

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

C.C.D. No. 24-01

IN RE: COMPLAINT UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

PROCEEDING IN REVIEW OF THE ORDER
OF THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT
J.C. No. 09-23-90037

MEMORANDUM OF DECISION

(Filed August 13, 2024)

Present: Judges William B. Traxler, Jr., Chair, Patricia A. Gaughan, D. Brooks Smith, Carl E. Stewart, Sarah S. Vance.¹

MEMORANDUM OF DECISION

The Judicial Council of the Ninth Circuit issued an Order on May 1, 2024, finding that Judge Roger T. Benitez (S.D. Cal.) engaged in judicial misconduct when he ordered the handcuffing of the thirteen-year-old daughter of a defendant who appeared in his courtroom. The Committee on Judicial Conduct and Disability (JC&D Committee) now considers this matter pursuant to Rule 20(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules), which provides that “[i]f the complaint was identified under Rule 5 ... , the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule

¹ This panel was comprised of five members of the seven-member Judicial Conduct and Disability Committee, as required by Rule 21(c) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Two members were recused from any consideration of this matter.

21.” Although Judge Benitez did not file a petition for review of the Judicial Council’s order, the Committee will review each of the Ninth Circuit Judicial Council’s findings and conclusions, and remedial action imposed, as required by Rule 20(f). *See also* Commentary on JC&D Rule 20 (“Because an identified complaint has no ‘complainant’ to petition for review, a judicial council’s dispositive order on an identified complaint on which a special committee has been appointed must be transmitted to the Committee on Judicial Conduct and Disability for review.”). For the reasons explained below, we affirm the Judicial Council’s order.

I. Procedural History

On February 22, 2023, the Chief Circuit Judge of the Ninth Circuit identified a complaint against Judge Benitez based on information received from the Chief District Judge of the Southern District of California that suggested possible misconduct by Judge Benitez. On February 17, 2023, the Federal Defenders of San Diego, Inc., submitted a letter to the Chief District Judge expressing concern over Judge Benitez’s conduct at a supervised release revocation hearing during which he ordered the thirteen-year-old daughter of a defendant to be handcuffed. On February 28, 2023, the Chief Circuit Judge publicly disclosed the existence of the complaint against Judge Benitez pursuant to Rule 23(b)(1) after information concerning the allegations had been published in the media. That same day, a second misconduct complaint was filed through counsel by the mother of the thirteen-year-old girl who was handcuffed at the hearing.

On April 18, 2023, the Chief Circuit Judge appointed a special committee to investigate the identified complaint, as well as a substantially similar complaint filed under Rule 6 by the mother of the child who was handcuffed.

The Special Committee investigated two incidents that took place in Judge Benitez’s courtroom on February 13, 2023: 1) Judge Benitez’s ordering that the thirteen-year-old daughter of a defendant be handcuffed (“Hearing 1”); and 2) Judge Benitez’s admonishment of the 12-year-old son of a defendant during a different hearing earlier that day (“Hearing 2”). On January 19, 2024, the Special Committee issued its report.

As to the handcuffing incident, the Special Committee found that the witnesses’ recollections generally matched the transcript of the hearing. During Hearing 1, the defendant explained that he wanted to leave the San Diego area, in part because he felt that his daughter might be “following the same footsteps” because she had “run-ins with smoking some weed and doing some things, hanging out with people.” Report of the Special Committee, p. 3 (January 19, 2024). Judge Benitez then asked the defendant’s daughter to approach and asked the Deputy Marshal to put handcuffs on her and escort her to the jury box. *Id.* A number of witnesses said that the defendant’s daughter was crying while she was handcuffed. Witnesses noted that Judge Benitez’s tone was “stern and calm but not loud.” *Id.* at 9. Witnesses’ accounts as to the duration of the handcuffing ranged from a few seconds to four minutes, after which Judge Benitez told the Deputy Marshal to remove the handcuffs from the defendant’s daughter. Judge Benitez then had a conversation with the thirteen year old and told her:

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.

