

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Sixty-Eighth Report to the Court recommending, in part, adoption of proposed amendments to Rule 4-312, as set forth in that Report published in the *Maryland Register*, Vol. 38, Issue 8, pages 475 - 503 (April 8, 2011); and

This Court having considered at open meetings, notice of which was posted as prescribed by law, the proposed amendments, together with the comments received, it is this 7th day of June, 2011,

ORDERED that the amendments to Rule 4-312, be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after September 1, 2011 and, insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

*

Robert M. Bell

/s/ Glenn T. Harrell, Jr.
Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia
Lynne A. Battaglia

/s/ Clayton Greene, Jr.
Clayton Greene, Jr.

/s/ Joseph F. Murphy, Jr.
Joseph F. Murphy, Jr.

/s/ Sally D. Adkins
Sally D. Adkins

/s/ Mary Ellen Barbera
Mary Ellen Barbera

* Chief Judge Bell has declined to sign the Rules Order.

Filed: June 7, 2011

/s/ Bessie M. Decker
Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-312 to require that jurors be addressed by number, to provide for nondisclosure of jurors' names and their cities or towns of residence under certain circumstances, to correct a cross reference, to add a cross reference, to add three Committee notes, and to make stylistic changes, as follows:

Rule 4-312. JURY SELECTION

. . .

(b) General Requirements

(1) Uniform Method of Impaneling

All individuals to be ~~impanelled~~ impaneled on the jury, including any alternates, shall be selected in the same manner, have the same qualifications, and be subject to the same examination.

(2) Jurors Not to be Addressed by Name

In any proceeding conducted in the courtroom or in chambers, a juror shall be referred to by juror number and not by name.

Committee note: The judge should advise prospective jurors and remind impaneled jurors that (1) it is standard procedure for jurors to be referred to in open court only by juror number and not by name, and (2) they may disclose their names to each other if they wish and, when not in open court, refer to each other by name, but they may not specifically disclose the names of other jurors to anyone else unless authorized by the judge.

(c) Jury List

(1) Contents

Subject to section (d) of this Rule, ~~Before~~ before the examination of qualified jurors, each party shall be provided with a list that includes each juror's name, ~~address~~ city or town of residence, zip code, age, ~~sex~~ gender, education, occupation, and spouse's occupation, ~~and any other information required by Rule~~. Unless the trial judge orders otherwise, ~~the address shall be limited to the city or town and zip code and shall not include the juror's street address or box number~~ shall not be provided.

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c)(2)(A) of this Rule may not disseminate the list or the information contained on the list to any other person.

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for

identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Cross reference: See ~~Rule 16-1009 concerning motions to seal or limit inspection of a case record~~ Rule 16-1004 (b)(2)(B) concerning disclosure of juror information by a custodian of court records.

(d) Nondisclosure of Names and City or Town of Residence

(1) Finding by the Court

If the court finds from clear and convincing evidence or information, after affording the parties an opportunity to be heard, that disclosure of the names or the city or town of residence of prospective jurors will create a substantial danger that (i) the safety and security of one or more jurors will likely be imperiled, or (ii) one or more jurors will likely be subjected to coercion, inducement, other improper influence, or undue harassment, the court may enter an order as provided in subsection (d)(2) of this Rule. A finding under this section shall be in writing or on the record and shall state the basis for the finding.

(2) Order

Upon the finding required by subsection (d)(1) of this Rule, the court may order that:

(A) the name and, except for prospective jurors residing in Baltimore City, the city or town of residence of prospective jurors not be disclosed in voir dire; and

(B) the name and, except for jurors residing in Baltimore City, the city or town of residence of impaneled jurors not be

disclosed (i) until the jury is discharged following completion of the trial, (ii) for a limited period of time following completion of the trial, or (iii) at any time.

Committee note: Nondisclosure of the city or town in which a juror resides is in recognition of the fact that some counties have incorporated cities or towns, the disclosure of which, when coupled with other information on the jury list, may easily lead to discovery of the juror's actual residence. The exception for Baltimore City is to take account of the fact that Baltimore City is both an incorporated city and the equivalent of a county, and because persons are not eligible to serve as jurors in the Circuit Court for Baltimore City unless they reside in that city, their residence there is necessarily assumed.

Cross reference: See Rule 16-1004 (b)(2)(B).

(3) Extent of Nondisclosure

An order entered under this section may direct that the information not be disclosed to (A) anyone other than the judge and counsel; (B) anyone other than the judge, counsel, and the defendant; or (C) anyone other than the judge, counsel, the defendant, and other persons specified in the order. If the court permits disclosure to counsel but not the defendant, the court shall direct counsel not to disclose the information to the defendant, except pursuant to further order of the court.

(4) Modification of Order

The court may modify the order to restrict or allow disclosure of juror information at any time.

Committee note: Restrictions on the disclosure of the names and city or town of residence of jurors should be reserved for those cases raising special and legitimate concerns of jury safety, tampering, or undue harassment. See *United States v. Deitz*, 577 F.3d 672 (6th Cir. 2009); *United States v. Quinones*, 511 F.3d 289 (2nd Cir. 2007). When dealing with the issues of juror security or tampering, courts have considered a mix of five

factors in deciding whether such information may be shielded: (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment. See *United States v. Ochoa-Vasquez*, 428 F.3rd 1015 (11th Cir. 2005); *United States v. Ross*, 33 F.3rd 1507 (11th Cir. 1994). Although the possibility of a lengthy incarceration is a factor for the court to consider the court should not shield that information on that basis alone. In particularly high profile cases where strong public opinion about a pending case is evident, the prospect of undue harassment, not necessarily involving juror security or any deliberate attempt at tampering, may also be of concern.

~~(d)~~ (e) Examination and Challenges for Cause

(1) Examination

The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

(2) Challenges for Cause

A party may challenge an individual qualified juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

~~(e)~~ (f) Peremptory Challenges

Before the exercise of peremptory challenges, the trial judge shall designate those individuals on the jury list who remain qualified after examination. The number designated shall be sufficient to provide the required number of sworn jurors, including any alternates, after allowing for the exercise of peremptory challenges pursuant to Rule 4-313. The judge shall at the same time prescribe the order to be followed in selecting individuals from the list.

~~(f)~~ (g) ~~Impanelled~~ Impaneled Jury

(1) ~~Impanelling~~ Impaneling

The individuals to be ~~impanelled~~ impaneled as sworn jurors, including any alternates, shall be called from the qualified jurors remaining on the jury list in the order previously designated by the trial judge and shall be sworn.

(2) Oath; Functions, Powers, Facilities, and Privileges

All sworn jurors, including any alternates, shall take the same oath and, until discharged from jury service, have the same functions, powers, facilities, and privileges.

(3) Discharge of Jury Member

At any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate in the order of selection set under section (e). When the jury retires to consider its verdict, the trial judge shall discharge any remaining alternates who did not

replace another jury member.

~~(g)~~ (h) Foreperson

The trial judge shall designate a sworn juror as foreperson.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule 754 a and in part new.

Section (b) is derived from former Rule 751 b.

Section (c) is new.

Section (d) is new.

Section ~~(d)~~ (e) is derived from former Rule 752 and 754 b.

Section ~~(e)~~ (f) is derived from former Rule 753.

Section ~~(f)~~ (g) is new.

Section ~~(g)~~ (h) is derived from former Rule 751 d.