

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 23-90037 and
23-90041

ORDER

Before: **MURGUIA**, Chief Circuit Judge; **CHRISTEN, MILLER, NGUYEN**, and **BADE**, Circuit Judges; **GUTIERREZ**,¹ **DU, SNOW**, and **BASTIAN**, Chief District Judges; and **BURGESS**, Senior District Judge²

I. INTRODUCTION

Multiple individuals reported possible judicial misconduct in connection with two incidents that occurred on February 13, 2023, in the courtroom of the Honorable Roger T. Benitez,³ Senior District Judge of the United States District Court for the Southern District of California. Responding to these reports, Chief Circuit Judge Mary H. Murguia conducted a limited inquiry under Rule 5 of the

¹ This matter was deliberated and decided upon before Chief District Judge Philip Gutierrez’s term on the Judicial Council ended on March 29, 2024.

² Pursuant to Rule 25(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, Senior Circuit Judge Michael D. Hawkins did not participate in the consideration of this matter.

³ We name Judge Benitez in this Order because, under Rule 24(a)(4) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the name of the subject judge must be disclosed if a complaint “is finally disposed of under Rule 20(b)(1)(D) by any remedial action other than private censure or reprimand.”

Rules for Judicial-Conduct and Judicial-Disability Proceedings (the “JC&D Rules”).⁴ On February 22, 2023, Chief Judge Murguia identified a misconduct complaint resulting from these incidents, Complaint No. 23-90037, against Judge Benitez pursuant to 28 U.S.C. § 351(b) and JC&D Rule 5.

Approximately one week later, Chief Judge Murguia publicly disclosed that she had identified Complaint No. 23-90037 against Judge Benitez under JC&D Rule 23(b)(1) to “maintain public confidence in the judiciary’s ability to redress misconduct or disability.”⁵

On February 28, 2023, a second misconduct complaint was filed against Judge Benitez, Complaint No. 23-90041, which focused on one of the incidents that occurred on February 13, 2023, and raised similar allegations to those contained in Complaint No. 23-90037. On April 18, 2023, after reviewing Complaint No. 23-90037 and Complaint No. 23-90041 under JC&D Rule 11, Chief Judge Murguia consolidated the two complaints (the “Complaints”) and appointed a special committee⁶ (the “Committee”) to investigate and make

⁴ All references in this Order to the “JC&D Rules” are references to the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

⁵ There was significant publicity and media coverage about these incidents. The initial article highlighting the Puente Hearing was published on the *Above the Law* blog, soon followed by articles in the *San Diego Union-Tribune*, the *Los Angeles Times*, and other media outlets.

⁶ The members of the Special Committee were Senior Circuit Judge Sidney R. Thomas, presiding officer; Chief Circuit Judge Mary H. Murguia; Circuit Judge Eric D. Miller; Senior District Judge Susan R. Bolton, District of Arizona; and District Judge Gloria M. Navarro,

findings and recommendations to the Judicial Council. Pursuant to JC&D Rule 17, the Committee delivered its report and recommendations to the Judicial Council on January 19, 2024.

II. BACKGROUND OF THE COMPLAINTS

The Complaints stem from two incidents that occurred in Judge Benitez’s courtroom on February 13, 2023:

1. During a sentencing hearing for Defendant Mario Puente for a violation of the terms of his supervised release, Judge Benitez ordered a Deputy United States Marshal to handcuff Mr. Puente’s 13-year-old daughter.⁷
2. During a sentencing hearing for Defendant Roy Flores for a violation of the terms of his supervised release, Judge Benitez admonished Mr. Flores’s 12-year-old son.

A. The Handcuffing of Defendant Mario Puente’s Daughter at the February 13, 2023, Sentencing Hearing for Defendant Mario Puente⁸

On February 13, 2023, a sentencing hearing for Defendant Mario Puente was scheduled before Judge Benitez for violations of the terms of his supervised release (the “Puente Hearing”). Mr. Puente’s daughter, who was 13 years old at the time,

District of Nevada. Douglas R. Young of Farella Braun + Martel LLP, San Francisco, California, was appointed counsel to the Committee pursuant to JC&D Rule 13(c). The Committee was assisted by legal staff in the Office of the Circuit Executive for the Ninth Circuit (“Committee Staff”) pursuant to JC&D Rule 13(c).

