

**IN THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

**ORDER ADOPTING A NEW RULE 86
OF THE COURT OF COMMON PLEAS
RULES OF CIVIL PROCEDURE**

This 21st day of May 2009, IT IS ORDERED that:

- 1) The Civil Rules of the Court of Common Pleas are amended by adopting a new Civil Rule 86, Declaration of Habitual Offender Status, as follows:

Rule 86. Declaration of habitual offender status.

(a) *Application of Rule.* This Rule shall apply to petitions to have someone declared a habitual offender pursuant to Chapter 28 of Title 21 of the Delaware Code.

(b) *Commencement of action.* The Attorney General shall initiate court proceedings to have someone declared a habitual offender pursuant to 21 *Del. C.* §2804 by filing a petition against the person in the Court and in the County in which the person resides. In the case of a nonresident, the petition shall be filed with the Court in New Castle County. A copy of the certified conviction record or abstract from the Division of Motor Vehicle for the person against whom the petition has been filed shall accompany the Attorney General's petition along with a form Order to Show Cause.

(c) *Order to Show Cause.* Upon the filing of a petition by the Attorney General, the Court shall issue an Order to Show Cause why the respondent shall not be declared a habitual offender together with a notice for a date for the hearing to Show Cause. Said order and notice shall, then, be returned to the Attorney General.

(d) *Service of petition.* The Attorney General shall serve the respondent with a copy of the petition, the Order to Show Cause and the respondent's driving record or abstract, along with the notice of the date and time of the hearing to show cause, by personal delivery thereon or by deposit of such in the United States mail in an envelope with postage prepaid, addressed to the respondent at the respondent's address as shown by the records of the Division of Motor Vehicles. This documentation sent by mail shall be deemed served upon the expiration of 4 days after the deposit of the documentation into the United States mail. Service on any nonresident of this State may be made pursuant to §3112 of Title 10.

(e) *Hearing.* The hearing to show cause why the respondent shall not be declared a habitual offender shall be heard by the Court without a jury in accordance with 21 *Del. C.* §2806.

2) The effective date of this rule amendment shall be July 6, 2009.

Alex J. Smalls
Chief Judge

William C. Bradley, Jr.
Judge

John K. Welch
Judge

Rosemary Betts Beauregard
Judge

Kenneth S. Clark, Jr.
Judge

Charles W. Welch, III
Judge

Joseph F. Flickinger, III
Judge

Andrea L. Rocanelli
Judge

Anne Hartnett Reigle
Judge