

# An Interview with Chief Justice Linda S. Dalianis

by Sabrina C. Beavens, Esq.

*Trial Bar News* met with Chief Justice Linda S. Dalianis on April 15, 2011, four months after she was sworn in as New Hampshire's 35<sup>th</sup> Chief Justice and, of course, our first female chief justice. As members of the Bar, we are familiar with the steep and daunting challenges facing the courts, caused by what Chief Dalianis recently described as the *perfect storm*: drastically reduced resources during a time of increased demand for services. Fortunately, Chief Justice Dalianis, already recognized as a pioneer for women in the law, stands at the helm, determined to battle the storm. It was truly a privilege to spend time with Chief Justice Dalianis and we thank her for her time.

Chief Justice Dalianis graduated from Northeastern University in 1970. Upon graduation, she attended Suffolk University Law School part-time at night, while working during the day as a legal secretary at the Boston law firm of Sullivan & Worcester. Chief Dalianis quickly distinguished herself at the law firm, where one of the partners, Robert Bleakney, Jr. mentored her and promoted her to law clerk: a position formerly held only by Ivy League students. Upon her graduation in 1974, Chief Dalianis joined Hamblett & Kerrigan in Nashua, working for Joseph Kerrigan, her second mentor, whom she credits as "taking a chance on her" at a time when there were very few female attorneys.

At Hamblett & Kerrigan, Chief Justice Dalianis mostly defended civil cases. As one of the few female attorneys in Nashua at the time, family law cases also seemed to "find" her. In 1979, the Chief Justice was appointed to the Superior Court as a Marital Master. In her statement to the Executive Council on November 29, 2010, Chief Dalianis described the job of a Marital Master as "one of the most

difficult jobs in the judicial system." The following year, 1980, Chief Dalianis became the first woman appointed to the Superior Court. For several years, she remained the only woman on the Superior Court bench. During this same period, the Chief Justice became a parent with two young sons, Matt and Ben, balancing the many demands on her time without any of the legal protections which women today, like me, take for granted,

In March 2000, Governor Jeanne Shaheen asked Chief Justice Dalianis to serve as the Chief Justice of the Superior Court – another first for a woman in New Hampshire. Only one month later, Governor Shaheen asked her to join the Supreme Court as its first female justice. Chief Dalianis served the Supreme Court as an Associate Justice until December 2010, when she was sworn in by Governor Lynch as the Chief Justice. Her professional journey is an inspiration for male and female lawyers: a reminder to continue the efforts to advance equality in the profession for our daughters, granddaughters, nieces, and all the other women who will join the profession behind us.

**Q: When you were asked to become a Marital Master, did you immediately know that you would accept the position?**

A: I immediately knew that I wanted to do it and a big part of my decision was that I had been, to that point, a litigator. I was comfortable doing that, but I also knew that my temperament tended more toward mediating, and being in the center, instead of polarized. I have always had the ability to see both points of view and make the counter argument against myself so I thought, "well, I would probably be well suited to be in the position of making the calls and I think it would be a comfortable fit."



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**Q: Fast forwarding to just a few months ago, could you describe how the nomination process for Chief Justice worked, including whether you thought you might be nominated?**

A: In mid-November, the Governor called me the day before he made the nomination at the Executive Council meeting. I thought I had a reasonable chance at being selected and hoped that I would be but I did not take it for granted. When I actually received the call and the Governor asked me if I was willing to become the Chief, I was delighted and honored.

**Q: Is your role as Chief Justice during oral argument noticeably different than when you sat as the Senior Associate Justice?**

A: The Chief is just one among equals in the Court, as far as the Court is concerned, but the Chief is also the ceremonial leader. I previously served the Chief's function on 3JX panels or if the Chief were away or disqualified, so it was something that I had done

before. However, directing oral argument is now my full-time job, not just a part-time job.

**Q: So far, what has surprised you about being Chief Justice?**

A: Nothing. I foresaw that I would be completely immersed in budget issues because my confirmation was coincident with the beginning of the bi-annual budget cycle and that is the pre-eminent job. I also foresaw that I would have to figure out how to triage the responsibilities of the Chief and decide what things I had to concentrate on and what things that I probably should do, but could delegate. Then there is another category of things I couldn't possibly do unless I had a clone. I've had to figure out how to prioritize responsibilities and to jettison some that might be nice, new projects, and things like that, but I just can't afford to undertake right now because of lack of time and energy.

Perhaps, one thing did surprise me and that was how much of my time would be consumed by non-judge things and that my adjudicative job was and remains, kind of squeezed into the corner. I have to spend a lot more time on weekends working on my adjudicative responsibilities because during the work week the administrative responsibilities pretty much swallow all of my time. It is two full-time jobs. I am trying to make it into one and a half full-time jobs.

