

## **Rule 38. Post-Placement Assessment Report**

### **38.01 Timing**

**Subdivision 1. Generally.** Unless waived by the court pursuant to Rule 38.04 and Minnesota Statutes, section 259.53, subdivision 5, the supervising agency, or if there is no such agency the local social services agency, shall conduct a post-placement assessment and file a report with the court within ninety (90) days of receipt of a copy of the adoption petition. A post-placement assessment report is valid for twelve (12) months following its date of completion.

**Subd. 2. Failure to Comply.** If, through no fault of the petitioner, the agency fails to complete the assessment and file the report within ninety (90) days of the date it received a copy of the adoption petition, the court may hear the petition upon giving the agency five (5) days' notice of the time and place of the hearing.

(Amended effective January 1, 2007; amended effective July 1, 2014; amended effective July 1, 2015.)

### **38.02 Content**

The post-placement assessment report shall provide an individualized determination of the needs of the child and how the adoptive placement will serve the needs of the child. The report shall include a recommendation to the court as to whether the adoption petition should or should not be granted. In making evaluations and recommendations, the post-placement assessment report shall, at a minimum, address the following:

- (1) the level of adaptation by the prospective adoptive parents to parenting the child;
- (2) the health and well-being of the child in the prospective adoptive parent's home;
- (3) the level of incorporation by the child into the prospective adoptive parent's home, extended family, and community; and
- (4) the level of inclusion of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives.

### **38.03 Background Study**

If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(19), the agency, as part of its post-placement assessment report, shall conduct a background study meeting the requirements of Minnesota Statutes, section 259.41, subdivision 3, paragraph (b). An adoption study and background study are always required for a child under the guardianship of the Commissioner of Human Services.

(Amended effective August 1, 2009; amended effective July 1, 2014.)

### **38.04 Waiver by Court**

**Subdivision 1. Post-Placement Assessment Waiver Permitted.** The post-placement assessment report may be waived by the court pursuant to Minnesota Statutes, section 259.53, subdivision 5, or 260C.607. A request to waive a post-placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post-placement assessment report shall be decided by the court within fifteen (15) days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

**Subd. 2. Background Study Waiver Prohibited.** The court shall not waive the background study.

(Amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

### **38.05 Contested Adoptive Placement for Children Under Guardianship of the Commissioner of Human Services**

The provisions of Rules 38.01 to 38.04 do not apply to children under the guardianship of the Commissioner of Human Services. Procedures for contested adoptive placements of children under the guardianship of the commissioner of human services are governed by Minnesota Statutes, section 260C.607, subdivision 6.

(Added effective July 1, 2014; amended effective September 1, 2019.)

#### ***2014 Advisory Committee Comment***

*Rule 38.05 provides that contests over the adoptive placement of children under state guardianship are governed by Minnesota Statutes, section 260C.607, subdivision 6. A contested adoptive placement hearing for a child under guardianship of the commissioner of human services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion, which is heard by the judge conducting the reviews required under Minnesota Statutes, section 260C.607, on the agency's reasonable efforts to finalize adoption of the child.*

*If the court finds there is a prima facie showing, it will conduct further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under the guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by a fully executed adoptive placement agreement. So, the process is not for contested adoption but, rather, for contested adoptive placement.*