

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

TIKD SERVICES LLC,
A Foreign Limited Liability Company,

and

CHRISTOPHER RILEY,
individually and as Founder of
TIKD SERVICES LLC,

Respondents.

Supreme Court Case
No. SC2018-149

The Florida Bar File
Nos. 20174035(11B) and
20174045(11B)

**THE FLORIDA BAR'S RESPONSE TO RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT AND THE FLORIDA BAR'S MOTION FOR
SUMMARY JUDGMENT**

Petitioner, The Florida Bar, through undersigned counsel, hereby files its Response to Respondents' Motion for Summary Judgment, and pursuant to Rule 10-7.1(b)(5)-(6) of the Rules Regulating The Florida Bar and Rule 1.510 of the Florida Rules of Civil Procedure, moves for a Summary Judgment in favor of The Florida Bar.

Summary judgment is proper only when there is an absence of a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. All doubts and inferences shall be resolved in favor of the nonmoving party,

and the slightest doubt or conflict in the evidence will preclude summary judgment. *Sawyers v. Southeastern University, Inc.*, 993 So. 2d 141 (Fla. 2d DCA 2008) (citing *Galaxy Fireworks, Inc. v. Bush*, 927 So. 2d 995, 996 (Fla. 2d DCA 2006) and *Winn-Dixie Stores, Inc. v. Dolgencorp, Inc.*, 964 So. 2d 261, 263 (Fla. 4th DCA 2007).

Here there is no doubt or conflict in the evidence. The Florida Bar alleges sufficient facts in the Petition Against The Unlicensed Practice of Law to support a finding that Respondent Christopher Riley (“Respondent Riley”), a nonlawyer, operates a nonlawyer entity that advertises and provides legal services to the public and, in return for payment from its customers (“TIKD customers”), provides legal representation services of licensed lawyers (“TIKD lawyers”). The undisputed facts support a finding, on all counts, that Respondents are engaged in the unlicensed practice of law. As a matter of law, Respondents have no defense and would not have anything substantive to testify to at trial which would alter the outcome. Consequently, Respondents’ Motion for Summary Judgment should be denied and The Florida Bar’s Motion for Summary Judgment should be granted.

ARGUMENT

To determine whether an activity constitutes the unlicensed practice of law, a two-part analysis must be made. First, it must be determined whether the activity is the practice of law. *State of Florida ex rel. The Florida Bar v. Sperry*, 140 So.

2d 587 (Fla. 1962), *judgment vacated on other grounds* 373 U.S. 379, 83 S. Ct. 1322 (1963).

The second part of the analysis is whether Respondents' conduct is authorized. If an activity is the practice of law but the activity is authorized, the activity is not the unlicensed practice of law and may be engaged in by a nonlawyer. *The Florida Bar v. Moses*, 380 So. 2d 412 (Fla. 1980). Here, Respondents' activities are the practice of law and are not authorized.

**THE UNDISPUTED FACTS SUPPORT A FINDING THAT
RESPONDENTS ARE ENGAGED IN THE UNLICENSED
PRACTICE OF LAW**

In support of their Motion for Summary Judgment, Respondents attached an affidavit dated April 9, 2018, signed by Respondent Riley. The Florida Bar also attaches Respondent Riley's affidavit and Respondents' Terms of Service as Ex. 1 and Ex. 1A.

On April 25, 2017, Respondent Riley gave a sworn statement before the Eleventh Judicial Circuit Unlicensed Practice of Law Committee "B." The Florida Bar considers the sworn statement a substantial source of evidence for the allegations supporting its Petition Against The Unlicensed Practice of Law. The parties stipulated to a redacted version of the transcript. The Florida Bar attaches excerpts of the redacted transcript as Exhibit 2 (hereinafter "Riley Stmt.").

Arthur J. Gill, a staff investigator with The Florida Bar, printed a PDF copy of Respondents' website. The Florida Bar attaches the staff investigator's Affidavit with a copy of the website as Ex. 3 and Ex. 3A.

A. Respondents' Activities Are The Unlicensed Practice of Law

This evidence shows that Respondents engage in the practice of law by offering to provide legal services. As Respondents are not licensed to practice law in Florida, the activity is the unlicensed practice of law. The fact that members of The Florida Bar perform the legal services Respondents offer and provide the public does not change the character of Respondent's conduct or the conclusion that the conduct constitutes the unlicensed practice of law.

