Exhibit 5

Declaration of Keith Baumann

1. I make this declaration based on my own personal knowledge and would testify to the statements here under oath if called to do so.

2. I am the Legal Director in the Family Defense Practice of The Bronx Defenders.

3. I am an attorney in good standing in the state of New York. I am admitted to practice law in the State of New York (Appellate Division, First Department). I specialize in the practice of family defense.

4. I have represented many hundreds of clients in family court over nearly twenty years on neglect, abuse, and termination of parental rights cases.

5. I have supervised attorneys in our Family Defense Practice for nearly fifteen years.

6. I am familiar with the procedures in New York City Family Court.

7. I write this declaration in anticipation of the reinstatement of courthouse drug testing in New York City Family Court. I write to describe the status quo for drug testing in family court, as well as the changes I expect, based on my experience, if courthouse drug testing is reinstated.

I. Status Quo for Drug Testing in Family Court Proceedings

8. Child protective proceedings in family court concern the state seeking to intervene in a parent/child relationship, against the wishes of the parent, to ensure the child's needs are met. N.Y. Fam. Ct. Act § 1011. The state often contends that drug testing is relevant to these proceedings. Drug test results are introduced most often in hearings to determine whether a child should be removed from home pending fact-finding on the state's petition ("removal"), N.Y. Fam. Ct. Act §§ 1027–28; and, after a disposition order, hearings to determine whether to increase parent contact, progressing toward decreased state supervision and a permanent living arrangement for the child ("permanency hearings"). N.Y. Fam. Ct. Act § 1086.

9. State law allows family courts to order the New York City Administration for Children's Services ("ACS") to provide or arrange for services for the family, and the agency must create a "permanency plan" every six months after placement of the child as the state's proposal for criteria the parent can meet to return the child home and end state supervision. N.Y. Fam. Ct. Act §§ 1015-a (provision of services); 1089(c)(3) (permanency plan). These plans often propose that the parent submit to random drug testing. Many parents agree to drug testing under these plans, and parents who do not agree are able to challenge them with the agency or in court.

10. To my knowledge, the current practice is that when clients take drug tests, whether voluntarily or pursuant to a court order, they do so at medical facilities and labs in the community where the samples are collected by trained lab technicians in private areas specifically designed for sample collection.

11. To my knowledge, family courts have operated since March 2020 without courthouse drug testing.

II. Anticipated Impact of Reinstating Courthouse Drug Testing

12. It is my understanding that family court administration intends to reinstate courthouse drug testing starting this month. I have reviewed the September 19, 2025 memo from court administrators describing reinstatement of the program.

13. I practiced in family court for over a decade before the COVID pandemic began in March 2020, when family court shut down for in-person appearances. Courthouse drug testing was available upon order of family court judges before the pandemic.

14. Based on my experience practicing in family court, I expect judges to continue their prior practices if courthouse drug testing is reinstated. Courthouse drug testing offers judges a fast, simple data point in cases that are otherwise complex and fact-intensive. The institutional pressures that made coercion to test attractive before, heavy calendars, time constraints, and the desire for quick decision-making, have not changed. Moreover, the September 19, 2025 memorandum describes a program that preserves similar broad judicial discretion, with no meaningful limits on when testing may be requested, under what circumstances, or the scope of testing. The memo does not prohibit judges from penalizing parents who refuse to consent, as was their prior practice. The memo also fails to provide judges with an alternative: there is not a new set of procedures designed to elicit voluntary consent or protect the rights of parents who refuse to test. Further, many judges practiced during the prior era of coercive courthouse drug testing, both as judges and as advocates. I expect those norms—how testing was used and how and when it was imposed—to persist as default approaches, especially in the absence of strong structural change.

15. The following paragraphs describe my experience representing clients when courthouse drug testing is available.

A. How Courthouse Drug Testing Works

16. Parents are required to appear in person for most family court proceedings. Judges generally will not grant parents relief if they appear through counsel.

17. Judges will typically request that clients drug test after a proceeding has begun. Judges make these requests in hearings where my clients are opposing removal of their children from home, seeking to bring their children home from foster care, or increasing visitation.

18. If the client submits to testing, the judge signs an order requiring the client to test. In my experience, judges do not make a probable cause finding supporting these orders. In fact, in nearly twenty years of practice, I have no memory of ever hearing a judge use the words "probable cause" concerning a drug test.

