

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

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. SC18-149

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

THE FLORIDA BAR'S OBJECTION TO THE REPORT OF REFEREE

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SYMBOLS AND REFERENCES

The Florida Bar shall be referred to as “The Florida Bar.”

Christopher Riley shall be referred to as “Respondent Riley.”

TIKD SERVICES LLC shall be referred to as “TIKD.”

Christopher Riley and TIKD SERVICES LLC together shall be referred to as “Respondents.”

Respondents’ customers shall be referred to as “TIKD customers.”

Florida licensed lawyers representing TIKD customers shall be referred to as “TIKD lawyers.”

The Florida Bar’s Petition Against the Unlicensed Practice of Law shall be referred to as “Pet.” followed by the referenced paragraph (Pet. ¶ __).

Respondents’ Answer to The Florida Bar’s Petition and Response to Order to Show Cause shall be referred to as “Ans.” followed by the referenced paragraph (Ans. ¶ __).

Respondent Christopher Riley’s Affidavit shall be referred as “Riley Aff.” followed by the referenced paragraph (Riley Aff. ¶ __).

Respondent Riley’s sworn statement before the Eleventh Judicial Circuit Unlicensed Practice of Law Committee “B” shall be referred as “Riley Stmt.” followed by the referenced page and line numbers (Riley Stmt. __: __-__).

Exhibit 3A to The Florida Bar’s Motion for Summary Judgment shall be referred to as “TIKD website” followed by the referenced page number(s) (TIKD website p. ____).

Exhibit 1 to the Petition shall be referred to as “Website FAQ-1.”

Respondents’ Terms of Service shall be referred to as “TOS” followed by the referenced page number(s) and paragraph number(s) (TOS p. ____).

The transcript of the Status Conference held on December 11, 2018 will be referred to as “Tr.” followed by the referenced page numbers (Tr. p. ____).

The Report of Referee shall be referred to as “ROR” followed by the referenced page number(s) (ROR p. ____).

The Services Agreement between Respondents and TIKD lawyers shall be referred to as “Contract” followed by referenced paragraph number(s) (Contract ¶ ____) or exhibit letter (Contract Exh. ____).

OBJECTION TO THE REPORT OF REFEREE

Pursuant to Rule 10-7.1(f) of the Rules Regulating The Florida Bar of the Rules Regulating The Florida Bar, The Florida Bar objects to Circuit Judge Teresa Pooler’s “Report of Referee and Recommended Judgment,” seeks review by the Supreme Court of Florida, and respectfully requests oral argument.

STANDARD OF REVIEW

The standard of review of a Report of Referee granting summary judgment orders is de novo review. *The Florida Bar v. Rapoport*, 845 So. 2d 874 (Fla. 2003); citing *The Florida Bar v. Cosnow*, 797 So. 2d 1255, 1258 (Fla. 2001).

STATEMENT OF THE CASE AND THE FACTS

I. STATEMENT OF THE CASE

On January 23, 2018, The Florida Bar filed a Petition Against the Unlicensed Practice of Law against Respondents TIKD Services LLC and Christopher Riley. The Petition seeks a ruling that Respondents’ conduct constitutes the unlicensed practice of law and an injunction to enjoin Respondents from engaging in the acts complained of until such time as Respondent Riley is duly licensed to practice law in Florida.

On January 30, 2018, this Court issued an order requiring Respondents to answer The Florida Bar's Petition and to show cause why Respondents should not be enjoined as sought by the Petition.

On April 4, 2018, Respondents filed an Answer admitting to certain facts, denying The Florida Bar's allegations of unlicensed practice of law, and asserting affirmative defenses.

On April 9, 2018, Respondents filed a Motion for Summary Judgment.

On April 20, 2018, The Florida Bar filed a Reply, moved to strike Respondents' affirmative defenses, and moved for the appointment of a referee and filed a Motion for Judgment on the Pleadings.

On April 30, 2018, Respondents filed a Response to The Florida Bar's Motion to Strike and Motion for Judgment on the Pleadings.

On June 4, 2018, The Florida Bar responded to Respondents' Motion for Summary Judgment and filed The Florida Bar's Motion for Summary Judgment.

On June 14, 2018, Respondents filed a response to The Florida Bar's Motion for Summary Judgment.

On June 26, 2018, this Court issued an order designating the Chief Judge in and for the Eleventh Judicial Circuit to appoint a referee.

On July 9, 2018, Chief Judge Bertila Soto appointed Circuit Court Judge Teresa Pooler to serve as Referee.

On August 30, 2018, the Referee held a case management conference and set a status conference on the parties' Motions for Summary Judgment for September 26, 2018, which was later continued, on the Referee's motion, to December 11, 2018.

On December 11, 2018, the Referee held a status conference, made oral pronouncements, and granted Respondents' Motion for Summary Judgment.

On January 24, 2019, the Referee served the parties with a "Report of Referee and Recommended Judgment." The Referee found Respondents do not engage in conduct which constitutes the unlicensed practice of law and recommended "the Supreme Court of Florida dismiss all claims alleged against Respondents with prejudice, enter judgment in favor of Respondents." ROR p. 17.

