

## MEMORANDUM

To: Advisory Committee on Rules  
From: Carolyn Koegler  
Re: # 2018-009. Gender Neutral Language in Supreme Court Rules.  
Date: September 4, 2018

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Attached please find a copy of an email from Joshua Gordon suggesting that Supreme Court Rule 16(7) be amended to make the language of the rule gender neutral.

David Peck has raised this issue a number of times over the last several years, and has suggested that all of the Supreme Court Rules be amended to make the language gender neutral. Given the large number of rule and rule amendments that were adopted during the last several years, the Court was not able to consider undertaking a project to make the rules gender neutral. Because the Court seems to be entering a relatively quiet period with respect to rules changes, it is now in a position to contemplate undertaking this project. Justice Lynn and Justice Donovan have asked me to add this item to the agenda and to ask the Committee for its opinion about how to address the issue of making the rules gender neutral.

It seems to me that the Committee could recommend any of the following:

- (1) that the Court take no action;
- (2) that the Court take the same approach the legislature has seemed to with respect to statutes and adopt a rule that says: (1) something like, "words importing the masculine gender may extend and be applied to females" (see RSA 21:3, attached); and (2) that whenever the Court considers amending or adopting a rule, it should make an effort, to the extent practicable, to use words that are "neutral as to gender" (see RSA 17:A:6, attached);
- (3) Amend all of the Supreme Court Rules in a single rules order adopting the changes David Peck suggests (19 rules would be reprinted in a 35 page appendix to the order).

**Carolyn A. Koegler**

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**From:** Joshua L. Gordon <jlgordon@appealslawyer.net>  
**Sent:** Monday, August 20, 2018 7:46 PM  
**To:** Carolyn A. Koegler  
**Subject:** Rules committee "he"

Carolyn:

I recently noticed that supreme court rule 16(7) contains gender-specific language that I think should be eliminated.

"Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in HIS brief, HE may similarly file ..."

I think the "his" and "he" can be changed it "its" and "it" or "the party's" and "the party."

Joshua

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Law Office of Joshua L. Gordon  
75 South Main Street # 7  
Concord, NH 03301  
(603) 226-4225  
[JLGordon@AppealsLawyer.net](mailto:JLGordon@AppealsLawyer.net)  
[www.AppealsLawyer.net](http://www.AppealsLawyer.net)

CHAPTER 21

STATUTORY CONSTRUCTION

- Section
- 21:3 Number; Gender.
- 21:33-a Terms of Appointment.
- 21:34-a Farm, Agriculture, Farming.
- 21:50 Veteran, Armed Forces; Active Duty; Service-Connected Injury, Illness, or Disability.
- 21:51 Petition.
- 21:52 Under Oath.
- 21:52 Under Oath.

21:2 Common Usage.

ANNOTATIONS

1. In general

In interpreting statutory language, New Hampshire courts ascribe the plain and ordinary meaning to the words used; technical words and phrases, however, and such others as may have acquired a peculiar and ap-

propriate meaning in law, shall be construed according to such peculiar and appropriate meaning. *Galvin v. EMC Mortg. Corp.*, 2014, 27 F Supp.3d 224. Statutes ⇨ 1091; Statutes ⇨ 1124; Statutes ⇨ 1126

**21:3 Number; Gender.** Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender may extend and be applied to females. Gender-specific terms relating to the marital relationship or familial relationships, including without limitation, "spouse," "family," "marriage," "immediate family," "dependent," "next of kin," "man," "woman," "groom," "bride," "husband," "wife," "widow," or "widower," shall be construed to be gender-neutral for all purposes throughout New Hampshire law, whether in statute, state administrative or court rule, policy, common law, or any other source of civil state law.

HISTORY

Source. RS 1:1, 2 CS 1:1, 2. GS Amendments—2014. Added, the 1:3 GL 1:3. PS 2:3. PL 2:3. RL second sentence. 7:3. 2014, 1604, eff. July 10, 2014

21:6 Reside

Construction and a

1. Construction a

State's voter reguige concerning quirements was r fusing to a degree constitutional righ conflated distinct domicile, and alth the language as ar with the federal Act (HAVA), the St how the challenge addressed HAVA thus failed to wit level of scrutiny

21:6-a Resi

1. Construction :

State's voter reguige concerning quirements was r fusing to a degree constitutional righ conflated distinct domicile, and alth the language as a with the federal Act (HAVA), the S how the challenge addressed HAVA thus failed to wit level of scrutiny (2015) 167 N.H. Election Law ⇨ 1

**21:33-a Te** for appointine sion, or board governor and such an appoi shall be consti

**17-A:3**

**THE STATE AND ITS GOVERNMENT**

**HISTORY**

**Source.** 1963, 297:1. 1975, 479:3, eff. July 1, 1975.

**Amendments—1975.** Inserted "or legislative office building" following "state house" in the first sentence.

**17-A:4 Assistants.** The director may, subject to the approval of the joint committee on legislative facilities, appoint and fix the compensation of such additional professional, technical, clerical or other employees necessary to perform his functions and duties under this chapter. He may, subject to like approval, designate one of said employees to be his deputy to act in his absence.

**HISTORY**

**Source.** 1963, 297:1. 1975, 465:3, eff. June 22, 1975.

**Amendments—1975.** Substituted "joint committee on legislative facilities" for

"special committee hereinbefore referred to" preceding "appoint" in the first sentence.

**17-A:5 Attorney General's Office.**

[Repealed 1987, 225:6, I, eff. May 18, 1987.]

**HISTORY**

Former RSA 17-A:5, which was derived from 1963, 297:1, related to assistance from the attorney general's office.

**17-A:6 Gender Neutral Drafting.**

I. It is the intent of the general court that the office of legislative services continue its efforts to draft all bills, resolutions and amendments using words that are neutral as to gender, to the extent practicable.

II. In addition, the office of legislative services shall continue to study the issues involved in gender neutral drafting, including the development and utilization of sexually neutral terms to replace masculine gender terms currently in use.

III. All members of the general court are encouraged to support the use of gender neutral terms in the drafting of legislation.

**HISTORY**

**Source.** 1994, 104:1, eff. July 10, 1994.

**17-A:7 Legislation Relating to Unclassified State Officers.** Legislation establishing a new, upgraded, or downgraded state unclassified officer position under RSA 94 shall to the extent practicable, be drafted