⁷ To preserve the confidentiality of the minors involved in these incidents, this Order will refer to “Mr. Puente’s daughter” and “Mr. Flores’s son.”

⁸ The description of the incidents of February 13, 2023, are drawn from the transcripts of the hearings in question, with some details added from the undisputed recollections of witnesses interviewed by Committee Staff.

attended this hearing to support her father. Mr. Puente's daughter had submitted a written statement in support of her father before the hearing and was sitting in the back of the courtroom with a relative and a family friend. Others present in the room were three Deputy United States Marshals, Judge Benitez's courtroom deputy, Mr. Puente's counsel (an Assistant Federal Defender), two Federal Defender supervisors, a Probation Officer, and an Assistant U.S. Attorney representing the government.

The hearing transcript reflects that the hearing began at 2:40 p.m. and concluded at 3:07 p.m.⁹ After Mr. Puente was brought into the courtroom, Judge Benitez recounted the allegations against Mr. Puente, who admitted that he had committed those violations. Mr. Puente's counsel stated that she would be joining the recommendation from the probation office for a sentence of 10 months of detention followed by a termination of supervised release. While discussing the recommendation, Mr. Puente's counsel noted that Mr. Puente's daughter was seated in the gallery of the courtroom.

Judge Benitez asked Mr. Puente's counsel to "explain why ending supervised release is appropriate." Mr. Puente's counsel then discussed the circumstances of Mr. Puente's violations, including a previous incident when Mr. Puente's daughter found Mr. Puente unconscious after Mr. Puente accidentally

⁹ All quoted language from the hearings is taken from the transcripts.

overdosed on fentanyl. Judge Benitez asked Mr. Puente if he had anything to add.

Mr. Puente said he hoped to leave San Diego, leading to the following exchange:

Mr. Puente: My daughter – my daughter’s following the same footsteps as I am right now. She –

Judge Benitez: What do you mean?

Mr. Puente: That she’s – she’s – you know, she’s – she’s had run-ins with smoking some weed and doing some things, hanging out with people –

Judge Benitez: I’m sorry. I couldn’t understand you. I apologize.

Mr. Puente: She’s – she’s – she’s basically growing up where I grew up, so she’s encountering the same people that I grew up with that’s going to lead her into the same path that I went down. Me being gone is not helping. I’m not there to pull her from that. The only thing I can do for her is try to get her out, try to get her out. It’s just what we grow up around. It’s there. No matter what we do, it’s who we’re around. I don’t want that for her.

Judge Benitez: Okay.

The Probation Officer and the Assistant U.S. Attorney then voiced their support for the recommendation of 10 months of custody followed by termination of supervised release.

At that time, Judge Benitez asked a Deputy United States Marshal, “[y]ou got cuffs? Do you?” Judge Benitez then asked, “[w]hat’s that young lady’s name?” and requested that Mr. Puente’s daughter “com[e] up for just a second and stand next to that lawyer over there.” After Mr. Puente’s daughter approached,

Judge Benitez told the Deputy Marshal “[d]o me a favor. Put cuffs on her.” The Deputy Marshal handcuffed Mr. Puente’s daughter.

Judge Benitez then instructed the Deputy Marshal, “[n]ow, would you mind escorting her and putting her over there in the jury box for me for just a minute.” Once Mr. Puente’s daughter was placed in the jury box, where her father sat, Judge Benitez stated, “[t]hat’s good enough.”

After an uncertain length of time, ranging somewhere from a few seconds to four minutes, Judge Benitez told the Deputy Marshal, “Okay. You can take the cuffs off.”¹⁰ The Deputy Marshal removed the handcuffs.

Judge Benitez then engaged in the following dialogue with Mr. Puente’s daughter:

Judge Benitez: Now, don’t go away. Now, don’t go away. Look at me. Look at me for just a second. You see where your dad is?

Mr. Puente’s daughter: Yes.

Judge Benitez: How did you like the way those cuffs felt on you?

Mr. Puente’s daughter: I didn’t like it.

Judge Benitez: How did you like sitting up there?

