

Advisory Committee on Rules of Court

Virginia Code § 19.2-263.3 and Confidentiality of Juror Information

April 2009

Confidentiality of Juror Information

During the 2008 Session, the General Assembly enacted, and the Governor signed into law, a new statute establishing the availability of motions for the protection of the confidentiality of information relating to jurors and prospective jurors, and directing further that the Supreme Court promulgate "rules that provide for the protection of the personal information of a juror in a criminal trial." The new statute, § 19.2-263.3, provides as follows:

§ 19.2-263.3. Juror information confidential

A. The court may, upon motion of either party or its own motion, and for good cause shown, issue an order regulating the disclosure of the personal information of a juror who has been impaneled in a criminal trial to any person, other than to counsel for either party. Good cause shown includes, but is not limited to, a determination by the court that there is a likelihood of bribery, tampering, or physical injury to or harassment of a juror if his personal information is disclosed. An order regulating the disclosure of information may be modified, and the personal information of the jurors in a criminal case may be disseminated to a person having a legitimate interest or need for the information, with restrictions upon its use and further dissemination as may be deemed appropriate by the court.

B. In addition to the provisions of subsection A, the Supreme Court shall prescribe and publish rules that provide for the protection of the personal information of a juror in a criminal trial.

C. For purposes of this section, "personal information" means any information collected by the court, clerk, or jury commissioner at any time about a person who is selected to sit on a criminal jury and includes, but is not limited to, a juror's name, age, occupation, home and business addresses, telephone numbers, email addresses, and any other identifying information that would assist another in locating or contacting the juror.

This new provision leaves intact all other relevant provisions of the Code of Virginia, including Virginia Code § 8.01-351 (which requires preparation and disposition by the clerk of court of a list of jurors drawn for potential service) and Virginia Code § 8.01-353 (which, among other things, requires disclosure of the jury panel list to counsel, upon request, at least 48 hours before trial).

The Advisory Committee at its October 2008 and April 2009 meetings held extensive discussion of draft rules on both criminal and civil implementations of juror confidentiality provisions. Both the Boyd Graves Conference and the Criminal Justice Conference

considered these matters as well, in the wake of the statute. The Boyd Graves Conference and the Advisory Committee agreed that no civil rules on this topic were required or advisable in light of the statute.

After considerable debate and discussion, a substantial majority of the Advisory Committee voted in favor of the following draft Rule to implement juror confidentiality concerns, and to comply with both subsections (A) and (B) of the Code provision quoted above.

In preparing the following draft for a rule on juror confidentiality, the Committee focused on complying with the plain language of the statute above and the public policy judgment it reflects. Rules and statutes from other jurisdictions addressing these concerns were also reviewed. *See, e.g.*, Colorado Revised Statutes §13-72-103, Idaho Court Rule 47(g), Illinois Court Rule 83.3, Indiana Local Jury Rules (St. Joseph) LR71-AR00-814, Minnesota Rules of Criminal Procedure Rule 26.02.

PROPOSED RULE FOR CRIMINAL TRIALS

The draft below is organized as follows: Subsection (A) adopts a uniform procedure for use of "juror numbers" in criminal trials. The uniformity is designed to avoid any implication that this anonymous procedure is being undertaken in any specific case because of the dangerousness of that specific defendant – an inference that jurors might otherwise draw if the procedure is used selectively or on a discretionary basis.

Subsection (B) addresses the dissemination of confidential jury information considered by counsel, and the requirement that such be returned at the conclusion of a case.

Subsection (C) implements the provisions of the statute itself for a motion to further regulate disclosure in a particular case.

As drafted below, some limitations on disclosure of juror identifying information are implemented by Rule, as the Code section requires, and further directions on such matters can be implemented under (C) where good cause is shown for additional restrictions or procedures. The difference between (A) and (B) on one hand, and (C) on the other, is that the former provide a standard procedure for all cases is adopted (no motion is required) which limits outside dissemination but allows disclosure to client, co-counsel and consultants. In (C), however, on motion showing a likelihood of bribery or physical harm, even more limiting disclosure procedures could be ordered by the court (this is the thrust of the statute):

Rule 3A:14.1 Confidentiality of Juror Personal Information

A. *Assignment and Use of Juror Numbers.* Prior to the commencement of any trial proceedings in a criminal case to be tried by jury, each individual on any list of prospective jurors for the trial shall be assigned a juror number by the clerk of court. The juror numbers shall be indicated on the jury panel information furnished to counsel. At all times during the course of the trial, including any individual or group voir dire, any polling of the jury and any execution of a verdict form, the court, counsel for the parties, and the jurors, shall refer to jurors by number and not by name. The judge shall advise the jury that use of the juror-number system is required in all criminal jury trials in Virginia.

B. *Duplication and Return of Juror Information.* Jury panel information furnished to counsel may be discussed with the client, co-counsel in the case, and jury selection consultants. Except by leave of court for good cause shown, counsel for a party in a criminal jury trial shall not copy or allow others to copy or record jury panel information furnished by court personnel. After the jury is impaneled, all copies of the jury panel information furnished by court personnel shall be returned to the court, and such information shall be maintained under seal in the file of the case, unless and until further disclosure of the information is allowed by the court for good cause shown.

C. *Motion for Order Regulating Disclosure of Jurors' Personal Information.*

(1) The court may, upon motion of any party or its own motion, and for good cause shown, issue an order further regulating the disclosure of the personal information of jurors or prospective jurors in a criminal trial to any person, other than to counsel for either party. Good cause includes, but is not limited to, a determination by the court that there is a likelihood of bribery, jury tampering, or physical injury to or harassment of a juror if personal juror information is disclosed.

(2) For purposes of this paragraph (C), "personal information" means any information collected by the court, clerk, or jury commissioner at any time, including but not limited to, a juror's name, age, occupation, home and business addresses, telephone numbers, email addresses, and any other identifying information that would assist another in locating or contacting the juror.

(3) An order under this paragraph (C) regulating the disclosure of personal information of the jurors in a criminal case may be modified by the court in the exercise of its discretion and for good cause shown, and such information may be disseminated to a person having a legitimate interest or need for the information, with restrictions upon its use and further dissemination as may be deemed appropriate by the court.

Comments on this Rule, which has been tentatively approved by the Advisory Committee on Rules of Court and has not been presented to or considered by the Judicial Council of Virginia or the Supreme Court of Virginia, should be submitted to Steven Dalle Mura, Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Richmond, VA 23219. The deadline for such comments is September 1, 2009.