

Proposed Amendments to Rule 9

Rule 9 is amended as follows:

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) *In General.* ~~It is not necessary to aver~~ **Except when required to show that the court has jurisdiction, a pleading need not allege:**

(A) a party's capacity ~~[of a party]~~ to sue or be sued; ~~[or the]~~

(B) a party's authority ~~[of a party]~~ to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party. ~~[, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.]~~

(2) *Raising Those Issues.* **To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.**

(b) Fraud~~[,]~~ or Mistake~~[,]~~; Conditions of ~~the~~ Mind. In ~~[all averments of]~~ **alleging** fraud or mistake, **a party must state with particularity** the circumstances constituting fraud or mistake. ~~[shall be stated with particularity.]~~ Malice, intent, knowledge, and other conditions **s** of **a person's** mind ~~[of a person]~~ may be ~~[averred]~~ **alleged** generally.

(c) Conditions Precedent. In pleading ~~[the performance or occurrence of]~~ conditions precedent, it ~~[is sufficient]~~ **suffices** to ~~[aver]~~ **allege** generally that all conditions precedent have **occurred or** been performed ~~[or have occurred]~~. ~~[A denial of performance or occurrence shall be made specifically and]~~ **But when denying that a condition precedent has occurred or been performed, a party must do so** with particularity.

(d) Official Document or Act. In pleading an official document or official act it ~~[is sufficient]~~ **suffices** to ~~[aver]~~ **allege** that the document was **legally** issued or the act **legally** done ~~[in compliance with law]~~.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, **a** judicial or quasi-judicial tribunal, or of a board or officer, it ~~[is sufficient]~~ suffices to ~~[aver]~~ plead the judgment or decision without ~~[setting forth matter]~~ showing jurisdiction to render it.

(f) Time and Place. ~~[For the purpose of testing the sufficiency of a pleading, averments]~~ **An allegation** of time ~~[and]~~ **or** place ~~[are]~~ **is** material **when** ~~[and shall be considered like all other averments of material matter]~~ **testing the sufficiency of a pleading**.

(g) Special Damages. ~~[When]~~ If an item~~[s]~~ of special damage ~~[are]~~ **is** claimed, ~~[they shall]~~ **it must** be specifically stated.

(As amended, July 28, 1988, eff. Nov. 1, 1988; _____, 2008, eff. _____, 2009.)

Advisory Committee Note

The language of Rule 9 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.