

1       **Rule 9. Pleading special matters.**

2       (a)(1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued  
3 or the authority of a party to sue or be sued in a representative capacity or the legal  
4 existence of an organized association of persons that is made a party. A party may raise  
5 an issue as to the legal existence of any party or the capacity of any party to sue or be  
6 sued or the authority of a party to sue or be sued in a representative capacity by specific  
7 negative averment, which shall include facts within the pleader's knowledge. If raised as  
8 an issue, the party relying on such capacity, authority, or legal existence, shall establish  
9 the same on the trial.

10       (a)(2) Designation of unknown defendant. When a party does not know the name of  
11 an adverse party, he may state that fact in the pleadings, and thereupon such adverse  
12 party may be designated in any pleading or proceeding by any name; provided, that  
13 when the true name of such adverse party is ascertained, the pleading or proceeding  
14 must be amended accordingly.

15       (a)(3) Actions to quiet title; description of interest of unknown parties. In an action to  
16 quiet title wherein any of the parties are designated in the caption as "unknown," the  
17 pleadings may describe such unknown persons as "all other persons unknown, claiming  
18 any right, title, estate or interest in, or lien upon the real property described in the  
19 pleading adverse to the complainant's ownership, or clouding his title thereto."

20       (b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the  
21 circumstances constituting fraud or mistake shall be stated with particularity. Malice,  
22 intent, knowledge, and other condition of mind of a person may be averred generally.

23       (c) Conditions precedent. In pleading the performance or occurrence of conditions  
24 precedent, it is sufficient to aver generally that all conditions precedent have been  
25 performed or have occurred. A denial of performance or occurrence shall be made  
26 specifically and with particularity, and when so made the party pleading the performance  
27 or occurrence shall on the trial establish the facts showing such performance or  
28 occurrence.

29       (d) Official document or act. In pleading an official document or act it is sufficient to  
30 aver that the document was issued or the act done in compliance with law.

31 (e) Judgment. In pleading a judgment or decision of a domestic or foreign court,  
32 judicial or quasi judicial tribunal, or of a board or officer, it is sufficient to aver the  
33 judgment or decision without setting forth matter showing jurisdiction to render it. A  
34 denial of jurisdiction shall be made specifically and with particularity and when so made  
35 the party pleading the judgment or decision shall establish on the trial all controverted  
36 jurisdictional facts.

37 (f) Time and place. For the purpose of testing the sufficiency of a pleading,  
38 averments of time and place are material and shall be considered like all other  
39 averments of material matter.

40 (g) Special damage. When items of special damage are claimed, they shall be  
41 specifically stated.

42 (h) Statute of limitations. In pleading the statute of limitations it is not necessary to  
43 state the facts showing the defense but it may be alleged generally that the cause of  
44 action is barred by the provisions of the statute relied on, referring to or describing such  
45 statute specifically and definitely by section number, subsection designation, if any, or  
46 otherwise designating the provision relied upon sufficiently clearly to identify it. If such  
47 allegation is controverted, the party pleading the statute must establish, on the trial, the  
48 facts showing that the cause of action is so barred.

49 (i) Private statutes; ordinances. In pleading a private statute of this state, or an  
50 ordinance of any political subdivision thereof, or a right derived from such statute or  
51 ordinance, it is sufficient to refer to such statute or ordinance by its title and the day of  
52 its passage or by its section number or other designation in any official publication of the  
53 statutes or ordinances. The court shall thereupon take judicial notice thereof.

54 (j) Libel and slander.

55 (j)(1) Pleading defamatory matter. It is not necessary in an action for libel or slander  
56 to set forth any intrinsic facts showing the application to the plaintiff of the defamatory  
57 matter out of which the action arose; but it is sufficient to state generally that the same  
58 was published or spoken concerning the plaintiff. If such allegation is controverted, the  
59 party alleging such defamatory matter must establish, on the trial, that it was so  
60 published or spoken.

61 (j)(2) Pleading defense. In his answer to an action for libel or slander, the defendant  
62 may allege both the truth of the matter charged as defamatory and any mitigating  
63 circumstances to reduce the amount of damages, and, whether he proves the  
64 justification or not, he may give in evidence the mitigating circumstances.

65 (k) Renew judgment. A complaint alleging failure to pay a judgment shall describe  
66 the judgment with particularity or attach a copy of the judgment to the complaint.

67 (l) Allocation of fault.

68 (l)(1) A party seeking to allocate fault to a non-party under Title 78B, Chapter 5, Part  
69 8 shall file:

70 (l)(1)(A) a description of the factual and legal basis on which fault can be allocated;  
71 and

72 (l)(1)(B) information known or reasonably available to the party identifying the non-  
73 party, including name, address, telephone number and employer. If the identity of the  
74 non-party is unknown, the party shall so state.

75 (l)(2) The information specified in subsection (l)(1) must be included in the party's  
76 responsive pleading if then known or must be included in a supplemental notice filed  
77 within a reasonable time after the party discovers the factual and legal basis on which  
78 fault can be allocated. The court, upon motion and for good cause shown, may permit a  
79 party to file the information specified in subsection (l)(1) after the expiration of any  
80 period permitted by this rule, but in no event later than 90 days before trial.

81 (l)(3) A party may not seek to allocate fault to another except by compliance with this  
82 rule.

83