

**JOINT RESOLUTION ON CIVIL PROCEDURE RULES  
REGARDING CAUSE OF ACTION**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill allows the consolidation of claims into one action if the claims are all for the same defendants.

**Highlighted Provisions:**

This resolution:

► allows claims against the same defendants to be consolidated by a plaintiff who has been assigned the claims.

**Special Clauses:**

This resolution provides an immediate effective date.

**Utah Rules of Civil Procedure Affected:**

AMENDS:

**Rule 9**, Utah Rules of Civil Procedure

---

---

*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

Section 1. **Rule 9**, Utah Rules of Civil Procedure is amended to read:



**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. A party may 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, by specific negative averment, which shall include facts within the pleader's knowledge. If raised as an issue, the party relying on such capacity, authority, or legal existence, shall establish the same on the trial.

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

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

(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, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

(d) *Official document or act.* In pleading an official document or 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. A denial of jurisdiction shall be made specifically and with particularity and when so made the party

pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts.

(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.

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

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

(j) *Libel and slander.*

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

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

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

(l) Allocation of fault.

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

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

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

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

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

(m) Consolidation.

(m) (1) A party seeking to collect multiple assigned claims may consolidate the claims into a single action if:

(m) (1) (A) the claims consolidated into a single action are for the same defendants; and

(m) (1) (B) each claim that is consolidated is within the statute of limitations.

**Section 2. Effective date.**

This resolution takes effect upon approval by a constitutional two-thirds vote of all members elected to each house.

**Legislative Review Note**  
**as of 2-11-11 9:51 AM**

**Office of Legislative Research and General Counsel**