¹⁰ The uncertainty about the length of time that Mr. Puente’s daughter remained handcuffed is the result of varying witness recollections. In his written responses to the Complaints and his written submission to the Committee, Judge Benitez offered various estimates about how long Mr. Puente’s daughter was handcuffed. In his written response to the Committee’s report, Judge Benitez stated that Mr. Puente’s daughter “was in handcuffs for less than two minutes (probably more like one minute).”

Mr. Puente's daughter: I didn't like it.

Judge Benitez: Good. That was the message I was hoping to get to you. So your dad's made some serious mistakes in his life, and look at where it's landed him. And as a result of that, he has to spend time away from you. And if you're not careful, young lady, you'll wind up in cuffs, and you'll find yourself right there where I put you a minute ago. And then some day, you'll look back and you'll say to yourself, "Where did my life go?" And the answer will be that you spent most of your life in and out of jail – in and out, in and out, in and out, in and out – and it will be, probably, because of drugs. You're an awfully cute young lady, and I have a feeling you have a wonderful life ahead of you. But from what I just heard about your dad – from your dad causes me to be very troubled. You can go back and sit with your – with your mom.

Judge Benitez proceeded to discuss in some detail his feelings about drugs and explained that, although he agreed with the recommendation for 10 months of detention, he did not agree with terminating supervised release. He sentenced Mr. Puente to 10 months of detention and two years of supervised release. While setting forth the conditions of Mr. Puente's supervised release, Judge Benitez again addressed Mr. Puente's daughter:

I hope the next time you're tempted to use drugs, even weed, okay, even weed, you'll remember what happened here today. I hope you remember this mean, old face. Look at it carefully. Remember that some day, those drugs may land you in a courtroom just like this. I don't want that to happen to you, young lady. I want you to have a wonderful – you got so much life ahead of you. I want you to have a wonderful life. I want your dad to get over his addiction. I want him to come home, be a good dad to you, and keep you out of trouble. If you're

ever, ever, ever, ever tempted to use drugs, make sure you tell your mom. Make sure you tell someone. Okay? Don't do it, please. Please, I beg you. Okay? Great.

B. Judge Benitez's Admonitions to Defendant Roy Flores's Son at Defendant Roy Flores's February 13, 2023, Sentencing Hearing

Immediately before the Puente Hearing on February 13, 2023, Judge Benitez conducted a sentencing hearing for Defendant Roy Flores for violations of the terms of his supervised release (the "Flores Hearing"). Mr. Puente's daughter was in the courtroom for the Flores Hearing.

The hearing transcript reflects that the hearing began at 2:09 p.m. and concluded at 2:34 p.m. It also indicates that Mr. Flores's counsel noted during his argument that Mr. Flores's son was present for the hearing. Judge Benitez asked Mr. Flores's son to remove his hat at that time.

After all arguments had been heard, Judge Benitez addressed Mr. Flores's son as follows:

So you can walk away from today's hearing with thinking to yourself that, you know, judges are mean. The system's mean. And that's – that's one way to feel about what's happening today. The other – the other thing you can do is you can walk out of here, and you can think the following things: Number one, drugs are bad. They're very, very bad. They're very, very bad. Not only can they kill you – as your dad just said, he had to give CPR to one of his buddies – not only are they bad because they can kill you, but they're also bad because they can put you where your dad is wearing those – those fashionable green coveralls that he's wearing, shackled, manacled, being paraded in front of a judge who ultimately decides the future of his life as opposed to deciding it yourself.

You can take one of those two views, whichever one makes you feel better. I hope it's the latter. I hope you realize you're going to run into an awful lot of people that are going to try and tell you to use drugs, get you involved in drugs. They're going to tell you, It's not so bad. Come on. You can do it. Yeah. You know. And then you may either find yourself dead on a curb somewhere or here in a jury box before a judge who sends you to – sends you to jail. So I hope you learn a lesson from this if nothing else.