**Q: Was the role as Administrative Officer of the Courts always as time consuming as it is now with the ongoing budget crisis?**

A: I think it depends upon the individual. I feel a great responsibility, as did Chief Broderick, to be right there in the thick of things, helping to figure out what the problems are, what the solutions are, developing strategies, so on and so forth. To the extent a Chief is of that mind, then the responsibilities are exceptionally time consuming. However, I think another model could work if the Chief were of a particular

mind to delegate more and to be more the "final answer" instead of the "how do we develop the strategy" person. So, it could be less time consuming if I were less hands on. But of course, I am not inclined to be less hands on, especially because of the budget.

**Q: When the budget issue is resolved, what are the projects that you are looking forward to focusing on?**

A: Well that will be very easy to tell you. Our budget situation is enmeshed deeply with the implementation of the reform proposals that the Innovative Commission has given us. As soon as the budget is finished, the next thing to do will be to make sure that the Circuit Court is up and running, the call center is up and running, the video arraignment system is up and running and the E-Courts project is launched. I won't have any trouble finding things to do!

**SB: As trial lawyers, what differences are we going to notice when the Circuit Court is open?**

A: You won't notice any difference. The differences are essentially administrative. You will go to the same courthouse. You will have the same hearing. You might notice, depending upon your practice, fewer in person hearings and more video hearings because we are trying to transition to that, not just in the criminal court but also, to some extent, in civil and marital. So you might notice that. And if we manage to do what we say we are able to do, you will notice an increased ability to interface with us electronically and that should be to everybody's benefit. But in terms of going to court for a hearing on the merits, you won't see any difference at all.

**Q: In addition to the Circuit Court, you also mentioned a potential new videoconferencing system and a call center. Could you tell us about the technological upgrades we could be seeing in the near future?**

A: We have a capital budget request that so far has been approved in the House but has not yet been voted on in

the Senate. It gives us just under \$3,000,000, roughly \$100,000 of which is to outfit a centralized call center, which will field all of the calls coming into the court system. We will have specially trained people who will have the case management system in front of them and they will be able to answer the questions that are routinely asked every day, such as "Has my hearing been continued? Has the order been issued? How do I find the courthouse?" We have done some pilots on this and discovered that about 70% of the calls that come into the courts everyday can be answered centrally. Further, the call center will have the added advantage of the technological capacity to transfer the call automatically without, as the case is today, having to tell a caller that the person they need to speak to is not in that court, so they must hang up and dial a different number. So, the public should realize benefit from that project.

The second component of our capital budget request is a little over \$500,000 for video conferencing equipment. There will be a video set up in each building to allow for video conferencing between the courts, the jails and the public defenders. Eventually we anticipate that the system could provide access for police departments or the Attorney General's office to use the system to the extent they choose to do so. However, at the moment the project will be to outfit the court buildings, the jails and the public defenders so that the default position for arraignments and bail hearings and other minor criminal matters, at least at the outset, will be remote rather than on site. If a defendant believes that he or she should be physically in court for a hearing, he or she would have to show cause why that is so. Of course, if the hearing has anything to do with the merits of the case or anything of substance, there won't be any question about everyone appearing physically in court. The savings captured by the videoconferencing system will not accrue as much to the judicial branch, but the reduced costs will be noticed by the counties because it will

reduce transport and guarding costs. In addition, it will, in our view, vastly increase public safety because if you have incarcerated individuals stay where they are you reduce the risk that something will happen during the time they are being moved.

**Q:** Sounds great! As I have integrated videoconferencing into my practice, I am finding that people, in general, are becoming more and more comfortable with its use.

**A:** It's a culture shift. People have to get used to it, but especially in our Northern rural counties or in the bad weather months, it will turn out, I'm sure, to be a valuable tool to everybody.

**Q:** Of all of the efficiency improvements that I have read about that may be coming to our courts, the one that interests me the most is E-filing. What impact do you view that system having on parties?

**A:** E-Court is the third part of our cap-

ital budget appropriation. It is our plan to digitize and interconnect all of the courts throughout the state. In our view, it will have a big positive impact on practitioners, but it will also, and this is our challenge and not so much yours, have a positive impact, on the people who, in increasing numbers, choose to or must be self-represented. All in all, everybody should see improvements when we get it up and running.

**Q:** For our last issue, I interviewed Chief Justice Broderick, who described feeling at times that someone was going to knock on your door and say "Hey, this is the Chief's office, what are you doing in here?" Can you relate?

**A:** No, but you have to remember I have been a judge in this system for more than 30 years. In an odd way it seems, perhaps not a logical progression, but not a completely unsurprising progression. It took me a while to come down from the high of it, of course, but when you are in the middle of the

budget wars, being too full of yourself doesn't get you very far.

**Q:** In preparing for today and thinking back to the interview with Chief Broderick, I wondered whether your different backgrounds – his spent largely in trial practice and yours spent largely on the bench, impacted how you approach a case?

