

# FAIR SPEECH

## Gender Neutral Language in the Courts



**Hon. Janet DiFiore**  
Chief Judge of the State of New York

**Hon. Lawrence K. Marks**  
Chief Administrative Judge

**New York State Judicial Committee on  
Women in the Courts**

**Hon. Betty Weinberg Ellerin, Chair**

# FAIR SPEECH

## Gender Neutral Language in the Courts

---

**In recent years, the formal language of the courts has changed** in response to efforts to create, in the words of the New York Task Force on Women in the Courts, “a justice system more fully committed to fairness and equality.” Forms, regulations, and statutes have been reviewed to eliminate words and expressions that exclude women or perpetuate the idea that men are the norm and women special cases. Regulations no longer say *he* when they mean *he* or *she*, and official letters are not addressed to *Dear Sir* when the recipients are judges, lawyers, or any other group that may include both men and women.

Spoken language is equally important. In courts, people communicate critical information not just on paper but face-to-face. On any weekday, our courts are filled with clerks and court officers talking to litigants, lawyers discussing cases, and judges making rulings from the bench. All of them are conveying not only data and facts but subtle messages about the status of the participants in the exchanges and their relations to each other.

At stake are not just claims for equality. Clarity is another victim of language that inappropriately incorporates gender. The ambiguous use, for example, of male terms to refer to both men and women can create confusion, sometimes with profound effects. In one notorious case, the Supreme Court of the State of Washington reversed a murder conviction in part because a jury was instructed on the “reasonable man” standard for a claim of self-defense on behalf of a 5’4” woman attacked by a 6’2” man. In its opinion, the court faulted the “persistent use of the masculine gender” that left the impression that the measure for reasonableness was an altercation between two men. [*State v. Wanrow*, 599 P.2d 548, 558 (1977).]

Acknowledging the critical role that words play in the climate of courthouses and courtrooms, the New York State Judicial Committee on Women in the Courts wrote this pamphlet over twenty years ago. Its purpose was to suggest a

few simple rules that would help those who use the courts or work in the court system to avoid unintended slights or compromises to the ideal of equal justice.

The original edition of this pamphlet was a great success. In only slightly altered form, it has been in print and in use ever since. Over the years, court users and the general public have become increasingly comfortable with gender neutral language, so that some ideas in the pamphlet that were novel when first made seem natural now and many of the suggestions in the pamphlet have become mere reminders.

Whether suggestions or reminders, the simple rules in this pamphlet remain important as we continue to nudge our speech towards a fuller embrace of the idea of equality.

---

## A FEW SIMPLE RULES

### **Use inclusive terms, rather than masculine forms.**

Many forms of address exclude women. Good substitutes, however, are easy to find:

**USE** chair  
members of the jury  
colleagues

**AVOID** chairman  
gentlemen of the jury  
brethren

Designations for professionals or categories of workers often are a source of lingering problems. Job segregation has been a great barrier to women's equality, and using gendered terms has the effect of implying women still cannot hold certain jobs. Again, substitutes are now commonly used:

**USE** police officer  
fire fighter  
worker  
homemaker  
nurse  
executive  
journalists

representative  
Member of the Assembly  
Member of Congress  
Representative

**AVOID** policeman  
fireman  
workman  
housewife  
male nurse  
businessman  
gentlemen of the press  
spokesman  
Assemblyman  
Congressman

Expressions with the words *man* or *men* may be changed so that women too are included:

**USE** reasonable person  
artificial  
staff  
a one-person operation  
high ranking officials  
diplomacy

**AVOID** reasonable man  
man-made  
manpower  
one-man operation  
men in high places  
statesmanship

---

**Avoid using *he* as a generic pronoun.** *He* should not be used to refer to a group of people that may include men and women or an individual whose gender is unknown. To avoid the generic *he*, you might:

1. Use plural nouns. “Jurors must make their own assessments of the credibility of each witness,” may replace “A juror must make his own assessment of the credibility of each witness.”