III. THE SPECIAL COMMITTEE'S INVESTIGATION

Judge Benitez provided written responses to each of the Complaints after they were filed. Committee Staff interviewed numerous witnesses to the Puente Hearing, as well as witnesses to the Flores Hearing.¹¹ The Committee also received and reviewed answers to written questions provided by the three Deputy United States Marshals present at the hearings. The Committee offered Judge Benitez an opportunity to present oral argument or evidence before the Committee at a hearing under JC&D Rule 14. Judge Benitez declined the opportunity. Both Judge Benitez and the complainant who filed Complaint No. 23-90041 (the "Complainant") submitted written argument to the Committee, as permitted by JC&D Rules 15 and 16.

A. The Puente Hearing

As set forth in the Committee's report, the transcript of the hearing generally corroborates the witnesses' recollections of the events of the Puente Hearing. As

¹¹ The Committee extended an opportunity for Mr. Puente's daughter to submit a personal statement to the Committee. Mr. Puente's daughter declined.

to events or recollections not captured by the hearing transcript, the Committee's investigation revealed the following:

- Numerous witnesses stated that Mr. Puente's daughter was crying when the Deputy United States Marshal handcuffed her and while she remained handcuffed.
- Several witnesses recalled that the Deputy United States Marshal who was ordered to handcuff Mr. Puente's daughter attempted to comfort her.
- Judge Benitez's tone with Mr. Puente's daughter was stern and calm but not loud. Though witnesses generally agreed that Mr. Puente's daughter was upset while Judge Benitez was talking to her, several witnesses recalled that Mr. Puente's daughter stopped crying while Judge Benitez was addressing her.
- A relative of Mr. Puente's daughter stated that Mr. Puente's daughter, the relative, and a family friend were "crying and hugging" in the court hallway after the hearing.
- The mother of Mr. Puente's daughter recalled that her daughter spoke little and had "puffy eyes" from crying after returning home from the Puente Hearing, and further shared that Mr. Puente's daughter became depressed and was reluctant to go to school because of the Puente Hearing.
- Most witnesses recall the reactions in the courtroom as shock and surprise when Mr. Puente's daughter was handcuffed. The Assistant United States Attorney present at the hearing recalled that his perception of time during the incident was "altered" and slowed down during the event.
- Several lawyer witnesses recalled looking to Mr. Puente's counsel and the two Federal Public Defender supervisors to see if they would object to Judge Benitez's actions. The transcript reflects that no objections were made.

- Several witnesses expressed that an objection was not raised to Judge Benitez’s actions due to concerns that any objection would make the situation worse.
- Multiple witnesses acknowledged that the handcuffing and subsequent observations by Judge Benitez to Mr. Puente’s daughter appeared to be efforts to provide, in the general words of the witnesses, a “scared straight” experience to Mr. Puente’s daughter.
- Following the hearing, the San Diego Office of the United States Marshals Service prepared a formal internal Incident Report concerning the hearing.

There were also several issues about which witnesses had differing recollections:

- Witnesses differed as to whether and when Mr. Puente’s daughter cried at the Puente Hearing before being called up by Judge Benitez.
- As noted above, there was a wide range of testimony regarding how long Mr. Puente’s daughter remained handcuffed. The time estimated by witnesses ranged from a few seconds to several minutes.
- Though multiple witnesses stated that Mr. Puente’s daughter became emotionally upset and cried during the Flores Hearing (the hearing immediately before the Puente Hearing), there were differing recollections as to precisely when she became upset and for how long.

B. The Flores Hearing

As with the Puente Hearing, the Committee’s investigation found that the transcript of the hearing generally corroborates the witnesses’ recollections of the Flores Hearing. Some witnesses described Judge Benitez’s tone with Mr. Flores’s son as stern but not loud, much like the tone Judge Benitez used with Mr. Puente’s daughter. Others described Judge Benitez’s tone as calm and normal.

C. Written Argument to the Committee from Complainant¹²

Through counsel, Complainant argued that Judge Benitez's actions at the Puente Hearing constitute cognizable misconduct under the Judicial Conduct and Disability Act and the JC&D Rules, and further violate the Code of Conduct for United States Judges, specifically Canon 1: failing to maintain high standards of conduct as a federal judge; Canon 2: failing to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary; and Canon 3: failing to treat Mr. Puente's daughter in a respectful and courteous fashion. Complainant argued that Mr. Puente's daughter "did not deserve to be publicly shamed and humiliated" as a family member of Mr. Puente and as a member of the public.

