

Virginia Code § 19.2-263.3 and Confidentiality of Juror Information

October 2009

Revised Draft Rule Published for Comment

Set forth below is a revised draft rule prepared by the Advisory Committee on Rules of Court after receiving numerous submissions of comments and suggestions concerning a tentative draft published in May, 2009. The revised draft below has not been approved by the Advisory Committee, which will consider the matter at its May, 2010 meeting. This revised draft has not been submitted to, considered, or approved by the Judicial Council of Virginia or the Supreme Court of Virginia. Comments are solicited on the revised provisions.

Background: 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 Code section, § 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.

HISTORY: 2008, c. 538.

This new provision leaves intact all other relevant provisions of the Code of Virginia, including Code § 8.01-351 (which requires preparation and disposition by the clerk of court of

a list of jurors drawn for potential service) and 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).

OUTLINE OF THE REVISED PROPOSED RULE

In preparing the following draft for a rule on juror confidentiality, the Committee gave detailed consideration to the many comments and suggestions received on the initial draft rule, and focused on complying with the plain language of the statute above and the public policy judgment it reflects in the most narrow fashion sufficient to make available the statute's protections. The draft Rule – which applies only in criminal cases in the circuit courts of Virginia – is organized as follows:

Subsection (a) directly implements the statute, setting forth a uniform requirement for the showing of good cause prior to any trial court ruling concerning restrictions on dissemination or use of identifying or personal information of jurors or prospective jurors.

Subsection (a)(1) authorizes the trial court in an individual case, upon such a finding of good cause, to enter orders concerning the distribution of identifying information about jurors to anyone other than counsel for either party. Thus implementing the statute, a circuit court which makes the required finding of grounds for restriction may impose a tailored limitation on the scope of dissemination of personal information about jurors, but in no case may the court preclude the provision of such information to counsel for the parties for use preparing for and conducting the proceedings.

Subsection (a)(2) authorizes the trial court in a criminal case, upon the required finding of good cause, to direct that jurors will be identified in open court by juror number rather than name. This option does not affect the right of the parties to obtain and use identifying and personal information about jurors or prospective jurors.

Pursuant to Code § 19.2-263.3(A) and (B), the revised draft rule utilizes a "good cause" standard that focuses on specific risks in circumstances that threaten the proper discharge of the jury's duties, and that warrant departure from the norm of open disclosure and use of juror identifying or personal information at trial.

Subsection (b) expressly preserves the trial court's option to modify provisions of any limiting procedure, as circumstances warrant.

Subsection (c) of the draft Rule defines "personal information" in the terms prescribed by the statute.

REVISED PROPOSED RULE FOR CRIMINAL TRIALS

Rule 3A:14.1 Confidentiality of Juror Personal Information

(a) *Motion for Order Regulating Disclosure of Jurors' Personal Information.* As provided in Code § 19.2-263.3, on motion of any party or its own motion, and only upon a finding of good cause sufficient to warrant departure from the norm of open proceedings, the court may issue an order which may include provisions:

(1) regulating the disclosure of the personal information of jurors or prospective jurors in a criminal trial. The court may limit or preclude dissemination of such information to particular persons, but in no event shall such information be denied to counsel for either party; and/or

(2) requiring that during the course of the trial counsel for the parties, and the jurors themselves, shall refer to jurors by number and not by name.

Under this Rule, a finding of "*good cause*" includes, but is not limited to, a determination by the court in a particular case that if personal information of jurors or prospective jurors is disclosed there is a reasonable possibility of bribery, tampering, physical injury, harassment, intimidation of a juror, or any other material interference with the proper discharge of the jury's functions, such as a reasonably perceived threat to the jury's safety, well-being, or capacity properly to focus upon and perform its trial and deliberative duties.

(b) *Modification of Order.* An order under this Rule 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 such restrictions upon its use and further dissemination as may be deemed appropriate by the court.

(c) *Personal Information.* For purposes of this Rule, "*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.

Comments on this Rule, which has been drafted (but not finally 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, Director of Legal Research, Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Richmond, VA 23219. The deadline for such comments is April 15, 2010.