

**YOUR HONOR, THE ACTING PRESIDENT OF THE PROVINCIAL COURT OF JUSTICE OF SUCUMBÍOS:**

I, Adolfo Callejas Ribadeneira, in my capacity as Counsel of Record for CHEVRON CORPORATION, in Case No. 002/2003, brought against my client by María Aguinda et al., and within the recusal proceedings filed before you by Dr. Juan Evangelista Núñez Sanabria, appear before you and say:

I have been served with the decision issued on September 03, 2009, at 17H10, by Dr. Juan Evangelista Núñez Sanabria, as President of the Provincial Court of Sucumbíos, in which said judge has indicated his willingness to recuse himself from hearing the present case, based on section three of Article 856 of the Code of Civil Procedure.

In addition, I have been served with your order of September 04, 2009, at 10H20, in which you, *"...before deciding [this issue] according to the law..."*, have ordered Dr. Núñez to *"...submit the documents that support and justify the self recusal filed..."*

Dr. Juan Evangelista Núñez Sanabria must be disqualified from hearing the present case, not only for reasons that are of public knowledge, but also because he has repeatedly acted arbitrarily and in violation of express legal norms in handling these proceedings since he began to hear this case, as I have stated in many motions filed with the court.

It is public knowledge that Judge Núñez has participated in at least two meetings arranged by purported "representatives" of the government and the Alianza País party, who sought, through the presence of said judge, to assure prospective remediation contractors that a judgment would be issued against Chevron in Case No. 002/2003. The purported government representatives also asserted that, by means of a payment of a \$3 million bribe, including \$1 million for Dr. Núñez, the prospective contractors could get remediation contracts arising from what was ordered in the judgment. In the meetings that he attended, Dr. Núñez apparently affirmed that he will order Chevron to pay billions of dollars, a portion of which would go directly to the government. Judge Núñez's participation in these meetings demonstrates that he is acting not in the interest of justice but for alleged personal economic interest. He has betrayed the public trust and violated his solemn duty to judge impartially and independently and not in his own interest.

In addition, Judge Núñez has made numerous biased public statements against Chevron and has violated settled rules of procedure, behavior that would be consistent with both his unequivocal intention to rule against Chevron and the bribery scheme previously described.

For these reasons, it is obvious that Dr. Núñez already has decided the outcome of this case, even before evidence requested and ordered has been submitted and without the parties yet having had an opportunity to present their final legal briefs or “alegatos.” As a result, any purported independence or impartiality on the part of Judge Núñez has been irretrievably compromised, and he must be disqualified (Recuse: “*To file a legitimate objection against the judge, official, expert who, in an official capacity, intervenes in a proceeding or trial, in order to disqualify that person from acting in it.*”) from presiding over the case.

The norm Dr. Núñez relied upon to justify his recusal was apparently intended to lead you, when you reviewed his decision, to reject it for lacking the required legal grounds,<sup>1</sup> thereby preventing the real reasons that make it necessary for Dr. Núñez to be disqualified from hearing the present case being known or discussed.

In sum, the grounds that Dr. Núñez actually and effectively should have invoked are those that appear in section 11 of Article 103 and section 1 of Article 128 of the Judiciary Act, which prevent him from manifesting his opinion, “***even privately,***” regarding the present case.

### **Conspiracy to Solicit Bribes and Prejudgment of the Case Against Chevron Corporation.-**

Chevron Corporation has informed the National Prosecutor General and the State’s Attorney General that it has obtained audiovisual recordings of four meetings where details of a plan to obtain bribes linked to the results of case 002/2003, that Judge Juan Núñez presides over as President of the Provincial Court of Justice of Sucumbíos, were discussed. The recordings were made by prospective remediation contractors in May-June 2009 after they were asked to pay a bribe. The first and last meetings took place in offices of the Alianza País party in Quito. The recordings reveal that persons purporting to represent the government and the Alianza País party sought to assure the potential contractors that Dr. Núñez would issue a ruling against Chevron—even though the trial is ongoing, given that evidentiary requests that were requested and ordered are still being carried out—and that the judgment would order Chevron to pay the Government billions of dollars for environmental remediation. The supposed “representatives” stated that the Government was hiring potential remediation contractors in advance of the award. They demanded in the meetings that the potential “contractors” pay them a \$3 million bribe in exchange for the award of a possible remediation contract. The “representatives” said \$1 million of the bribe would be

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<sup>1</sup> On this matter, the second paragraph of section three of Article 856 of the Code of Civil Procedure is clear, expressly ordering that: “**a civil lawsuit or complaint that did not precede the trial shall not be grounds for either excusing oneself or recusal.**” (Emphasis added.) Section 3 of Article 856 of the Code of Civil Procedure is a Public Law norm and, as such, does not allow any interpretation or expanded application.

delivered to Dr. Núñez, \$1 million to the purported “representatives” of the Presidency of the Republic, and \$1 million to the plaintiffs.