Complainant asserted that a severe sanction against Judge Benitez is warranted because:

1. the harm was done in public, before members of the court staff, law enforcement, attorneys, and the public;
2. Mr. Puente's daughter was a member of the public who had done nothing wrong;
3. Mr. Puente's daughter was a minor;
4. the negative effects on Mr. Puente's daughter have been lasting;
5. there has been no acknowledgment of wrongdoing; and
6. since the incident, there have been no efforts at corrective action from Judge Benitez.

¹² "Complainant" is the party who filed Complaint No. 23-90041.

D. Judge Benitez's Written Responses to the Complaints and Written Argument to the Committee

Judge Benitez's written responses to the Complaints and his written argument to the Committee emphasized that his actions were motivated by a desire to change the alleged behavior of Mr. Puente's daughter and to potentially change the behavior of Mr. Puente as well. In his own words, Judge Benitez felt he had an opportunity "to possibly alter the destructive trajectory of two lives."¹³ Judge Benitez also stressed his strong concerns regarding the dangers of drug use, discussing his experiences with drug offenders, as well as statistics and studies related to drug use, specifically as to adolescents and youth.

Judge Benitez noted that it was Mr. Puente who conveyed his personal concerns about his daughter's behavior during the hearing. Thus, Judge Benitez felt he could "solve two equations with two variables: Mr. Puente's inability to rehabilitate himself and [Mr. Puente's daughter's] dangerous marijuana use." Notably, Judge Benitez acknowledged that he is aware "that counseling, therapy and mental health treatment are the best modalities for helping young people overcome developmental issues such as drug use. But that kind of intervention

¹³ All quoted language in this section is taken from Judge Benitez's written responses to the Complaints and written argument to the Committee.

was not in the inventory of actions within my control.”¹⁴

Judge Benitez also highlighted that no one in the courtroom raised any objection to his actions. Judge Benitez recalled that he never raised his voice, called Mr. Puente’s daughter or Mr. Puente names, berated Mr. Puente’s daughter, or said anything that would demean or shame her. Judge Benitez argued that, by having Mr. Puente’s daughter submit a letter before Mr. Puente’s sentencing, the “Federal Defenders injected [Mr. Puente’s daughter] into Mr. Puente’s sentencing by telling [him] how much she loved her father,” which he felt constituted “[e]motional manipulation.”¹⁵

Judge Benitez indicated that he would be willing to apologize to Mr. Puente’s daughter “if I could also briefly explain why I did what I did.” Judge Benitez urged the Committee to find that his actions at the Puente Hearing do not justify a finding of judicial misconduct.

E. Judge Benitez’s Written Response to the Committee’s Report

On February 9, 2024, Judge Benitez submitted a written response to the Committee’s report to the Judicial Council, as permitted under JC&D Rule 20(a).¹⁶

¹⁴ Judge Benitez also acknowledged that “there are better ways to deal with a child who is violating the law and using a dangerous substance.”

¹⁵ Judge Benitez also accused Mr. Puente’s counsel of trying to “[g]am[e] the system,” and asserted that the Federal Defenders used Mr. Puente’s daughter to “obtain a desired result.”

¹⁶ The Judicial Council offered Judge Benitez an opportunity to present oral argument in person before the Judicial Council under JC&D Rule 20(a). Judge Benitez declined.

In his written response, Judge Benitez discussed in detail the dangers of underage use of marijuana.¹⁷ Judge Benitez reaffirmed his position that he did not commit judicial misconduct in ordering Mr. Puente's daughter handcuffed. Judge Benitez argued that "[t]rying to help a thirteen year old girl with what appears to be a very serious problem fraught with frightening risks can't be judicial misconduct."

Judge Benitez reiterated his willingness to apologize to Mr. Puente's daughter.

IV. LEGAL STANDARDS

A federal judge's conduct is sanctionable under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, and the JC&D Rules¹⁸ if the conduct is "prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a); JC&D Rule 4. JC&D Rule 4(a)(2) provides that cognizable misconduct includes certain specific behavior, such as "abusive or harassing behavior."