**A:** The differences in our backgrounds informed our discussions. As a longtime trial judge, I had a very clear sense of what was going on in the trial and what the judge was thinking or trying to accomplish with any particular problem. Chief Broderick would have some ideas, but they would be probably coming from a different perspective, that is the trial lawyer and trying to figure out how to handle the problem from the trial lawyer's point of view. So we would talk about the opposing sides of that particular coin in an effort to resolve whatever the issue in front of us happened to be. I don't

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think the background makes any particular difference to your ability to be a good appellate judge, although I do think having experience in a courtroom somehow is if not critical, at least valuable, because, what are we doing after all? We are looking over the shoulders of the trial judges.

**Q: I wouldn't be doing my job if I didn't ask you about briefs and oral argument. What do you find persuasive in a brief?**

A: That it is brief. It is called a brief for a reason. What I don't find persuasive is repetition, which is a rampant problem. I think lawyers think "I've got to write it down seven times because otherwise they won't get it." Well, maybe you could repeat it twice, but the third time I will start to get annoyed.

I also don't like gratuitous jabs at your opponent, which is not as uncommon as you might think. The lawyers will take swipes at opposing parties and counsel that don't add anything, but rather distract me from what I am thinking about the persuasive power of their arguments. In other words, I don't like cheap shots in briefs and they are not uncommon.

**Q: How about oral arguments?**

A: For oral arguments, we are all prepared. We know what the facts of the case are and unless we ask for particular explanation of some factual part of the case, go right to the legal issues, forget the factual summary. Start by, if you can, countering your opponent's best argument or, by highlighting your best argument, one or the other. But you should do both of those things and not spend precious oral argument time on issues that you should have already recognized as less important than your critical issues and probably not likely to be winners anyway. Just concentrate on your best argument and challenging your opponent's best argument. Repetition in an oral argument is not well received either, so there is no shame in stopping your argument

before the red light comes on if you have said what you've come to say.

**Q: In the heat of the moment, it can be a difficult thing to do for some of us.**

A: Oh sure. In fact, the lawyers that appear here most often, who tend to be members of the AG's office and the appellate defenders, have got that down cold and they do know when to stop. They frequently do stop unless the time is necessary because of the length or complexities of the issues involved. People who don't come here very often don't seem to feel comfortable about that and so sometimes, toward the end of their 15 minutes repeat themselves because, while they have run out of things to say, they are nervous about not speaking until the red light comes on.

**Q: Do you have a preference for the types of cases you hear?**

A: It is not as easy a question to answer as you might think because what I really enjoy the most is the breath of the experience so that though a particular case might be dry as dust, it will still interest me, if only for the intellectual challenge of trying to figure out the answer to a difficult problem. So, I don't have any preference for any particular kind of case.

**Q: Prior to oral argument, do you read all the briefs?**

A: Yes, every single one. Now, you learn over time that there are some things that you don't necessarily have to learn by heart before the oral argument. For example, there are lots of pleadings that are produced in appendices that you do not necessarily have to go through one by one, because what you really want to get at is the trial court order that relates to those pleadings.

**Q: When do you vote?**

A: We take a straw vote after oral argument and the straw vote informs the authoring justice of the court's general feeling at that point in time. It is not infrequent, however, that further

research and further consideration of the nuances of an argument might make the straw vote something that should be revisited.

**Q: Do you know before oral argument or after who is going to write the brief?**

A: We know before. We draw, randomly, usually 2 or 3 weeks ahead of any argument dates. So I know which cases I will be given authoring responsibility for before I hear the argument. In those cases, my tendency would be to read every single piece of paper before oral argument even if I would not otherwise do that if it were not my case. Overall, we are always prepared to a greater degree than some people might suspect.

**Q: Even if after you have completed your preparation for oral argument and know, or at least think you know, where you will vote, can oral argument change your mind?**

A: Oh yes, it can and it does. Because the only thing that any of us does in advance for our argument is to figure out what are the issues, what are the arguments that are being made and develop a general sense of, well, at the moment it seems like that should be an affirm or this issue looks to me like it might be a reverse. So it is just preliminary thinking, but no minds are ever made up and it is not infrequently the case that I might have a notion about a case before oral argument and as I'm listening to the argument I realize that I may have actually misperceived that issue and now the other position seems to be making more sense.

**Q: What is a common mistake from lawyers at oral argument?**

A: Advocates should think of oral arguments as an opportunity to debate the points of their case with the judges. What a lot of lawyers do not realize is that oral argument is for us, it's not for them and it's the only time when all 5 of us, assuming nobody is disqualified, are focusing upon the case all at once.