In the recordings, the supposed “representatives” stated and made clear that:

1. The Government is managing Dr. Núñez and has instructed him on how to distribute the money in the judgment.
2. “. . . *Chevron is going to lose the trial. . . . [T]here’s no way, in other words, there’s no logic for Chevron’s win.*”
3. The Government has provided lawyers to help craft the opinion against Chevron.
4. The purported “representatives” will give the Judge his portion of the requested bribe money.

In order to demonstrate to the supposed contractors that the result of the trial allegedly has been pre-ordained by the Government, in between the two meetings held at the Alianza País offices, the supposed “representatives” took the potential contractors on two occasions to meet with Dr. Núñez. The first meeting took place in the offices of the President of the Provincial Court of Justice of Sucumbíos in Lago Agrio, and the second took place in a hotel in Quito. The recordings of these meetings show that Judge Núñez states that:

1. He will find Chevron guilty in this trial.
2. According to the expert the amount is for \$27 billion, and the judge will decide whether to award more or less.
3. The judgment will indicate what portion of the award will be delivered to the Government.
4. He will issue the ruling in October or November 2009.
5. The appeal process to the full chamber of the provincial court will be a mere formality.
6. The American government will tell Chevron: “you lost the trial, so pay up.”

Following these meetings, one of the purported “representatives,” through his assistant, sent the purported contractors wiring instructions for the bribe payment. The instructions included an account number for a bank in the city of Galveston, Texas, in the United States of America.

The participation of Dr. Núñez in this alleged bribery scheme and his alleged acquiescence in the Government dictating a result against Chevron in this trial prove that this case is a sham. The content of the above-mentioned audiovisual recordings suggests that Dr. Núñez apparently has a direct and substantial financial interest in

finding Chevron liable so that he can benefit from alleged potential bribes and kickbacks derived from the environmental remediation contracts. In addition, it is obvious that Dr. Núñez does not maintain the necessary judicial independence and impartiality as the judge in this case. As a result, Judge Núñez's own recusal from the case must be accepted because his behavior violates one of the basic guarantees of due process established in both the 1998 version as well as the current Constitution of the Republic of Ecuador, which is the right of all persons to be "judged by independent, impartial and competent judges." In accordance with that constitutional norm, Articles 9<sup>2</sup> and 21<sup>3</sup> of the Judiciary Act establish impartiality and integrity as the basic rules for judicial behavior. The proven fact that Dr. Núñez has met with third parties not involved in these proceedings to discuss the contents and result of the ruling he will hand down in this case undoubtedly constitutes a grave assault on due process and the constitutional and legal guarantees that regulate the administration of justice, and ultimately establishes a legal situation that justifies confirmation of Dr. Núñez's recusal so that he is disqualified definitively from hearing this case.

### **Biased Public Statements by Judge Núñez.-**

Moreover, in several interviews published in various domestic and international media outlets, Dr. Núñez has made public statements consistent with his private statements, referenced above, confirming his bias in favor of the plaintiffs and his pre-judgment of the outcome before all of the evidence has been submitted. Dr. Núñez's statements to the press also justify confirming his decision to recuse himself as presiding judge in this case, because those statements violate the prohibition contained in section 11 of Article 103 of the Judiciary Act, according to which judges cannot "**express their opinions, even privately, or give early indications thereof, with regard to the cases they are hearing.**" (Emphasis added.)

These and other rules are designed to avoid having the administration of justice in the hands of a judge whose integrity is in doubt due to a lack of impartiality and whose independence is clearly questionable. Statements to the media by a presiding judge about a pending case raise concerns for obvious reasons. A judge's personal opinions and/or his wishes, and the fact that he participates in press coverage, as is the case

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<sup>2</sup> Judiciary Act: "Art. 9.- Principle of impartiality.- Actions by judges in the Judiciary shall be impartial, respecting equal protection of the law. In all proceedings over which they preside, judges shall always decide claims and defenses raised by the litigants based solely on the Constitution, international human rights instruments, international instruments ratified by the State, the law, and the evidence submitted by the parties. In order to preserve the right to a defense and rebuttal, private hearings or meetings, or hearings or meetings outside of the appropriate procedural phase, between the judge and the parties or their attorneys shall be prohibited, unless the other party is provided notice in accordance with the provisions of section 14 of article 103 of this act."