In the affidavit filed by Respondents, Respondent Riley states that he is the Founder and CEO of TIKD Services, LLC ("TIKD"), and not an attorney. He explains he founded TIKD based on his "belief that modern communication technology could provide a simpler, better, and innovative way for drivers to handle tickets" and he "launched TIKD in December 2016." Ex. 1 ¶¶ 1-2. He states Respondents are currently providing services in four Florida counties and in four other states by operating a website at <http://www.TIKD.com> and publishing a free mobile app. Ex.1 ¶¶ 2-3. Respondent Riley explains, "Through its website and mobile app, TIKD provides a technology platform and financial guarantee for drivers who have received a traffic ticket." Ex. 1 ¶ 4. Using either the website or

mobile app, a TIKD customer can request Respondents' services "by uploading a picture of the ticket and creating an account." Ex. 1 ¶ 4. Respondent TIKD "performs a statistical analysis on each uploaded ticket before TIKD agrees to provide the driver with its services." Ex. 1 ¶ 5.

Respondents accept or decline a TIKD customer's request for services. If Respondents decline the ticket, they notify the TIKD customer and the customer pays nothing. Ex. 1 ¶ 6. If Respondents accept the ticket, the TIKD customer "is charged a percentage of the face amount of the ticket." Ex. 1 ¶ 6. TIKD customers "can choose to pay the remaining percentage at the time of acceptance, or pay the balance in monthly installments." Ex. 1 ¶ 6. TIKD customers pay "no other charges, at any time." Ex. 1 ¶ 6.

TIKD customers pay Respondents "a single charge" and in turn Respondent TIKD "(1) pays the cost of an independent attorney who contracts with the driver separately and represents the driver against the traffic ticket in court; (2) pays any fine or court costs imposed against the driver if the ticket is not dismissed; and (3) provides the driver a full refund of all charges if any 'points' are issued against the driver's motor vehicle license, while still paying any fine or court costs imposed." Ex. 1 ¶ 7. Respondents cap the TIKD customer's "maximum financial exposure to the traffic ticket." Ex. 1 ¶ 8.

During the sworn statement, a UPL circuit committee member asked Respondent Riley, “In addition to your website, are you advertising?” Respondent Riley answered, “We advertise on social media, Facebook, Instagram, and primarily we have begun buying radio ads throughout the State of Florida.” Riley Stmt. 64:8-12.

Respondents’ website offers legal services to the public. Ex. 3A. Respondents’ website features a home page with a side-by-side comparison demonstrating “Why TIKD is the better solution” for someone who wants to fight a traffic ticket in court. Ex. 3A at 1. The home page of Respondents’ website states, “WITH TIKD Get all the benefits of a court challenge along with the convenience of simply paying your fine” while “WITHOUT TIKD Additional costs and hassle of hiring a lawyer” would be incurred. Ex. 3A at 1. Respondents are offering to provide the legal service of assisting their customers in defending a court action based on the issuance of a traffic ticket. The fact that the services are advertised and offered via a website or mobile app does not change the character of the services being offered – legal representation for traffic ticket defense. The services offered are no different than services offered by brick and mortar businesses who have been enjoined for engaging in the unlicensed practice of law.

This Court has consistently held that it constitutes the unlicensed practice of law for a nonlawyer to offer to provide legal services to the public. R. Regulating

Fla. Bar 10-2.2(b)(2); *The Florida Bar v. We The People Forms and Service Center of Sarasota, Inc.*, 883 So. 2d 1280 (Fla. 2004); *The Florida Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000); *The Florida Bar v. Davide*, 702 So. 2d 184 (Fla. 1997); *The Florida Bar v. Warren*, 655 So. 2d 1131 (Fla. 1995); *The Florida Bar v. Consolidated Business and Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980); *The Florida Bar v. Lugo-Rodriguez*, 317 So. 2d 721 (Fla. 1975); *The Florida Bar v. American Legal and Business Forms, Inc.*, 274 So. 2d 225 (Fla. 1973); *The Florida Bar v. Counseling Research and Training Services, Inc.*, 270 So. 2d 365 (Fla. 1972). Moreover, this Court has consistently held that it constitutes the unlicensed practice of law for a nonlawyer or a nonlawyer entity to hold out as able to render legal services to the public. *The Florida Bar v. Consolidated Business and Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980); *The Florida Bar v. Warren*, 655 So. 2d 1131 (Fla. 1995); *The Florida Bar v. We The People Forms and Service Center of Sarasota, Inc.*, 883 So. 2d 1280 (Fla. 2004).

As shown by Respondent Riley's affidavit and the undisputed facts, Respondents' advertisements, website, and mobile app hold out to the public that Respondents are able and willing to render the legal service of providing a traffic ticket defense in court. Rather than showing that Respondents' actions are not the unlicensed practice of law entitling Respondents to summary judgment, the affidavit and evidence show that Respondents are engaging in the unlicensed

practice of law and summary judgment should be awarded in favor of The Florida Bar.

This Court has also held that it constitutes the unlicensed practice of law for a nonlawyer to advertise in such a way as to cause the customer to rely on the nonlawyer to provide legal services. *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978). Respondents' advertisements cause this reliance. In fact, Respondents' advertisements tout the benefit of using their services versus the services of a lawyer. Ex. 3A at 1. Not only are Respondents engaging in the unlicensed practice of law by offering to provide legal services, Respondents are engaging in the unlicensed practice of law by causing the customer to rely on Respondents to properly handle and resolve their traffic ticket in court. Ex. 3A at 1. Respondents' website asserts TIKD is a "better solution." Ex. 3A at 1. The website also states TIKD is "your traffic ticket champion." Ex. 3A at 1.

Respondents argue that because the legal services are being performed by a member of The Florida Bar, Respondents are not engaged in the unlicensed practice of law. Case law does not support this argument. Instead, the case law finds that the activity is the unlicensed practice of law even though performed by a member of The Florida Bar. *The Florida Bar v. Consolidated Business and Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980).

There is no factual dispute that Respondents advertise the services of a lawyer using a website, mobile app, social media, and broadcast media. On the FAQ page of the website, Respondents state:

TIKD provides you with a more convenient, more cost-effective alternative to hiring your own lawyer or using a lawyer referral service. We do this by giving you access to a traffic ticket lawyer at a pre-negotiated rate that is always going to be cheaper than hiring your own lawyer, directly from your phone in two minutes or less.

Ex. 3A at 5.

Respondents' FAQ page responds to whether a customer could hire their own lawyer to do the same thing by stating:

You sure can! And we encourage you to do the research and make an informed choice on what's best for you and your individual case.

However, hiring your own lawyer directly can be more expensive than choosing TIKD. In most of the Counties where we operate, lawyer fees can range from \$300-\$800 excluding Court costs and the fine amount itself.

It's also much quicker and easier to use TIKD. With TIKD you simply go to TIKD.com, upload a picture of your traffic ticket along with some basic info and we do the rest. Simple.

Ex. 3A at 10.

The FAQ page of Respondents' website also states, "Once we have reviewed and verified your traffic ticket you will be provided with your lawyer's contact information." Ex. 3A at 12. The lawyer is picked by Respondent TIKD.

Respondent Riley states, "When a driver creates an account with TIKD, the driver affirmatively assents to TIKD's Terms of Service before TIKD receives any payment." Ex. 1 ¶ 10. Once the TIKD customer submits a traffic ticket to the website, the TIKD customer authorizes Respondents to pay a licensed attorney to represent the customer regarding the submitted ticket. Ex. 1 ¶ 11. Respondents pay "a flat fee per ticket defended" to TIKD lawyers from the payment Respondents received from the TIKD customer. Ex. 1 ¶ 18; Riley Stmt. 14:1-14. The flat fee payment to the TIKD lawyer is pursuant to a retainer agreement between Respondents and private Florida licensed attorneys. Riley Stmt. 37:6-7; 73:3-12.

Once Respondent TIKD agrees to provide its services to a TIKD customer, Respondent TIKD "contacts one of these attorneys and provides the driver's contact and ticket information." Ex. 1 ¶ 12. TIKD lawyers are free to accept or decline the representation. Ex. 1 ¶ 13. If the attorney declines, Respondent TIKD may send the TIKD customer's information to another TIKD lawyer. Ex. 1 ¶ 13. If all TIKD lawyers decline representation, Respondent TIKD notifies the TIKD customer and "provides a full refund in accordance with TIKD's Terms of

Service.” Ex. 1 ¶ 13. If the TIKD lawyer accepts the representation, the TIKD lawyer contacts the TIKD customer “directly and provides a representation letter drafted by the attorney.” The TIKD customer “may decline the attorney’s representation for any reason.” Ex. 1 ¶ 14. If a TIKD customer declines the representation of the TIKD lawyer, Respondent TIKD “provides a full refund in accordance with TIKD’s Terms of Service.” Ex. 1 ¶ 14. At all times, once a customer pays Respondents, it is the Respondents, not the customer, who assign the TIKD lawyers for the TIKD customer.

TIKD hires lawyers to work for TIKD to defend their customer’s traffic tickets. When discussing the retainer agreement between Respondents and Florida licensed lawyers, Respondent Riley described the duties of the lawyers who agree to represent TIKD customers. He said, “Our attorneys simply have to do what they’re paid to do, which is go take care of the ticket, resolved and discharged doesn’t mean with favorable outcome. It just purely means you have to go do what you are paid to do.” Riley Stmt. 30:8-13. In the affidavit, Respondent Riley states, “The independent attorney handles all aspects of the ticket defense. If the ticket is dismissed, the customer’s attorney-client relationship ends, and TIKD has no further obligation.” Ex. 1 ¶ 17.

At all relevant times, Respondents retain lawyers to represent TIKD customers. Respondent Riley stated during his sworn statement, “Currently we

contract with two firms and they have a number of attorneys that work under them.” Riley Stmt. 20:10-12. A UPL circuit committee member asked Respondent Riley, “You chose those firms based on their quality of service?” Riley Stmt. 20:20-21. Respondent Riley explained:

A combination of a bunch of things, people reaching out and wanting to talk, people understanding what we are doing, costs, yes, business history.

These are both well known firms that have been around for a very long time with clean records and very qualified lawyers, so it’s a combination of any business decision that somebody would make.

Riley Stmt. 20: 22-25; 21:1-5.

The UPL circuit committee member then asked Respondent Riley how he ensures the competency of the lawyers. Respondent Riley stated, “Well, all firms we work with attest that everybody that handles cases will be fully qualified by the Bar, in good standing with the Bar and fully able to represent these types of cases. Then again, just business history and relationships.” Riley Stmt. 21:9-13.

The undisputed facts show that Respondents retain Florida lawyers to represent their customers, choose the lawyers that will provide services to their customers, determine what types of cases to forward to the lawyers, and set the fee their customers pay for legal representation. This Court has held that these activities constitute the unlicensed practice of law. *The Florida Bar v. Consolidated Business and Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980); *The*

Florida Bar v. We The People Forms and Service Center of Sarasota, Inc., 883 So. 2d 1280 (Fla. 2004).

In *Consolidated*, a nonlawyer owned corporation engaged in the business of offering legal services to the public by employing Florida licensed lawyers. Consolidated Business received and controlled fees from clients and paid the lawyers. Consolidated Business also chose the cases the lawyers would handle, hired and fired lawyer employees, and controlled the bank accounts and all client trust account funds. This Court found that these activities constituted the unlicensed practice of law and issued an injunction against the nonlawyer business.

The respondent is a Florida corporation for profit, now known as Consolidated Systems, Incorporated, engaged in the business of offering legal services through members of The Florida Bar who are its full time employees. The officers and stockholders of the respondent are non-lawyers with no legal training who supervise and control the day to day business of the corporation for the sole purpose of personal financial gain derived from providing legal services to individuals who have no other business relationship with the respondent to which such services are related. The practice therefore differs from businesses who maintain lawyers as full time employees primarily to further a course of business other than the practice of law.

Consolidated at 798.

Like the corporation in *Consolidated*, Respondents offer legal services to the public, receive and control payment from their customers, and, because Respondents cannot represent their customers in traffic court, they hire lawyers to

provide the legal services Respondents cannot provide. Also like the corporation in *Consolidated*, Respondents control the financial transaction by retaining the payment received from the TIKD customer during the entire length of the TIKD lawyer's legal representation. Respondents keep all payments received by TIKD customers as income or general revenue. The TIKD lawyer receives no payments from the TIKD customer; rather, Respondents pay the TIKD lawyer a flat fee per ticket defended. Like the company in *Consolidated*, Respondents are engaged in the unlicensed practice of law.

In *We The People*, the nonlawyer company advertised legal services directly to their customers and employed a licensed Florida attorney to provide the services and give legal advice to their customers. This Court found the conduct constitutes the unlicensed practice of law and enjoined Respondents from initiating and controlling a lawyer-client relationship, setting fees and paying a lawyer to do work for a third party, and from advertising in any fashion which may lead a reasonable lay person to believe the corporation offers to the public legal service, legal advice, or personal legal assistance. *We The People* at 1282-83.

Like the company in *We The People*, TIKD offers the services of Florida lawyers to the public and advertises in a fashion which may lead a reasonable lay person to believe that TIKD offers the public legal service, legal advice, or personal legal assistance regarding traffic tickets. Like the company in *We The*

People, TIKD initiates the lawyer-client relationship, sets the fees the lawyers are paid to defend TIKD customers in court, and pays the lawyers for representing their customers. Like the corporation in *We The People*, TIKD is engaging in the unlicensed practice of law.

A common theme between *Consolidated* and *We The People* is the control the nonlawyer respondents had over the lawyer-client relationship. Respondents argue that they do not have this control because the lawyers they retain to represent their customers are independent contractors. This argument has no merit and ignores the undisputed fact that Respondents retain control over their customers and, through the customers, the lawyers throughout the representation. In fact, Respondents' business model necessitates that a TIKD customer remain Respondents' customer while a TIKD lawyer represents the TIKD customer in traffic court. Respondents remain involved because a TIKD customer is not due a refund and/or payment of fines and court costs until final disposition.

Respondent Riley explains:

Sir, the first guarantee that TIKD provides is that if there are court costs, TIKD will pay them on behalf of the customer. So just to use an example, if somebody comes to TIKD with a \$200 speeding ticket, what they would pay TIKD for our services would be, for example purposes, would be \$160, a 20 percent discount.

At that point we contract with a lawyer who contracts on their behalf with the customer.

The attorney/client relationship is established. We do not participate in the attorney/client relationship.

The contact information is provided between the lawyer and the customer, and the lawyer does what he's paid to do.

At the end of the hearing, if there are court costs awarded, let's say, in the example of our \$200 speeding ticket, the Judge withholds adjudication, no points, but you have to pay 200 bucks even though we were only paid \$160 by the customer, we pay the \$200 on behalf of the customer, and then we would go back to the customer and say: You received no points and, you know, that's bad news for us, but great news for the customer.

Riley Stmt. 14:19-25, 15:1-18

In other words, TIKD's involvement does not end when the lawyer is hired. TIKD must remain involved to complete the financial transaction and reimburse the customer if necessary.

Respondents also attempt to distinguish their conduct from the conduct of the respondents in *We The People and Consolidated* by arguing that their lawyers are independent contractors rather than employees as were the lawyers in the earlier cases. From an unlicensed practice of law standpoint, it makes no difference whether the Florida lawyers are employees or working for the nonlawyer entity on retainer. How the lawyer is employed is not relevant. What is relevant are the activities of the nonlawyer company. As demonstrated above, the activities of Respondents and those of the nonlawyers in *We The People* and

Consolidated are similar in that they all offer legal services, they all use Florida lawyers to provide the services to their customers, and they all set the fees and control other aspects of the lawyer-client relationship.

Moreover, Respondents' characterization of the lawyers as independent is misleading. Respondents want the public to believe Respondent TIKD gives them access to an "independent" lawyer. Respondent Riley, while pointing to Respondents' Terms of Service¹, asserts:

If both the attorney and the driver agree to the attorney's representation of the driver, they enter into a contractual attorney-client relationship based on the attorney's representation letter. The driver then works and communicates directly and confidentially with the attorney regarding the traffic ticket defense. The driver does not work with or through TIKD to resolve any legal issues associated with the ticket.

TIKD does not instruct the attorneys on how to advise or represent the drivers. TIKD does not participate in attorney-client communications or the attorney-client relationship. TIKD is not involved in the attorney's defense of the ticket."

Ex. 1.

In reality, the lawyers are not as independent as Respondents would have their customers or this Court believe. Respondents' website advertises how TIKD

¹ Ex. 1 and Ex. 1A

has direct contact with TIKD customers while TIKD lawyers are representing the TIKD customer. The website FAQ page states:

Will I receive any correspondence regarding my case? How will I know that things are progressing?

Yes. You will receive a series of notifications from TIKD including:

- When your traffic ticket has been verified and accepted.
- The details of your lawyer who will handle your case.
- When your case has been filed with the Court.
- When your hearing date(s) is/are scheduled.
- The outcome of your case.

The exact notifications you receive from TIKD will depend on your type of traffic ticket and where it was issued. Our customer service team is available daily from 9am-5pm EST to answer any questions you may have about the status of your case. And you can contact your lawyer directly at any point in time – no coordination with TIKD required.

Ex. 3A at 17.

As shown above, Respondents' characterization that TIKD lawyers are independent is misleading. TIKD lawyers are not independent, but rather Respondents have TIKD lawyers on retainer. Unlike a qualifying provider or lawyer referral service, Respondents' relationship with TIKD customers does not end once Respondents match the TIKD customer to a TIKD lawyer. Rather, like *Consolidated*, nonlawyers control the relationship by controlling the type of traffic

tickets TIKD accepts, accepting or declining tickets, and assigning a TIKD lawyer to each TIKD customer. Once Respondents accept the ticket, TIKD's nonlawyer staff leads TIKD customers through a virtual door which leads directly to legal representation by TIKD lawyers paid by and hired by TIKD, a nonlawyer for-profit corporation.

Not only do Respondents' nonlawyer staff maintain direct communication with the customer, but ultimately the product sold to and purchased by a TIKD customer hinges on the result of the legal services provided by TIKD lawyers. In turn, each time a TIKD lawyer successfully defends a traffic ticket, Respondents increase their income by collecting customer payments minus the amount Respondents paid the TIKD lawyer. In sum, without the TIKD lawyer, Respondents have nothing to sell the public and no way to generate income.

Therefore, just as in *Consolidated*:

We find here the unique circumstance wherein the owners of a business are prohibited by law from rendering the services which they offer to the public (F.S. 454.23) are not competent by training to judge the quality of their product, are not subject to the licensing authority which regulates the distribution of their product and who purport to exercise no ultimate control over their primary employees. This concept, alien to the world of business, does greater violence to the accepted ideals of the professions, which must balance service to the public against the need to show a profit. . . . The respondent has shown no other means of producing income other than by the providing of legal services which is clearly the practice of law. Were the respondent to cease the

providing of such services, then it would cease to exist as an income producing enterprise. The nature of the corporate business is such that it must be deemed to be engaged in the unauthorized practice of law with or without the examples of lay control which the evidence shows.

The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So. 2d 797, 798-799 (Fla. 1980).

Respondents seem to argue that their business model insulates them from the Court's rulings because the Court has not addressed the use of a website or mobile app and has not expressly proscribed the practice of retaining Florida lawyers to represent TIKD customers based on each ticket defended. The fact that TIKD customers use a website or mobile app to hire Respondents to defend their traffic ticket does not change the nature of Respondents' conduct. Respondents are operating a virtual law office as if they were a brick and mortar operation. Simply put, Respondents use technology as a gateway to provide legal services. Similarly, while the type of case involved, traffic ticket defense, has not been the subject of an action before this Court, the Court has addressed similar conduct involving different areas of the law.² It is the nature of the services, not the cause of action

² *The Florida Bar v. Neiman*, 816 So. 2d 587 (Fla. 2002) (referee found the nonlawyer, a paralegal, appeared to be a businessman who was trying to use his association with a law firm to run a lucrative business); *The Florida Bar v. Miravalle*, 761 So. 2d 1049 (Fla. 2000); (holding it is UPL for a nonlawyer entity to use the word "legal" in ads); *The Florida Bar v. Catarcio*, 709 So. 2d 96 (Fla. 1998) (holding it is UPL for a nonlawyer to operate and advertise a business in a weekly advertising publication offering divorce and bankruptcy services); *The*

that controls. *State of Florida ex rel. The Florida Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962), *judgment vacated on other grounds* 373 U.S. 379, 83 S. Ct. 1322 (1963). Most importantly, this Court has the exclusive jurisdiction to decide unlicensed practice of law issues of first impression. *Goldberg v. Merrill Lynch Credit Corp.*, 35 So. 3d 905 (Fla. 2010).

As a matter of law, Respondents are engaged in the unlicensed practice of law by providing legal services. Respondents' arguments do not hold up to the spirit and weight of the Court's rulings in *We The People* and *Consolidated*. Therefore, based on this Court's well-established holdings, Respondents are engaged in the unlicensed practice of law.