19. Once the order to test is issued, court officers "escort" clients to monitor them until they give a urine sample. Officers first escort clients to a bench in a public waiting area, in front of other litigants and attorneys, where clients wait to be tested by court staff. The wait can be over an hour.

20. In the past, when court staff were ready to collect the sample, they called the client into an administrative office that also doubled as a clerk's office, with attorneys and staff regularly coming in and out to file petitions, serve motions on the court, and pick up subpoenaed records. Clients have reported to me that they were required to urinate in a bathroom in that office with the door open, visible to court staff.

21. Social workers from The Bronx Defenders sit with clients while they are waiting and have in some instances mediated between clients and courthouse staff administering the tests.

22. In my experience, judges ask parents to test in wide circumstances, including circumstances where there is no drug misuse allegation against the parent in the neglect petition. Judges have asked clients to test even when the client is seeking only visitation supervised by ACS. Judges have also asked clients to test based on my client's associations.

B. Judges Coerce Consent to Courthouse Drug Testing

23. A judge's "request" for courthouse drug testing is functionally a demand. In my experience, judges explicitly threaten to draw an inference that the test would be positive if a parent refuses to consent or does not provide a sample.

24. In my experience, if a parent refuses to test or does not provide a sample, the judge urges the parent to withdraw or delay their applications or denies the parent's application on the basis of their refusal or lack of sample.

25. Refusal to consent to testing is treated as determinative, while even a positive drug test is not. Judges sparingly grant the relief a parent is seeking if they test positive for substance use. I have never seen a judge rule in favor or a parent's requested relief when a parent refused a courthouse drug test.

26. The practice of denying a parent's application when they refuse to test or fail to provide a sample is often implicit, though at times judges make it explicit. Courts have, in some instances, expressly conditioned relief, such as the return of children, the avoidance of removal, or expanded visitation, on a parent's compliance with courthouse drug testing. Judges have also cautioned attorneys to withdraw emergency applications for the return of children (which are available only once as of right) where a parent would not consent to testing or was unable to provide a sample.

27. Frequently, what is framed as a request for testing is not presented as a request at all, but as a directive issued in the form of an order. Judges have ordered parents to submit to courthouse testing without first inquiring whether the parent consents or despite the objections of counsel.

28. The practice of drawing an adverse inference, that a client's drug test would be positive if the client refused to test or did not provide a sample, was often explicit. On multiple occasions, I objected to judges stating on the record that they could or would treat a refusal as equivalent to a positive result. Even more frequently, I heard judges articulate this view openly in court.

29. Because consent to courthouse drug testing is functionally a condition of any application for increased contact with children, I often counsel clients who do not want to consent to testing that they should withdraw their application for the return of children. Parents get only one such hearing as of right, and in my experience, it would be a waste of this opportunity to pursue it without consenting to the judge's request to test.

30. Family court proceedings offer no alternative for these parents. There is no procedure in family court for challenging the existence of the courthouse drug testing program as a whole.

31. When judges ask clients to test at the courthouse, the clients have no recourse to a different, neutral magistrate, to challenge the basis for the request.

32. For parents who do drug test at the courthouse, there is no opportunity to challenge the results as illegally obtained. Family court proceedings do not offer suppression or any other remedies for the state's use of evidence collected through Fourth Amendment violations.

33. Counseling clients about in-court drug testing diverts time and attention from other critical priorities and can strain the attorney-client relationship. When requests arise without notice during a court appearance, even the act of pausing to advise a client may be perceived by the court or other parties as suspicious, implicitly suggesting that the client has something to hide. This dynamic not only undermines trust but also limits counsel's ability to develop and present effective arguments in opposition, including constitutional challenges.

C. Courthouse Drug Testing Deters Parents from Appearing in Court

34. In cases where I suspect that the judge will seek an in-court test, I will take additional time to inform my client that they can expect a request to test, and that refusing consent will likely have a determinative impact on their case, especially if my client is trying to keep their kids home or is asking for more contact with their children.

35. In my experience, despite this counseling, the invasive nature of courthouse drug testing has caused some clients to leave the courthouse and abandon their applications, and deterred others who were previously tested from returning to court at all. Many of these parents have otherwise meritorious arguments that removal is not "necessary to avoid imminent risk to the

child's life or health," N.Y. Fam. Ct. Act §§ 1027(b), 1028(b), and that increased visitation is "in accordance with the best interests and safety of the child," N.Y. Fam. Ct. Act § 1089(d).

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 8, 2026.



Keith Baumann