

**STATE OF VERMONT
VERMONT SUPREME COURT
OCTOBER TERM 2023**

**Order Amending Rules 47(b) and (c) and 45(d) of the
Vermont Rules of Criminal Procedure**

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 47(b) and (c) of the Vermont Rules of Criminal Procedure be amended as follows (deleted matter stricken; new matter underlined):

RULE 47. MOTIONS

(a) **Motions.** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state the grounds therefor, including a concise statement of the facts and law relied on, and shall set for the relief or order sought. It may be supported by affidavit.

(b) **Disposition of Written Motions With or Without Argument.**

(1) *Memorandum in Opposition.* Any party opposed to the granting of a written motion shall file a memorandum in opposition thereto, not more than 14 days after service of the motion, unless otherwise ordered by the court. ~~The memorandum may be accompanied by affidavit.~~ Any party may file a reply to a memorandum in opposition within 14 days after service of the memorandum. The court may also allow a surreply memorandum if the memorandum would assist in clarifying the issues, particularly where the party seeking to file the memorandum is addressing newly raised factual or legal arguments by the opposing party. If a memorandum in opposition is not timely filed when required under this rule, the court may dispose of the motion without the memorandum.

(2) *Affidavits on Motions.* When a motion is supported by affidavit, the affidavit shall be served with the motion. Opposing affidavits may be served with the reply or surreply, unless the court permits them to be served at some other time.

(3) *Oral Argument in the Discretion of the Court.* Unless otherwise required by these rules, oral argument shall be deemed waived unless requested by an interested party or required by the court. In any case, the court may dispose of the motion without argument.

(c) **Findings.** When factual issues are involved in determining a motion, the court shall state its essential findings on the record or in writing.

Reporter's Notes—2024 Amendment

Rule 47(b)(1) is amended to authorize the filing of reply memoranda in response to memoranda that has been filed in opposition to a motion. The amendment is intended to clarify that replies (and surreplies) are permitted, and to prescribe the manner and timing of filing of such. Reply memoranda have long been authorized in Civil Division practice formerly under V.R.C.P. 78(b)(1), until its abrogation in 2021, and now under V.R.C.P. 7(b).

Paragraph 47(b)(2) is added to incorporate the provisions of former V.R.Cr.P. 45(d), and to address the manner and timing of filing of affidavits accompanying memoranda on motions, in the more pertinent governing rule.

Subdivision 47(c) is amended to provide that the court may state essential findings in writing, as an alternative to statement on the record, when factual issues are involved in determining a motion.

2. That Rule 45(d) of the Vermont Rules of Criminal Procedure is amended as follows (deleted matter stricken):

RULE 45. TIME

~~(d) —Affidavits on Motions. When a motion is supported by affidavit, the affidavit shall be served with the motion. Opposing affidavits may be served not later than 7 days before the hearing, unless the court permits them to be served at some other time.~~

Reporter's Note—2024 Amendment

Subdivision (d), which prescribed the manner and timing of service of affidavits accompanying motions or given in opposition thereto, has been deleted, and moved verbatim to Rule 47(b)(2). Rule 47 addresses the disposition of written motions with or without argument, including the manner and timing of filing opposing and reply memoranda, and affidavits pertinent thereto.

3. That these amendments be prescribed and promulgated, effective on January 1, 2024. The Reporter's Notes are advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this 10th day of October, 2023.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice