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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GREG MLACNIK, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 BILL DONAT, *et al.*, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )  
 /

3:08-cv-00164-LRH-VPC

ORDER

Petitioner filed a first amended petition for writ of habeas corpus (docket #19) on August 5, 2009 and respondents have moved to dismiss the petition (docket #22). The court issued it order regarding the importance of responding to a motion to dismiss and outlined the time-line for such a response (docket #26). Petitioner has since failed to respond to the motion or to seek additional time to do so.

Under Local Rule 7-2(d), failure to file points and authorities in response to any motion shall constitute a consent to the granting of the motion.

**Certificate of Appealability**

In order to proceed with an appeal from this court, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.* The Supreme Court has held that a petitioner “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

