

The Legal Intelligencer

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New Phila. Defense Bar Leader Wants to Strengthen Links With Plaintiffs Lawyers

The Legal spoke with Robert Cosgrove, who started heading the Philadelphia Association of Defense Counsel last month, about what he hopes to accomplish during his tenure.

By Max Mitchell | July 16, 2018



Robert Cosgrove.

It's been a busy summer so far for the new president of the [Philadelphia Association of Defense Counsel](#).

Wade Clark Mulcahy partner Robert Cosgrove started heading the organization last month, and, since taking over, he has ramped up coordination within Philadelphia's defense bar, worked to increase collaboration with the city's plaintiffs bar, and helped to establish new protocols at the court affecting a range of issues, from attorney ID access to case consolidation.

The Legal spoke with Cosgrove, a former assistant district attorney in Nassau County, New York, who now focuses on products liability, cybersecurity and other civil defense work, about what he hopes to accomplish during his tenure.

The following has been edited for clarity, space and flow.

Q: What have you been doing since you took over?

A: It's been nonstop busy. First, although PADC is older than pretty much everyone else in the country in respect of being in defense organizations, we're part of the hierarchy of the Defense Research Institute, or what they call an SLDI, or a state and local defense organization, so we get invited as leadership to various DRI leadership conferences. A couple of those types of things have taken place. One in Lake George, so that took up a couple days.

I also had a chance to sit down and meet with [former Philadelphia Trial Lawyers Association president] Larry Bendesky who is leaving and Tim Lawn who is taking over—maybe he's officially in office since about last week now—and we've been talking about the ways we can work together.

And then thirdly talking to the Pennsylvania Defense Institute, which is our sister statewide institute. We've been talking about ways we can work with them, so we've had those types of meetings. Then we've had our usual stuff

that's gone on. We've agreed to work on a couple of amicus brief issues. We're on for two right now, working on a third.

We have the Ronald McDonald House charity event. This will be our second time doing it. We're going to cook for the folks and parents who are staying there, so that's coming up, there's a lot of prep for that.

Then there's the practical aspects of the organization, which is we've got to set up all our committees for next year. We have an active amicus committee for the reasons we talked about. We have the active programs committee, which runs all our CLE activities, plus our young lawyers program, plus our annual meeting. We have a social media and technology committee that's getting up to speed. We have a judicial relations committee, and we've got the legislative committee, all of which needs to be restaffed because the terms of all the people on the committee runs for a year, so we've got to restaff all those things.

The last thing that's taking up a lot of time is, I reached out to what I believe is every defense firm in the city. If I'm missing somebody I apologize, but I think that's right. I reached out to talk about ways that we can be of better service to them and their lawyers, and to talk about ways in which we can collaborate on issues that are of common interest to the defense bar, because I think the defense bar in general, unlike the plaintiff bar, does suffer from a bit of a prisoners dilemma. It's in everyone's best interest to cooperate, but that's hard to do for a variety of reasons—competition, billing pressures, other types of things that the plaintiffs bar doesn't have in quite the same way. Sometimes it's difficult to get folks to agree that we should work on certain issues, or pool our resources, and we're trying to improve that, because we are the voice of the defense bar here in Philadelphia.

Q: Are there any new programs on the horizon?

A: I wouldn't say new per se. Most of the stuff I'm hoping to work on this year are programs that began approximately three years ago under John Livingood and [Dave Wolf](#)'s administrations, where we had our long-range planning committee take a look at some issues, and these things take a while to matriculate. [Joe Cincotta](#) and I worked together last year on a lot of different issues and we're starting to see the fruits of some of those things.

For example, the judicial relations committee. We worked with the Philadelphia Trial Lawyers Association to sit down with Judge [Sheila] Woods-Skipper, Judge [Idee] Fox, and Judge [Jacqueline] Allen, actually her team came to the meeting, she had conflicts, but we met to work and talk about different issues that are of concern to the plaintiffs bar and the defense bar and to reach some common agreement on those things. And the court has been nice enough to effectively allow us, and if you go to our [website](#) you'll see the fruits of that, to issue a memo, a joint memo on behalf of the PADC and PTLA. I think that's the first time that's been done.

The first communique tells all the people on the PADC and PTLA member lists that through the work of the court, we've been able to change attorney ID access card times. It sounds silly, but the attorney IDs tap out after 30 days, so if you didn't tap in to City Hall every 30 days, you have to go restart the process. So Judge Woods-Skipper was nice enough to work with City Hall on that.

Another thing is how to deal with consolidated cases. Oftentimes you have a situation where there's a first in-time case, but then new parties are discovered, so a second in-time case is filed, and how do you deal with that consolidation? The parties that get to join into the case, they say, wait a

minute we didn't know what was going on. That affects the defendants, and it also affects the plaintiffs because now they've got to re-litigate certain things. So we worked with Judge Fox in particular on this to come to a solution that makes some sense.

The third one that's jumping to mind that's been agreed to with the courts is with respect to motions in limine, because there are certain cases in which a motion in limine might be dispositive of all the facts in the case, it might be like *the* issue, and if the issue gets resolved in a certain way that's going to clarify what has to get tried, whether the case does get tried, etc. And right now the system is set up so that pretty much those motions won't get assigned to a judge for any kind of argument or decision until you're picking a jury. So we've got a lot of prep time that might be better spent elsewhere. So Judge Fox had a proposal for how we can deal with that so we can flag, in the right case, not all the cases, but the right case, if there's a particularly meaningful issue, let's say the enforceability of a waiver that might make the rest of the case somewhat moot; you can ask the courts to flag the issue at the pretrial conference, and then the hope is the the team leader will sign it out for argument prior to jury selection, and there will be a bit of a gap between the argument on the substantive motion in limine, and the actual jury selection, which gives people time to really focus on a case that is really going to get tried, as opposed to one that might get tried.

We're also working with the courts to find out if there are better ways to bring better technology, again with the Philadelphia Trial Lawyers, we're working jointly on this, to figure out if there's a way to bring technology to the settlement conference, and then to the judge pro tempore program, to allow technology, this is 2018 after all, to make those settlement conferences more productive. That's still in discussions.

Q: What are the top objectives you're hoping to accomplish during your tenure?

A: The main thing I hope to do this year is increase collaboration and cooperation, one, with our sister nationwide, statewide defense organizations, and two, with the Philadelphia Trial Lawyers, because they're not always our enemies. They can be when we're zealously advocating, but they're not in general—some attorneys excepted. [Laughs.] And then, thirdly, just to cooperate or better facilitate discussions with the defense firms here in the state.

Sometimes, I think, we get so caught up in emails, that we lose sight of the old-fashioned—and I'm 44 so I'm sort of in the middle of that. I was in a world where, when I first began practicing, you faxed communications back and forth. You had floppy disc copies of transcripts. And now we've gone the other way where it's all emails. I think some of us lose sight of the value of old-school face-to-face discussions with people. It's a better way to get things done.

Q: Are there any legislative issues you're going to pay attention to this year?

From a legislative perspective, obviously we're interested in the same things that come up year after year: tax on legal services, other new asbestos litigation issues, auto insurance premium increase requirements.

But the one that is the greatest interest to our members is a quasi-judicial, quasi-legislative issue, which is: what does *Tincher* [v. *Omega Flex*] mean, and what are the appropriate jury charges?

There's that back-and-forth with the [Pennsylvania Bar Institute]. Their [standard jury instructions](#) on products liability for example are different than what the [Pennsylvania Defense Institute] and then the PADC believes perhaps are the standard jury instructions, so that back-and-forth continues.

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