<sup>3</sup> Judiciary Act: "Art. 21.- Principle of integrity.- The Judiciary shall have the substantive mission of conserving and recovering social peace; guaranteeing secular and social ethics as the foundation for public work and legal order; and achieving full effectiveness and compliance with the prevailing legal order. Every public official in the Judiciary shall, in the performance of his or her duties, conduct him/herself diligently, correctly, honestly and impartially."

here, create the concern that the publicity-seeking judge will rule in a way that maximizes publicity and promotes his personal interests.

Moreover, the content of Dr. Núñez's statements to the media show that he is not impartial and that his recusal from this case is required and constitutionally justified. In fact, the *Economist* has observed that "[t]he judge in Lago Agrio, Juan Núñez, . . . has made no secret of his sympathy for the plaintiffs." *Justice or extortion? The hounding of an American oil company*, *ECONOMIST*, May 23-29 2009, at 42. The *New York Times* similarly has noted that Judge Núñez's "sympathies . . . are not hard to discern," and that "he appears likely to rule against Chevron this year." *In Ecuador, Resentment of an Oil Company Oozes*, *NEW YORK TIMES*, May 15, 2009. These statements are particularly inappropriate because they were made to the press at a time when, according to one of the same press statements, the Judge had not even begun reviewing the approximately 145,000-page case file. See Juan Forero, *In Ecuador, High Stakes in Case Against Chevron*, *WASHINGTON POST*, Apr. 28, 2009, at A12 (noting that Judge Núñez "will begin reviewing [the] evidence after reports on the effects of the discharges on fishing and agriculture are completed"). What is more, it is well known that Dr. Núñez's statements to the press that the case "has taken too long" came shortly after a two-hour luncheon between the members of the National Court of Justice and President Correa, where the President complained about delays and demanded "expedited treatment of cases that are of interest to Ecuador." Joffre Campaña Mora, *Interference in the Administration of Justice*, *EL UNIVERSO*, Mar. 5, 2009. Thus, the content of Judge Núñez's statements confirm his lack of impartiality, which arises any time a judge gives public opinions about a case over which he presides.

Consistent with his biased statements, Dr. Núñez has denied Chevron's motions for reasons that are indefensible, violate rules of procedure, deprive Chevron of its due process rights, and constitute denial of justice. Even more significantly, the Judge has refused to examine the patent irregularities in the work of the court-appointed expert, Mr. Richard Cabrera. The petitions that Chevron has submitted to Dr. Núñez have detailed these irregularities, which include the use of the plaintiffs' supporters in his fieldwork, the fact that he carried out much of his work in secret, and numerous other indicators that the plaintiffs' representatives collaborated in preparing his expert report. Similarly, in denying Chevron's request for a hearing on its claim that Mr. Cabrera's expert report suffered from material errors, the Judge stated only that Mr. Cabrera's report did not need clarification—reasoning that has nothing to do with Chevron's essential error claims. These rulings are further evidence of partiality and of Judge Núñez's rush to enter judgment against Chevron, regardless of the facts or law.

All of the foregoing facts require the recusal of Judge Núñez and further taint the entire case against Chevron, demonstrating that my client's due process rights have been severely violated and that, as a result, the aforementioned Judge cannot continue hearing this case.

## PETITION:

Based on the supremacy of the Constitution and the Judiciary Act over the Code of Civil Procedure, and also on Article 11, section 3 of the current Political Constitution, which provides that “*the rights and guarantees established in the Constitution . . . shall be of direct and immediate application by and before any public, administrative or judicial official, either sua sponte or upon the request of a party*” and that “ . . . *lack of judicial rules may not be cited as a basis . . . to dismiss the action . . .*” that seeks judicial recognition of such guarantees and rights, I come before you and respectfully request that you confirm Dr. Núñez’s recusal and that, despite the inapplicability of the cause for recusal cited by him, the corresponding provisions of the Judiciary Act and the Constitution of the Republic of Ecuador that I have mentioned be applied, and, as a consequence of this, Dr. Juan Evangelista Núñez Sanabria be disqualified definitively from hearing this case in his alleged condition as President of the Provincial Court of Justice of Sucumbíos.