B. Respondents' Activities Are Not Authorized

As noted above, if an activity that is the practice of law is authorized, the activity is not the unlicensed practice of law. Respondents' activities are the practice of law and are not authorized. There is no case law, statute, or court rule that authorizes a nonlawyer private entity to offer to provide legal services and representation in court to the public.

Florida Bar v. Gordon, 661 So. 2d 295 (Fla. 1995) (holding Respondent engaged in UPL by offering legal advice in connection to bankruptcy proceedings); *The Florida Bar v. Lugo-Rodriguez*, 317 So. 2d 721 (Fla. 1975) (holding it is UPL for a nonlawyer to advertise immigration services); *The Florida Bar v. Counseling Research and Training Services, Inc.*, 270 So. 2d 365 (Fla. 1972) (holding a nonlawyer entity engaged in UPL by advertising in local newspaper).

Respondents appear to argue that their activities are authorized by attempting to hide behind a thin veneer of false legitimacy by arguing that Rules 4-1.8(f) and 4-5.4(d) of the Rules Regulating The Florida Bar authorize Respondents to pay a Florida lawyer to represent a third party. Rule 4-1.8(f) regulates a lawyer's conduct when a third person compensates the lawyer. Generally, Rule 4-5.4 addresses a lawyer's ethical limits when sharing fees and subparagraph (d) addresses how a fee sharing arrangement should not interfere with the lawyer's professional conduct. Rules 4-1.8(f) and 4-5.4(d) go to lawyer conduct and do not authorize Respondents or any for-profit nonlawyer enterprise to keep Florida lawyers on retainer to represent its customers.

Respondents also argue that their business model is like an insurance company and as such should be authorized by this Court. Respondents are not an insurance company. Respondents do not offer a product proximate to insurance and are not licensed to sell insurance. Respondents' false analogy fails in the face of the highly regulated nature of the insurance industry.

Respondents are engaged in the practice of law. Respondents are not lawyers. Respondents' activities are not authorized. Therefore, Respondents are engaged in the unlicensed practice of law and summary judgment should be entered in favor of The Florida Bar.

C. Respondents' Activities Cause Public Harm

In support of their Motion for Summary Judgment, Respondents argue that The Florida Bar has failed to allege public harm, therefore, their conduct is not the unlicensed practice of law. Although public harm is not an element required to find the unlicensed practice of law, Respondents' actions cause public harm by impacting the integrity of the practice of law and this Court's constitutional authority over the practice of law. Art. V, § 15. Fla. Const.

The single most important concern in the Court's defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation. It is in furtherance of this purpose that this Court maintains strict standards of competence and ethical responsibility to be reached prior to admission to practice law in Florida. Once admitted, a person must continue to adhere to these standards or suffer the disciplinary powers residing in this Court by constitutional mandate.

The Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980) (citations omitted).

The actions of Respondents do exactly what this Court is bound to protect. Respondents' actions and business model result in lawyers avoiding their ethical duties and obligations as related to lawyer advertising, direct client solicitation, fee splitting, qualifying provider rules, and the ethical limits placed on a Florida lawyer with respect to paying a client's fines and court costs.

The reason for prohibiting the practice of law by those who have not been examined and found qualified

. . . [is] to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the public interest, lawyers are bound to observe.

State of Florida ex rel. The Florida Bar v. Sperry, 140 So. 2d 587, 595 (Fla. 1962), *judgment vacated on other grounds* 373 U.S. 379, 83 S. Ct. 1322 (1963).

Respondents advertise legal services and the services of Florida lawyers and such unregulated conduct is a threat to the public. Rules 4-7.13 and 4-7.14 of the Rules Regulating The Florida Bar regulate similar lawyer conduct. Respondents' conduct circumvents these rules resulting in lawyer advertising in violation of the rules. For example, Respondents' website compares the fees Respondents charge to the fees lawyers charge. Ex. 3A at 10. A lawyer could not advertise this comparison unless the lawyer could objectively verify that this is true. R. Regulating Fla. Bar 4-7.13(b)(3). Respondents' website states, "[W]e know with a pretty high degree of certainty what is going to happen to a particular type of ticket, and therefore how much it's going to cost us." Ex. 3A p. 3. A lawyer could not make statements that could be reasonably interpreted as a prediction of success or specific result. R. Regulating Fla. Bar 4-7.13(b)(1).