The Commentary to JC&D Rule 4 states that "[t]he Code of Conduct for United States Judges sets forth behavioral guidelines for judges" and that the Canons of the Code of Conduct for United States Judges (the "Canons") are

¹⁷ Judge Benitez noted that "[d]uring the past eight weeks I have had ten supervised release violation matters. All ten of them – that is 100 % – involved defendants who started using drugs at ages 13, 14, and 15. Nine of them reported first using marijuana as adolescents."

¹⁸ In 2008, the Judicial Conference of the United States promulgated the JC&D Rules to "guid[e] the various officers and bodies who must exercise responsibility under the Act." Commentary on JC&D Rule 1.

“instructive.”¹⁹ The relevant Canons at issue are as follows:

- Canon 1 states that “[a] judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved.” The Commentary to Canon 1 states that “violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.”
- Canon 2A states that “a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” The commentary to Canon 2A expounds on this further:

An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen.

- Canon 3 states that a “judge should perform [the duties of judicial office] with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased.” Canon 3(A)(3) explains that a judge “should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity.” The Commentary to Canon 3 notes that:

¹⁹ A violation of the canons does not automatically establish the need for a sanction or discipline under 28 U.S.C. §§ 351- 64. *See In re Charge of Judicial Misconduct*, 62 F.3d 320, 322 (9th Cir. 1995); *see also* Commentary to JC&D Rule 4.

[t]he duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

The Commentary to Canon 3 further states that “[u]nder this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others,” citing to JC&D Rule 4.

When a district judge is the subject of a special committee report, the actions a judicial council can order that are appropriate to assure the effective and expeditious administration of the business of the courts within the circuit include, but are not limited to:

1. ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;
2. censuring or reprimanding such judge by means of private communication;
3. censuring or reprimanding such judge by means of public announcement;
4. certifying the disability of the judge pursuant to the procedures and standards provided under 28 U.S.C. § 372(b);²⁰ and
5. requesting that the judge voluntarily retire.

²⁰ 28 U.S.C. § 372(b) sets forth the procedure for a judicial council to certify a district or circuit judge's disability.

See 28 U.S.C. § 354(a)(2); JC&D Rule 20(b)(1)(D).

IV. DISPOSITION

A. Misconduct During the Puente Hearing

After careful consideration of the record, the Judicial Council unanimously adopts the Special Committee’s Findings of Fact. Furthermore, the Judicial Council unanimously adopts the finding of the Special Committee that Judge Benitez’s actions towards Mr. Puente’s daughter constitute judicial misconduct.

Specifically, the Judicial Council unanimously finds that Judge Benitez:

- engaged in abusive or harassing behavior in violation of JC&D Rule 4;
- failed to maintain high standards of conduct as a federal judge in violation of Canon 1;
- failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2;
- failed to treat Mr. Puente’s daughter in a respectful and courteous fashion in violation of Canon 3; and
- undermined the public’s trust and confidence in the judiciary, which is prejudicial to the effective and expeditious administration of the business of the courts in violation of the Judicial Conduct and Disability Act and JC&D Rule 4.

The Committee’s investigation and the record demonstrate that Judge Benitez took it upon himself to order Mr. Puente’s daughter to be handcuffed for the purpose of teaching both the girl and her father a lesson about the consequences of drug use. He did so while knowing that, in his own words, “counseling, therapy and mental health treatment are the best modalities for helping young people overcome developmental issues such as drug use.”

The Judicial Council finds two features of this conduct impermissible. First, the shackling of a spectator at a hearing who is not engaged in threatening or disorderly behavior exceeds the authority of a district judge. Second, creating a spectacle out of a minor child in the courtroom chills the desire of friends, family members, and members of the public to support loved ones at sentencing.

