jurisdictions, particularly in proceedings involving:

- Live witness testimony and credibility determinations;
- Evidentiary hearings;
- Dispositive motions involving substantial oral advocacy;
- Bench trials;
- Jury trials.

These types of proceedings implicate heightened due process considerations and carry substantial consequences for litigants. The absence of clear parameters creates uncertainty as to when in-person judicial presence is required and when it is not.

The additional geographic limitations and emergency provisions do not resolve this ambiguity. The core authorization for remote presiding remains unchanged.

The Section supports remote access for litigants in scheduling conferences, administrative matters, and other nonsubstantive proceedings. The circumstances under which a judge may preside remotely – particularly in substantive proceedings – should not be left to undefined discretion.

For these reasons, the Negligence Law Section respectfully recommends that the Board consider advocating for clarification or amendment defining the types of proceedings that require a judicial officer's physical presence in the courtroom.

Clear, statewide standards would promote uniformity, protect due process, and preserve public confidence in the integrity of courtroom proceedings.