Respondents share customers' payments with a Florida lawyer hired to work on a flat fee per ticket defended retainer agreement. Respondents' conduct is unregulated. Rule 4-5.4 of the Rules Regulating The Florida Bar regulates similar

lawyer conduct and prohibits Florida lawyers from sharing fees with nonlawyers.

While a Florida lawyer could not hire a nonlawyer to obtain business and then split any resulting fee with the nonlawyer, Respondents' business model is based on this improper activity.

Respondents pay TIKD customers' fines and court costs. Such conduct is unregulated and is a threat to the public. Rules 4-1.8(e) and 4-8.4(d) of the Rules Regulating The Florida Bar regulate similar lawyer conduct and prohibit a lawyer from providing financial assistance to a client. By paying the customer's fines and court costs, Respondents are providing financial assistance which a Florida lawyer is prohibited from providing. R. Regulating Fla. Bar 4-1.8(e) and 4-8.4(d).

Respondents do not comply with Rule 4-7.22 of the Rules Regulating The Florida Bar, or its predecessor rule on lawyer referral services³. Florida lawyers are prohibited from participating with any qualifying provider that does not meet the requirements of the rule. Respondents admit, and Respondent Riley stated in the sworn statement, that Respondent TIKD is not a lawyer referral service. Riley

³ The Supreme Court of Florida adopted amendments to Rule 4-7.22 on March 8, 2018. The amended rule went into effect on April 30, 2018. The new rule includes changing terminology from lawyer referral services to qualifying providers, and broadening the definition to include matching services, group or pool advertising programs, directories, and tips or lead generators.

Stmnt. p. 52:6-7. Yet Respondents flaunt the letter and intent of this rule by acting as a qualifying provider without following any of the requirements of the rule.

Respondents' unregulated and prohibited conduct impacts the public. Taken to its furthest extent, any nonlawyer, a disbarred lawyer, or an out-of-state lawyer could establish a nonlawyer entity to practice law and hire Florida lawyers to provide any type of legal services to its customers. For example, a nonlawyer entity could retain lawyers to prepare Medicaid planning documents for its customers, conduct that has been found to constitute the unlicensed practice of law.

The Florida Bar re Advisory Opinion – Medicaid Planning Activities by Nonlawyers, 183 So. 3d 276 (Fla. 2015). A financial planning firm could hire a Florida lawyer to provide estate planning legal services for its customers, conduct that has been found to be the unlicensed practice of law. *The Florida Bar v. Goodrich*, 212 So. 2d 764 (Fla. 1968). Even more worrisome, any nonlawyer entity could engage in wholesale direct client solicitation while hiring Florida lawyers to provide legal services in any area of law, an activity specifically prohibited by the Rules of Professional Conduct. R. Regulating Fla. Bar 4-7.18.

CONCLUSION

As shown above, there are no questions of fact. Respondent Christopher Riley, a nonlawyer, operates a nonlawyer entity that advertises and provides legal services to the public. In return for payment from its customers, Respondents

provide legal representation. Respondents do not dispute these facts. Thus, Respondents are not entitled to summary judgment because as a matter of law there is no law authorizing a corporation owned and operated by nonlawyers to advertise legal services or to employ lawyers to provide legal services to corporate customers.

Rather, the undisputed facts show Respondents are engaged in prohibited conduct which constitutes the unlicensed practice of law. As a matter of law, the Court should grant The Florida Bar's Motion for Summary Judgment and enter a Permanent Injunction Against the Unlicensed Practice of Law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response to Respondents' Motion for Summary Judgment and The Florida Bar's Motion for Summary Judgment has been filed via the statewide e-portal and true and correct copies were furnished via email using the statewide e-portal to Christopher Michael Kise, Respondents' Counsel, Foley & Lardner, LLP, 106 East College Avenue, Suite 900, Tallahassee, Florida 32301-7732, primary email address ckise@foley.com; and via email using the statewide e-portal to William A. Spillias, UPL Counsel, The Florida Bar, 651

East Jefferson Street, Tallahassee, Florida 32399-2300, Primary E-Mail:
wspillias@floridabar.org on this 4th day of June, 2018.

/s/ Algeisa Maria Vazquez
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