I base the request above on the true and proven fact that, according to what has been previously described, Dr. Juan Evangelista Núñez Sanabria has, through his actions, violated my client’s constitutionally guaranteed rights to due process, especially those established in section 7, subsection k),<sup>4</sup> of Article 76 of the Constitution in force, related to his breach of the Judge’s obligation to act with impartiality and integrity in hearing this case.

With regard to this point, it is important to highlight that Article 108 of the Judiciary Act, which refers to the serious infractions that can be committed by members of the Judiciary, establishes that the violation of “*constitutional rights and guarantees, as described in articles 75, 76 and 77 of the Constitution of the Republic,*” constitutes one such serious infraction that would justify even the suspension of the official who committed the violation, in this case, Dr. Juan Evangelista Núñez Sanabria.

I attach the public and well-known evidence that proves the facts upon which this motion is based, which includes:

- **ATTACHMENT 1:** Page seven (7) of Quito’s daily newspaper HOY, second edition, dated Tuesday, September 2, 2009, in which, under the title “**The bioremediators’ meeting,**” the transcript of the first video is published.
- **ATTACHMENT 2:** Page seven (7) of Quito’s daily newspaper HOY, dated Thursday, September 3, 2009, in which, under the title “**Conversation with Judge Núñez,**” the transcript of the second video is published.

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<sup>4</sup> Article 76, section 7: “k) To be judged by an independent, impartial and competent judge. No one shall be judged by emergency tribunals or special commissions created for that purpose.”

- **ATTACHMENT 3:** Page seven (7) of Quito's daily newspaper HOY, dated Friday, September 4, 2009, second edition, in which, under the title "**Conversation during lunch,**" the transcript of the third video is published.
- **ATTACHMENT 4:** Page six (6) of Quito's daily newspaper HOY, dated Saturday, September 5, 2009, in which, under the title "**Hey, when was the last time you talked to Judge Juan Núñez?**," the transcript of the fourth video is published.
- **ATTACHMENT 5:** Transcripts of the four (4) videos, totaling 149 pages, which are available on the web at [www.chevron.com](http://www.chevron.com), as the link on the cover pages indicates (the videos that are the object of the transcripts can be viewed at <http://www.chevron.com/ecuador/>).
- **ATTACHMENT 6:** Printout of the article "**Ecuador, Chevron and pollution: Justice or extortion?**," published May 21, 2009, available on the web at [http://www.economist.com/world/americas/PrinterFriendly.cfm?story\\_id+13707679](http://www.economist.com/world/americas/PrinterFriendly.cfm?story_id+13707679) , and a Spanish translation of the same, including all the respective legal formalities and requirements.
- **ATTACHMENT 7:** Article published in the New Your Times and reprinted in the El Universo on May 21, 2009, at page 10, with the title "**In Ecuador, Resentment of an Oil Company Oozes**" ("*Los resentimientos persisten tras retiro de petrolera Texaco*").
- **ATTACHMENT 8:** Printout of the article "**In Ecuador High Stakes in Case Against Chevron,**" published April 28, 2009, available on the web at [http://www.washingtonpost.com/wp/content/article/2009/04/27AR2009042703717\\_p..8/20/2009](http://www.washingtonpost.com/wp/content/article/2009/04/27AR2009042703717_p..8/20/2009), and a Spanish translation of the same, including all the respective legal formalities and requirements.
- **ATTACHMENT 9:** Printout of the article "**Chevron fights Ecuador pollution lawsuit,**" published June 12, 2009, available on the web at [http://www.ft.com/cms/s/2a1599988-5771-11de-8c47-00144feabdc0,dwp\\_uuid=8fa2c9cc-2...](http://www.ft.com/cms/s/2a1599988-5771-11de-8c47-00144feabdc0,dwp_uuid=8fa2c9cc-2...), and a Spanish translation of the same, including all the respective legal formalities and requirements.
- **ATTACHMENT 10:** Copies of four (4) e-mails taken from the web page [chevron.com](http://chevron.com), as the link on the cover pages indicates.

May your Honor grant what is herein requested in the furtherance of justice.

I sign as Counsel of Record,

ADOLFO CALLEJAS RIBADENEIRA  
ATTORNEY  
BAR NO. 1138 – C.A.P.