

SECOND DIVISION

[A.M. No. RTJ-96-1346, September 30, 1996]

**PROSECUTOR LEO C. TABAO COMPLAINANT, VS. JUDGE
WALERICO B. BUTALID, RTC BRANCH 9, TACLOBAN CITY,
RESPONDENT.**

R E S O L U T I O N

TORRES, JR., J.:

Respondent Judge Walerico B. Butalid of RTC, Branch 9, Tacloban City, is charged with grave abuse of authority and dishonesty in the performance of official duties.

The complainant 1st Assistant City Prosecutor Leo C. Tabao alleged in his complaint that on 25 January 1995, he received an Order dated January 3, 1995 in Criminal Case No. 94-01-479, entitled People vs. Nicolas Makabenta, et. al. signed by Judge Butalid, the pertinent portions of which read:

"O R D E R

"In view of the absence of special prosecutor, Atty. Leo Tabao without any justifiable reason, let the arraignment and pre-trial of the above-entitled case be rescheduled to January 17, 1995 at 8:30 in the morning with notice to counsel and parties.

"SO ORDERED.

"Open Court, Bulwagan Ng Katarungan, Tacloban City, January 3, 1995."

Complainant further alleged that because said Order made him appear as remiss and negligent in the performance of his duties as a government prosecutor, he examined the folder of said case and found out that:

"(a) (I)n November 1994, Judge Butalid, thru his Branch Clerk of Court Atty. Jose B. Lagado issued a subpoena for arraignment and pre-trial of said case for 03 January 1995 (Annex "B", certified machine copy);

"(b) Said subpoena was addressed only to all the accused and government witnesses from the DENR, PNP, and EIIB without any notice to the undersigned or the City Prosecution Office of Tacloban City;

"(c) Judge Butalid and his clerk of court were aware that there was no notice or subpoena prepared and served upon the undersigned when the open court order of 03 January 1995 was made.

Complainant opined that respondent judge, in issuing the order abused his authority as a judicial officer by putting into the records of the criminal case an act of non-