Committee on Judicial Ethics
State of Connecticut Judicial Branch
Superior Court Operations
100 Washington Street, 3rd Floor
Hartford, CT 06106

September 15, 2022

Hon. Thomas G. Moukawsher
Judicial District of Middlesex
1 Court Street
Middletown, CT 06457

RE: Formal Opinion 2022-07

Dear Judge Moukawsher:

You have inquired whether you have an obligation to recuse yourself under the following circumstances.

You were recently assigned to preside over a dissolution of marriage case. During the initial conference with the parties, one of the attorneys said that counsel for the other side had consulted a lawyer (a retired judge) with whom you are slightly acquainted. The lawyer works at a large Connecticut law firm and the attorney indicated that he was aware that you had been recusing yourself from cases in which that law firm had filed an appearance.

Opposing counsel responded that counsel had consulted with the lawyer from that firm, but that the lawyer would not be appearing in the case in any capacity and further that it was unknown as to whether the lawyer will be consulted again and, if so, to what extent.

You indicate that you have made it a policy to recuse yourself when lawyers from the law firm appear in front of you. Your connection to the law firm is: 1. The chairman of the firm is a close friend, and 2. The law firm handled a real estate transaction for you, set up some limited liability companies for you, and wrote your will, with the last service rendered around two or three years ago. Finally, you believe that you have a responsibility to decide cases under Rule 2.7 of the Code of Judicial Conduct and not recuse yourself from your duties unnecessarily. You

also indicate that you do not feel this tenuous connection would have any effect on your views of the case.

The Committee concluded that Rules 1.2 and 2.11(a) of the Code of Judicial Conduct apply to this matter. Rule 1.2 states that a judge "should act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Rule 2.11 (a) states that:

> A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:
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> (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
> (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:
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> (A) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
> (B) acting as a lawyer in the proceeding;
> (C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or
> (D) likely to be a material witness in the proceeding.
>
> (3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.
> (4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
> (5) The judge:
> (A) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
> (B) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or
> (C) was a material witness concerning the matter.

There are two initial objective questions to consider when determining if disqualification is required. The first is whether disqualification is mandated under the specific circumstances in the Code of Judicial Conduct. Where, as in this inquiry, none of the enumerated circumstances in Rule 2.11 applies, the second question is whether the judge's impartiality might nonetheless be reasonably questioned. See New York Advisory Opinion 14-90. If disqualification is not mandated under the objective standards of those two questions, the Committee has previously stated that a judge "is ordinarily in the best position to assess whether in a particular proceeding the judge's impartiality might reasonably be questioned…" See Connecticut JE 2016-14. Of course, if a judge questions his or her own ability to be impartial in a particular matter, then he or she must not preside.

There is no indication in the present inquiry that you have any direct relationship, either social, professional, or otherwise, with any of the attorneys appearing before you in the dissolution matter. The Committee has advised that, even where a judge has a social relationship with an attorney that may require disqualification when that attorney appears, the duty to disqualify does not automatically extend to the attorney's law firm colleagues. (See Connecticut JE 2010-28, no duty to automatically disqualify from presiding over a motion to reconsider involving a friend's law firm; Connecticut JE 2011-06, a judge who has a close friendship with the Attorney General does not have a duty to automatically disqualify himself or herself when a member of the Attorney General's Office appears; Connecticut JE 2014-03, a judge does not have an automatic duty to recuse or disclose his or her relationship with a former partner or former law firm when members of the newly merged law firm (comprised of members of the former law firm) appear before the judge; Connecticut JE 2016-12, judge who has a close personal relationship with a State's Attorney may preside over criminal cases that are tried by Assistant State's Attorneys who work under the supervision of a State's Attorney.)

In Connecticut JE 2013-45, this Committee determined that a judge may preside over juvenile cases involving the juvenile prosecutor's office where a prosecutor from that office previously consulted with an attorney (former law partner of judge's spouse) about an unrelated criminal matter. The Committee likewise believes that a judge's impartiality cannot "reasonably be questioned" merely because an attorney appearing before him has consulted with a lawyer who works at the law firm that handled legal work for the judge several years ago and that is managed by a close friend.

Based on the facts presented, and consistent with Rule 2.11, the Committee unanimously determined that there is no ethical requirement for you to automatically recuse yourself from the pending dissolution of marriage case after learning that an attorney of record has consulted with a lawyer who works at the law firm managed by your close friend and that handled legal work for you more than two years ago. Absent an appearance from the law firm in question, mere consultation with an attorney associated with the firm is too tenuous a connection to require disqualification.

The opinions of the Committee on Judicial Ethics are advisory. Although judicial conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on

a judge's behalf, our opinions are not binding on the Judicial Review Council, the Superior Court, the Appellate Court, or the Supreme Court in the exercise of their judicial discipline responsibilities. You may submit a written request for reconsideration, explaining the basis for the request, to the Secretary to the Committee within thirty days after distribution of this opinion. Policy & Rules of the Committee, §10.

Sincerely,

Hon. James T. Graham, Chair
Committee on Judicial Ethics