

## **RULE 9. PLEADING SPECIAL MATTERS**

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. 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.

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

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, but when so made the party pleading the performance or occurrence has the burden of establishing it.

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

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver 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 of time and place are material and shall be considered like all other averments of material matter.

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

**Reporter's Notes**  
**December 1, 1959**

This rule is substantially the same as Federal Rule 9 and does not significantly change Maine law. Capacity to sue need not now be alleged by the plaintiff, *Leonard Advertising Co. v. Flagg*, 128 Me. 433, 148 A. 561 (1930), and averments of fraud must be stated with particularity. *Semo v. Goudreau*, 147 Me. 17, 83 A.2d 209 (1951). Subdivision (c) seems declaratory of existing practice under R.S.1954, Chap. 113, Sec. 28 (repealed in 1959). Subdivision (f) is chiefly important for making the averment of time material in determining the applicability of the statute of limitations, contrary to the common law rule. Subdivision (g) preserves the present requirement of alleging items of special damage. See *Fournier v. Great Atlantic & Pacific Tea Co.*, 128 Me. 393, 148 A. 147 (1929).