2. Eliminate the pronoun altogether. For example, “A court clerk can give you advice on that form,” may replace  
“A court clerk can give you his advice on that form.”
3. Find a neutral article, such as **a** or **the**, to replace a gendered pronoun. “A judge may always make the ruling orally,” may replace “A judge may always make his ruling orally.”
4. Rearrange the sentence to use **who** as the pronoun. “A person who wants an adjournment should ask for it during the calendar call,” may replace “If someone wants an adjournment, he should ask for it during the calendar call.”
5. Replace the pronoun with a synonym. “You should find a court officer. That is the person who can help you,” may replace “You should find a court officer. He is the one who can help you.”
6. Substitute **he** or **she** for *he*. This may not be the most felicitous suggestion, but, if all else falls, it works. It is accurate, gender neutral, and doesn’t give offense to anyone.

---

**Use consistent forms of address.** When no other title is appropriate, **Ms.** and **Mr.** are usually correct, not *Miss* or *Mrs.* and *Mr.* While *Miss* or *Mrs.* may be acceptable when a woman specifically asks for such a designation, in general, these forms should be avoided. Unlike *Mr.*, they gratuitously call attention to a person’s marital status.

Often, you can use exactly the same form of address for men and women by calling them by their professional titles. Of course, these titles should be used consistently for both men and women. All physicians are **Doctor** (not *Dr.* and *Ms.*), police personnel are **Officer** (not *Officer* and *Ma’am*), and lawyers are **Counselor** (not *Counselor* and *Ms.*).

---

**Use formal rather than informal forms of address.** Using first names to refer to litigants and witnesses should be avoided not only because the informality is inappropriate, but

also because it is patronizing. The motives for calling someone Maria or Beth may be habit on the part of a court official or an attempt by a woman's own lawyer to put her at ease. However, all litigants, including defendants in criminal cases, deserve a proper form of address, and the dignity conferred by the formal designation may do more to make a witness comfortable than the intimacy implied by the use of a first name.

---

Altering speech habits may require conscious thought for a period of time, but change is part of any living language, and English, which is an unusually rich tongue, is still evolving. What was considered questionable usage a decade ago may be commonly accepted now. What feels awkward today may seem natural tomorrow. The term *chair*, now a preferred designation for the person in charge of a meeting, predates *chairman*, and grammarians settled on the use of *he* as a generic pronoun less than three hundred years ago.

The goal is worth the effort it takes to reach it. After all, as an essay by Wendy Martyna, a scholar studying language and gender, has suggested, when we change old habits of speech, we are doing nothing less than creating “a language that speaks more fairly and clearly of us all.”

The New York State Judicial  
Committee on Women in the Courts

March 2017

---

## New York State Judicial Committee on Women in the Courts

Hon. Betty Weinberg Ellerin, *Chair* • Fern Schair, *Vice Chair*  
Charlotte A. Watson, *Executive Director* • Hon. Rosalie Stoll Bailey  
Maria Cortese, Esq. • Elizabeth Cronin, Esq. • Hon. Matthew D'Emic  
Hon. Bruna L. DiBiase • Patricia Ann Fersch, Esq.  
Jill Laurie Goodman, (*Former Counsel*) • Hon. Sylvia O. Hinds-Radix  
Hon. Allen Hochberg • Hon. Deborah Kaplan • Hon. Judy Harris Kluger  
Marjorie Lesch, Esq. • Caroline Levy, Esq. • Maria Logus, Esq.  
Nancy Mangold • Hon. Renee Forgensi Minarik • Hon. Juanita Bing Newton  
Hon. Marilyn Hoffman O'Connor • Hon. Emily Ruben  
Hon. Terry Jane Ruderman • Hon. Toko Serita • Hon. Denise Sher  
Hon. Jeffrey Sunshine • Hon. John Sweeny, Jr.  
Judith E. White, Esq. • Cheryl Zimmer, Esq.