

Effective May 2, 2005. Subject to further change after comment period.

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 or the
3 authority of a party to sue or be sued in a representative capacity or the legal existence of an
4 organized association of persons that is made a party. A party may raise an issue as to the legal
5 existence of any party or the capacity of any party to sue or be sued or the authority of a party to
6 sue or be sued in a representative capacity by specific negative averment, which shall include
7 facts within the pleader's knowledge. If raised as an issue, the party relying on such capacity,
8 authority, or legal existence, shall establish the same on the trial.

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

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

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

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

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

28 (e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or
29 quasi judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision
30 without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be

Effective May 2, 2005. Subject to further change after comment period.

31 made specifically and with particularity and when so made the party pleading the judgment or
32 decision shall establish on the trial all controverted jurisdictional facts.

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

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

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

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

49 (j) Libel and slander.

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

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

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

61 [\(l\) Allocation of fault.](#)

Effective May 2, 2005. Subject to further change after comment period.

62 (l)(1) A party seeking to allocate fault to a non-party under Title 78, Chapter 27 shall file:
63 (l)(1)(A) a description of the factual and legal basis on which fault can be allocated; and
64 (l)(1)(B) information known or reasonably available to the party identifying the non-party,
65 including name, address, telephone number and employer. If the identity of the non-party is
66 unknown, the party shall so state.

67 (l)(2) The information specified in subsection (l)(1) must be included in the party's
68 responsive pleading if then known or must be included in a supplemental notice filed within a
69 reasonable time after the party discovers the factual and legal basis on which fault can be
70 allocated but no later than the deadline specified in the discovery plan under Rule 26(f). The
71 court, upon motion and for good cause shown, may permit a party to file the information
72 specified in subsection (l)(1) after the expiration of any period permitted by this rule, but in no
73 event later than 90 days before trial.

74 (l)(3) A party may not seek to allocate fault to another except by compliance with this rule.
75