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Message to Iowa judges regarding Judge Jason Besler

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Wed, Oct 10, 2018 at 2:04 PM

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Counsel to the Chief Justice Molly Kottmeyer sent the message pasted below to all Iowa judges Monday, October 8. Today, a member of the news media requested a copy of the message, so I am sending it to all members of the media who cover the courts or this issue. There will be no further comment.

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Chief Justice Cady has asked me to write you regarding the inquiries he has received as to whether he will “confirm” or “ratify” the appointment of Jason Besler as a district court judge in the Sixth Judicial District. Governor Reynolds appointed Judge Besler in June and questions have surfaced whether the appointment was made within the constitutional thirty day time period in which the governor is authorized to make the appointment.

As you know, article V, section 15 of the Iowa Constitution sets forth the process by which judicial vacancies are filled. As a part of this process, the chief justice does not have the authority to “make the appointment” from the list of nominees submitted by the Judicial Nominating Commission unless the governor “fails for thirty days to make the appointment.”

With regard to the appointment of Judge Besler, the Governor’s Office told Chief Justice Cady that Governor Reynolds properly exercised her constitutional authority to make the appointment in a timely manner. This determination by the governor deserves respect unless resolved differently through the legal process established to resolve disputes. Under the constitution, only one person can exercise the appointment authority at a time. Additionally, the constitution does not give the chief justice any additional authority to “confirm” or “ratify” a judicial appointment made by a governor. The chief justice only has the power to “make the appointment” if the governor fails to do so.

Chief Justice Cady finds himself in a difficult position, as is Jason Besler and litigants in his courtroom. At this time, there is no simple solution. We operate under a system of laws and must rely on that system. Any exercise of authority that does not exist would do far greater damage to our system of justice. Accordingly, the chief justice believes he has no constitutional authority to “ratify” or “confirm” a judicial appointment. The chief justice will also take no action to exercise his constitutional authority to make a judicial appointment at this time. He will continue to monitor the situation in order to protect the judicial process and all its judges.