We first address the improper use of handcuffs. In directing the Deputy Marshal to handcuff Mr. Puente's daughter and requiring her to stand in the jury box, Judge Benitez ordered her to be seized within the meaning of the Fourth Amendment. *See California v. Hodari D.*, 499 U.S. 621, 624-25 (1991) (explaining that "the mere grasping or application of physical force" is sufficient to constitute a seizure). In addition, even for criminal defendants lawfully before the court, our law has long recognized the use of shackles, including handcuffs, can intrude on an individual's constitutional rights, *Deck v. Missouri*, 544 U.S. 622, 626 (2005), and degrade the "dignity and decorum of judicial proceedings that the judge is seeking to uphold," *Illinois v. Allen*, 397 U.S. 337, 344 (1970). In criminal proceedings, due process does not permit the "routine use of visible shackles" absent an individualized determination that it is necessary to maintain safety. *Deck*, 544 U.S. at 626. This rule reflects the reality that shackles are both physically intrusive and strongly connotative of criminality. *Id.* at 630. The reasons for limiting the shackling of criminal defendants resound even louder

against the shackling of other individuals present in the courtroom, particularly where there is no threat to order or safety.

In this case, Mr. Puente's daughter was present in court for the purpose of supporting her father. Under these circumstances, Judge Benitez had no authority to order her to be physically restrained. Judge Benitez cites no persuasive legal authority in his written submissions to the Committee or in his written response to the Committee's report to justify his actions. Further, the Judicial Council is not aware of any legal authority even arguably authorizing the handcuffing and detention of a spectator at a criminal hearing who has not engaged in any behavior that threatens the dignity and order of the proceedings. Given the physical and emotional impacts of shackling and the lack of any basis for handcuffing Mr. Puente's daughter in these circumstances, we conclude that Judge Benitez acted in a manner that violated JC&D Rule 4 and the Code of Conduct for United States Judges.

We next consider the way Judge Benitez addressed Mr. Puente's daughter. Like all members of the public, a defendant's family members have a right to be present at sentencing proceedings. *See United States v. Rivera*, 682 F.3d 1223, 1229 (9th Cir. 2012). The presence of family members at sentencing "reminds the participants, especially the judge, that the consequences of their actions extend to the broader community . . . especially [to] a defendant's young children." *Id.* at

1230. Judicial actions that exclude or discourage the presence of supportive family members may infringe the rights of both defendants and their loved ones.

Again, Mr. Puente's daughter was present at the hearing to support her father. Although Mr. Puente expressed his concerns about his daughter's well-being in their current community, her behavior was not at issue in the proceedings and thus not within Judge Benitez's judicial authority. The record reflects that Mr. Puente expressed his concerns about his daughter in the context of asking that there be no requirement of supervision upon his release; at no point did he ask Judge Benitez to directly address his concerns about his daughter, to directly address his daughter herself, or to publicly reprimand his daughter or order her to be detained.

Judge Benitez's primary argument to the Judicial Council and to the Committee is that, because he intended to influence Mr. Puente's daughter and Mr. Puente to make better choices in the future, Judge Benitez's actions at the Puente Hearing do not constitute judicial misconduct. But intent is not the determinative factor in the Judicial Council's consideration of the matters at issue; what matters is whether Judge Benitez acted in a manner that others would reasonably perceive to be an egregious violation of the JC&D Rules and the Code of Conduct for United States Judges.

At no point during this investigative process has Judge Benitez accepted that his actions were ill-advised, improper, and damaging to the public's trust in the

judiciary. Judge Benitez has in fact placed blame on others, particularly the Federal Defenders, for his actions that day. Judge Benitez accuses the Federal Defenders of using the letter from Mr. Puente's daughter "as leverage," but criminal defendants are well within their rights to solicit and submit letters of support.

Judge Benitez has, at every point, maintained that he acted only with the best intentions toward Mr. Puente's daughter and her father. But his good intentions do not excuse his conduct during the Puente Hearing, which displayed misguided and inappropriate methods that exceeded the authority vested in him. His actions not only harmed Mr. Puente's daughter, but also impaired the public's trust in the institution. Judge Benitez's arguments for why his conduct was justified in the circumstances are not persuasive, and his suggestions that this Council's finding of judicial misconduct is a result of public pressure are incorrect. On the contrary, reinforcing the public's trust in the judiciary is within the scope of the Council's duties.

The Judicial Council finds that Judge Benitez's actions towards Mr. Puente's daughter constitute abusive or harassing behavior in violation of JC&D Rule 4. By exceeding his authority and ordering the minor daughter of a criminal defendant handcuffed in these circumstances, Judge Benitez failed to maintain high standards of conduct as a federal judge, in violation of Canon 1, and failed to act in a manner

that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2. Judge Benitez violated Canon 3 and exceeded his authority because he did not treat Mr. Puente's daughter in a respectful and courteous fashion.