It is our opportunity to clear up issues in our minds about the things that the appeal concerns by asking questions about it; or, by playing devil's advocate we are trying to tease out the things that we are either troubled by or think might be important. Our court does that by questioning counsel pretty extensively – we are not shy.

**Q: I argued here a few years ago and you were not shy.**

A: There you go!

**Q: Lastly, I would like to discuss your experiences as one of the woman pioneers of the New Hampshire Bar. First, how has the practice of law changed for women since you joined the Bar?**

A: Considerably. I was only the 50<sup>th</sup> woman lawyer ever admitted to the New Hampshire Bar. When I joined, women lawyers were regarded as either exotic flowers or people who shouldn't be in the room. It took a long time for the cultural shift to take place. It did gradually and coincident, more or less, with the increase in the number of women going to law school. When I was in law school in the early 1970s, women were a rare breed. It was still not thought of as a profession for females. Gradually, however, and it took quite a lot of time, the culture shifted because it came to be perceived that female lawyers were just as good or bad as your average male lawyer and we gradually, and it was largely imperceptible, gained the ability to just be referred to as a good lawyer or not a good lawyer regardless of our gender. I can't speak very ably to how things may have changed for women in practice outside the courtroom overtime, but in court, it's a level playing field.

**Q: Can you describe your experience early on as the first female Superior Court judge?**

A: Being the first women to have obtained any of these particular positions was and remains, in and of itself, an honor. However, I no longer

thought too much about that after other women joined me on the Superior Court. The time when the issue of being the first woman weighed heaviest on me was the seven years when I was alone on the Superior Court, young and relatively inexperienced, hoping that I did not make such a serious mistake as a judge that it would hurt the chances of other women coming behind me. That felt like an enormous responsibility so that by the time the second woman was appointed to the Superior Court, Margaret Flynn, now deceased, I felt as if I could breathe a little bit easier because I had not done the job badly enough that it hurt others. Then over time going forward as more women began to populate the judiciary it seemed like less of an issue. However, I am not blind to the fact that I happened to be the pioneer female for all of these jobs.

**Q: That answer speaks to a thought I had in trying to put myself in your shoes when you were first appointed to the bench. I imagined that I would feel a pressure to do my job as the first woman judge extremely well.**

A: Well, in addition, you have to remember that 30 years ago there was a generalized notion that women were not suited to be lawyers never mind judges. If women weren't suited to be lawyers, well they definitely weren't suited to be judges, and so there was a great deal of scrutiny and I felt the need to do the job as well as I could possibly do it in order to prove that women could be capable judges.

**Q: Are you able to put it into words yet what it means to be New Hampshire's first woman Supreme Court Chief Justice?**

A: It is an honor that surpasses anything that I could have ever imagined for myself when I first started out in this profession.

**Q: At the time when you were "proving yourself" as a new judge, how**

**were you able to manage raising two young boys?**

A: It became much easier once I was on the bench because I was in charge of my hours. In other words, the court day is generally defined and if I had to leave court for a family related issue that could not be otherwise managed, then I had the ability to do that. When I was practicing it was much harder because my life was less my own, and I imagine that that remains true today for women litigators. The way I was able to make it work was that I had plan a, b, c, d and sub plans d-a, d-b, d-c, all in place. I had an exceptionally good local daycare. My husband worked half a mile from our house and my parents lived across town. In addition, I could call my sister if necessary. In other words, I had a support system that was ready, willing and able to help me out as necessary. That was important because there was no latitude for family interfering with your legal career back in those days. There was no such thing as maternity leave, never mind the Family Medical Leave Act. It was inexcusable in those days to say "I'm sorry, I can't do this piece of work because I have to do something for my children." I went to a month long general jurisdiction trial judge course in Reno, Nevada just after I became a judge and left behind a 6-year-old and an 8-month-old baby. A month long, and there was no question about it, you did it. You didn't get an exception because you happen to have small children at home. Now, a lot of that has changed, thankfully. But, if I did not have the close support network that I had then I am not sure I could have pulled it off.

**Q: What it is like leading our courts at this time in our history? Is it exciting? Demanding?**

A: It is certainly a challenging time. I suppose any time would be exciting to be Chief because you are suddenly in a position where if you happen to have a vision you might actually be able to realize it because you can undertake

initiatives and projects and actually get people to do them. So, I think that it would be exciting at any time to be Chief but right now, I think, the challenge is greater than the excitement because the issues are so grave. We are going to have to lay people off and that is not ever an easy thing to do. The access to justice issues are becoming

more challenging all the time because of shrinking budgets and shrinking courts colliding with ever increasing dockets. So those are particularly challenging problems and as well, the transformation of the Judicial Branch into a 21<sup>st</sup> Century entity is an enormous challenge. So it is exciting, but the

excitement from my point of view, is tempered by the challenge of pulling it off. I'll get excited when it is complete.

**Q: We look forward to reaching those milestones with you.** 



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