Id. at 5. The reaction in the courtroom was “shock and surprise.” Counsel for the defendant explained that an objection was not raised “due to concerns that any objection would make the situation worse.” *Id.*

As to the admonishment of a different defendant’s 12-year-old son at Hearing 2, the Special Committee found that after arguments had been submitted, Judge Benitez addressed the defendant’s 12-year-old son and stated:

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.

Special Committee Report at 6. Some witnesses at the hearing described Judge Benitez’s tone as “stern but not loud” while others described his tone as “calm and normal.” *Id.*

In his written responses, Judge Benitez explained that his actions during the handcuffing incident were motivated by a desire to change the behavior of the defendant’s daughter, and potentially that of the defendant as well. Judge Benitez stated that during the incident, he “talked to her about the evil and dangers of drugs and the horrible consequences that would befall her if she did not change her behavior.” *Id.* at 10. Judge Benitez further explained that he faced a “Hobson’s choice” and under the “unorthodox” option he selected, he was able “with one very quick demonstration, to possibly alter the destructive trajectory of two lives.” *Id.* at 11. Judge

Benitez's responses emphasized that he had strong concerns about the dangers of drug use, citing to his experiences and to statistics related to adolescent drug use. *Id.* at 11-12. Although he acknowledged that "counseling, therapy, and mental health treatment are the best modalities for helping young people" overcome drug use, he explained "that kind of intervention was not in the inventory of actions within my control." *Id.* at 13.

Through counsel, the mother of the child who was handcuffed filed a complaint about the incident and requested that Judge Benitez be publicly censured and be asked to voluntarily retire. *Id.* at 17. She argued that Judge Benitez should receive a severe sanction because, among other things, the incident took place publicly, involved a minor who was merely attending court proceedings and who had done nothing wrong, and that Judge Benitez had not acknowledged that what he had done was wrong nor had he attempted to take corrective action. *Id.* at 17-18.

The Special Committee unanimously found that Judge Benitez's conduct during the handcuffing incident rose to the level of judicial misconduct, as it was "demonstrably egregious and hostile" and violated the Code of Conduct for United States Judges.² The Committee explained that "the shackling of a spectator at a hearing who is not engaged in threatening or disorderly behavior exceeds the authority of a district judge" and that "creating a spectacle out of the presence of a minor child in the courtroom chills the desire of friends and family members to support loved ones at sentencing." *Id.* at 21. The Special Committee noted that it was "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

² Specifically, the Special Committee found that Judge Benitez failed to maintain high standards of conduct in violation of Canon 1; failed to act in a manner that promoted public confidence in the integrity and impartiality of the judiciary in violation of Canon 2; and by having handcuffed the child, he failed to treat her in a respectful and courteous fashion, in violation of Canon 3. Special Committee Report at 23.

and order of the proceedings.” *Id.* at 21-22. Ultimately, the Special Committee rejected Judge Benitez’s argument that his actions did not amount to misconduct because he was encouraging the defendant’s daughter to make better choices. Instead, the Special Committee explained that “[w]hat matters is whether Judge Benitez acted in a manner that others would reasonably perceive to be hostile or egregious.” *Id.* at 23. As to Judge Benitez’s conduct at Hearing 2, the Special Committee found that Judge Benitez did not treat the defendant’s son in an egregious and hostile manner, as Judge Benitez respectfully addressed the child to express his concerns about the defendant’s behavior. Accordingly, the Special Committee recommended that the allegations about Judge Benitez’s behavior at Hearing 2 be dismissed. *Id.* at 24.

As to remedial measures, the Special Committee recommended that the Judicial Council: 1) issue Judge Benitez a public reprimand; 2) approve, formalize, and confirm Judge Benitez’s previously made election upon taking senior status to not be assigned new criminal cases; and 3) include in its final order a general admonition against retaliating against participants in the complaint process. *Id.* at 25.

