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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Ruth Bradburn Mitchell; Kenneth)  
Christopher Mitchell,

CV 11-08140-PCT-FJM

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Plaintiffs,

**ORDER**

11

vs.

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City of Flagstaff; Roy Taylor,

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Defendants.

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The court has before it Counsel Lee Phillips' request for clarification of non-representation of plaintiffs (doc. 9). We also have before us defendant City of Flagstaff's motion to dismiss state law claims (doc. 4). The deadline for plaintiffs to respond to the motion to dismiss was October 7, 2011. Plaintiffs have not responded.

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This case arises out of the death of Kenneth Mitchell. Officer defendant Roy Taylor responded to a disturbance call on August 25, 2010 that culminated in Officer Taylor shooting and killing Kenneth Mitchell. Plaintiffs originally filed this action in the Superior Court of Arizona in Coconino County on August 22, 2011 alleging three claims: (1) negligence - wrongful death; (2) deprivation of constitutional rights pursuant to 42 U.S.C. § 1983; and (3) negligent infliction of emotional distress. At the time, plaintiffs were represented by Tom Shorall, Jr. and Scott Zerlaut of Shorall McGoldrick Brinkmann. The Shorall firm filed a motion to withdraw as counsel in the Coconino County court on

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1 September 9, 2011. In this motion, the Shorall firm indicated that plaintiffs would continue  
2 to be represented by co-counsel, Lee Phillips. The state court granted the motion on  
3 September 13, 2011. Defendants removed this action on the same day, and defendant City  
4 of Flagstaff filed its motion to dismiss on September 20, 2011.

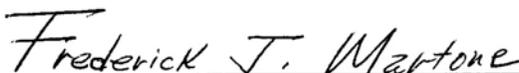
5 Lee Phillips, a criminal defense lawyer, filed a request for clarification of non-  
6 representation with this court on September 30, 2011. Phillips seeks a confirmation from this  
7 court whether he represents plaintiffs, and if so, time to file a motion to withdraw as counsel.  
8 On October 12, 2011, Michael Pearson and Daniel Riley of Curry, Pearson & Wooten, PLC  
9 entered a notice of appearance as counsel of record on behalf of plaintiffs (doc. 10). We  
10 therefore clarify that Lee Phillips is not representing plaintiffs in this matter.

11 We are reluctant to rule on the motion to dismiss without first giving plaintiffs and  
12 new counsel the opportunity to respond. We therefore order *sua sponte* an extension of time  
13 for plaintiffs to file their response to defendant City of Flagstaff's motion to dismiss.

14 **IT IS ORDERED THAT** plaintiffs shall have to and including November 3, 2011  
15 to file their response to the motion to dismiss.

16 The clerk shall update the docket to indicate that Lee Brooke Phillips is no longer  
17 counsel for plaintiffs.

18 DATED this 13<sup>th</sup> day of October, 2011.

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22 Frederick J. Martone  
23 United States District Judge  
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