Independent judicial decision-making depends on the public's trust and confidence in the judiciary, and Judge Benitez's actions at the Puente Hearing undermine this trust and confidence. The Judicial Council therefore concludes that Judge Benitez's actions constituted conduct prejudicial to the effective and expeditious administration of the business of the courts.

B. No Misconduct During the Flores Hearing

Regarding the Flores Hearing, the Judicial Council unanimously adopts the finding of the Committee that Judge Benitez's actions were within his purview as a district judge. Judge Benitez addressed Mr. Flores's son in a respectful manner and with an appropriate tone to impress on Mr. Flores's son his concerns about Mr. Flores's behavior. Though some may disagree as to the effectiveness or appropriateness of addressing a minor in this fashion, the Judicial Council does not find that Judge Benitez treated Mr. Flores's son in a "demonstrably egregious and hostile manner." Therefore, the Judicial Council concludes that Judge Benitez's conduct at the Flores Hearing does not rise to the level of cognizable misconduct. This allegation is dismissed under JC&D Rule 20(b)(1)(A)(i).

V. REMEDIAL MEASURES

Given our findings and conclusions, and having considered the Committee's recommendations, the Judicial Council unanimously **ORDERS** the following:

1. The Judicial Council publicly reprimands Judge Roger T. Benitez for his conduct towards Mr. Puente's daughter, 28 U.S.C. § 354(a)(2)(A)(iii); JC&D Rule 20(b)(1)(D)(i), which includes:
 - a. engaging in abusive or harassing behavior in violation of JC&D Rule 4;
 - b. failing to maintain high standards of conduct as a federal judge in violation of Canon 1;
 - c. failing to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2;
 - d. failing to treat Mr. Puente's daughter in a respectful and courteous fashion in violation of Canon 3; and
 - e. undermining the public's trust and confidence in the judiciary, which is prejudicial to the effective and expeditious administration of the business of the courts.
2. Because the Judicial Council has been informed that, upon assumption of senior status pursuant to 28 U.S.C. § 294(b), Judge Benitez, with the approval of the Chief District Judge of the Southern District of California, elected not to be assigned new criminal cases, the Judicial Council approves and confirms this arrangement pursuant to 28 U.S.C. § 294(c) by limiting Judge Benitez's designation of approved judicial duties as to newly-assigned cases to non-criminal civil matters for three years. This action is taken "to assure the effective and expeditious administration of the business of the courts" under 28 U.S.C. § 354(a)(1)(C) and to ensure "the effective and expeditious administration of justice within [the] circuit" under 28 U.S.C. § 332(d)(1).
3. The Judicial Council reminds Judge Benitez that cognizable misconduct under the JC&D Rules includes retaliation against complainants, witnesses, judicial employees, or others for participating in the misconduct complaint process, or for reporting or disclosing judicial misconduct or disability.

4. In any criminal matter assigned to Judge Benitez in which a sentencing hearing for violation of the terms of supervised release has been scheduled but not yet heard before the date of this Order, the parties may move to recuse Judge Benitez based on this Order. In any criminal matter assigned to Judge Benitez in which a sentencing hearing for violation of the terms of supervised release is scheduled for a date within three years after the date of this Order, the parties may move to recuse Judge Benitez based on conduct described in, or concerns arising out of, this Order at any time but no later than thirty days before the date of the hearing. Any motions to recuse authorized by this Order will be referred for resolution to the Chief District Judge currently sitting on the Executive Committee of the Judicial Council.²¹ This action is taken “to assure the effective and expeditious administration of the business of the courts” under 28 U.S.C. § 354(a)(1)(C) and to ensure “the effective and expeditious administration of justice within [the] circuit” under 28 U.S.C. § 332(d)(1).

IT IS SO ORDERED.

²¹ If the Chief District Judge sitting on the Executive Committee of the Judicial Council chooses to recuse, the Chief Circuit Judge will refer the matter for resolution to another chief district judge of the Chief Circuit Judge’s choosing. A judge from outside the Southern District of California will rule on these recusal motions to avoid any conflict.