On May 1, 2024, the Judicial Council³ issued its order unanimously adopting the Special Committee’s findings of fact, including the Special Committee’s finding that Judge Benitez’s behavior during the handcuffing incident constituted judicial misconduct, and concurred with the Special Committee’s conclusion that Judge Benitez’s actions at Hearing 2 did not constitute misconduct. The order also described Judge Benitez’s response to the Special Committee’s report, where he discussed the dangers of underage use of marijuana, reaffirmed his position that he did not commit misconduct in ordering that the defendant’s daughter be handcuffed, and

³ The Judicial Council considered the Special Committee’s report, which covered both the complaint identified by the Chief Circuit Judge under Rule 5 and the Rule 6 complaint filed by the thirteen-year-old girl’s mother.

argued “[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.” In his response, Judge Benitez reiterated his willingness to apologize to the defendant’s daughter. Judicial Council Order at 14-15. The Judicial Council noted that “[a]t 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.” *Id.* at 21-22. Based on its findings, the Judicial Council: 1) publicly reprimanded Judge Benitez for his conduct towards the defendant’s daughter during Hearing 1; 2) approved and confirmed Judge Benitez’s previously made election upon taking senior status to not be assigned new criminal cases for three years; 3) reminded Judge Benitez that retaliating against participants in the complaint process is misconduct; and 4) provided that parties in any violation of supervised release hearings scheduled within three years of the issuance of the order may move to recuse Judge Benitez based on the conduct and concerns described in the order. *Id.* at 24-25.

Pursuant to Rule 20(f), both the subject judge and the complainant were provided with a copy of the Judicial Council’s order and notified of their right to seek review of the order by filing a petition for review with the JC&D Committee. The Judicial Council’s order was forwarded to the JC&D Committee pursuant to Rule 20(f). Although neither the subject judge nor the complainant filed a petition for review, the JC&D Committee has undertaken a review of the Judicial Council’s order, as it arises from a complaint identified by the Chief Circuit Judge, as required by Rule 20(f).

The JC&D Committee sent Judge Benitez a letter on June 27, 2024, explaining that the Committee would review the Ninth Circuit Judicial Council’s conclusions, findings, and remedies, even though Judge Benitez did not file a petition for review, and notifying Judge

Benitez that he could file a written statement with the Committee addressing these issues. Judge Benitez submitted a written statement on July 29, 2024, in which he confirmed that he did not challenge the Judicial Council's decision.

II. Discussion

We review circuit judicial council orders for errors of law, clear errors of fact, or abuse of discretion. Rule 21(a); see also *In re Complaint of Judicial Misconduct*, 747 F.3d 869, 872 (U.S. Jud. Conf. 2014) (finding that the circuit judicial council did not abuse its discretion); *In re Complaint of Judicial Misconduct*, 664 F.3d 332, 334–35 (U.S. Jud. Conf. 2011) (deferring to findings of circuit judicial council and overturning them only if clearly erroneous). Our review necessarily depends on the record before us and gives deference to the circuit judicial council's consideration of the special committee's review of the evidence. See *In re Decision of Judicial Conference Comm. on Judicial Conduct & Disability*, 517 F.3d 563, 569 (U.S. Jud. Conf. 2008) (“[W]e will defer to the findings of the Judicial Council and the special committee, and will overturn those findings only if, upon examination of the record, they are clearly erroneous.”).

In light of our review for errors of law, clear errors of fact, or abuse of discretion, and in deference to the Circuit Judicial Council's consideration of the Special Committee's review of the evidence, we affirm the Circuit Judicial Council's unanimous decision concluding that Judge Benitez's actions during the handcuffing incident constituted judicial misconduct. The Special Committee conducted a thorough investigation and afforded Judge Benitez all the process he was due under the JC&D Act and the Rules. Accordingly, we find no error of law or abuse of discretion in the Special Committee's investigatory process. And we conclude that the remedial measures ordered by the Judicial Council under 28 U.S.C. § 354(a)(2)(A) are appropriate and proportionate to the Judicial Council's findings in relation to the seriousness of the misconduct.

III. Conclusion

For the reasons above, we affirm the Ninth Circuit Judicial Council's order.