II. STATEMENT OF THE FACTS

A. Undisputed Facts

Respondent Riley is a nonlawyer and the founder of Respondent TIKD, a Foreign Limited Liability Company whose principal place of business is Coral Gables, Florida. Riley Aff. ¶ 1; Pet. ¶ 1, 2; Ans. I, ¶ 1, 2. Respondent Riley was not and is not a member of The Florida Bar, and was not therefore licensed to engage in the practice of law in the State of Florida. Pet. ¶ 1; Ans. I, ¶ 1. Respondent TIKD was not and is not a law firm and was not and is not authorized

to practice law in Florida. Pet. ¶ 2; Ans. I, ¶ 2. TIKD is not a lawyer referral service.¹ Pet. ¶ 3; Ans. I, ¶ 3.

Respondents employ a mobile app and a website to reach and obtain customers who were issued traffic tickets and who desire to have their traffic tickets defended in court. Riley Aff. ¶¶ 2-3. TIKD customers initiate TIKD services by uploading a photograph of the ticket to Respondents' website and paying Respondents a fixed fee set by Respondents. Riley Aff. ¶ 4.

Respondents accept or decline a TIKD customer's request for services "on a case-by-case basis." Riley Aff. ¶ 5; TOS p. 2. If Respondents decline the ticket, they notify the TIKD customer and the customer pays nothing. Riley Aff. ¶ 6. If Respondents accept the ticket, TIKD charges the customer "a percentage of the face amount of the ticket" to hire lawyers to defend the ticket in court. Riley Aff. ¶ 6. TIKD customers "can choose to pay the remaining percentage at the time of acceptance or pay the balance in monthly installments." Riley Aff. ¶ 6. TIKD customers pay "no other charges, at any time." Riley Aff. ¶ 6. Respondents

¹ Paragraph 3 of The Florida Bar's Petition Against the Unlicensed Practice of Law asserts Respondents are not a lawyer referral service and Respondents admitted. Respondents do not comply with Rule 7.22 of the Rules Regulating The Florida Bar of the Rules Regulating The Florida Bar or its predecessor rule on lawyer referral services. 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.

decline some customers' traffic ticket cases which do not meet the Respondents' criteria. Riley Aff. ¶ 5; TOS p. 2.

According to Respondent Riley, 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.

Riley Aff. ¶ 7.

Respondents provide traffic ticket legal defense services to TIKD customers by entering into Services Agreements with Florida licensed lawyers who represent TIKD customers in traffic court.² Riley Aff. ¶ 11. Respondents pay members of The Florida Bar "a flat fee per ticket defended" in court. Riley Aff. ¶ 18; Riley Stmt. 14:4-14. The flat fee payment to the TIKD lawyer is pursuant to the Services Agreements between Respondents and private Florida licensed lawyers. Riley Stmt. 37:6-7, 73:3-12. TIKD customers do not pay the TIKD lawyer directly.

² On August 30, 2018, the parties stipulated to supplement the record by providing Referee copies of the TIKD Services Agreements between TIKD and TIKD lawyers who represent TIKD customers under seal.

Rather, the customer pays TIKD who pays a portion of the customer's fee to TIKD lawyers. Riley Aff. ¶ 18; Riley Stmt. 14:4-17, 64:17-25.

Respondents use their website, social media, and other means to advertise that TIKD provides traffic ticket legal defense services for a fixed price along with an offer to pay all fines and court costs with a money-back guarantee. TIKD website pp. 1-22; Riley Stmt. 64:8-12.

B. Referee's Factual Inferences

The Referee infers TIKD lawyers are not employed or controlled by Respondents. ROR p. 8, 12.

The Referee infers "TIKD is not involved in the attorney's defense of the ticket." ROR p. 8.

The Referee infers "TIKD's involvement ends at identifying an appropriate attorney to represent the TIKD customer." ROR p. 13-14.

The Referee quotes from TIKD website's FAQ page answering the question "Can't I hire a lawyer to do the same thing for me?" but omits the second half of the quote and infers the public is not harmed by Respondents' conduct. ROR pp. 10-11.

The Referee infers "TIKD furthers the consuming public's interest by providing a speedy, efficient and relatively painless way to deal with traffic tickets." ROR p. 11.

The Referee infers “the information of the client is protected.” ROR p. 13.³

SUMMARY OF THE ARGUMENT

The present case involves a de novo review of the Referee’s interpretation of the law as applied to the undisputed facts of this case and as it relates to her ruling granting Respondents’ Motion for Summary Judgment. The Referee was required to resolve all doubts and inferences in favor of The Florida Bar, and the slightest doubt or conflict in the evidence should have precluded summary judgment.

Moore v. Morris, 475 So. 2d 666 (Fla. 1985); *Sawyer v. Southeastern University, Inc.*, 993 So. 2d 141 (Fla. 2d DCA 2008). The Referee did not resolve all facts and inferences in favor of The Florida Bar. Moreover, the Referee misinterpreted this Court’s case law.

This Court has consistently held that a nonlawyer and a nonlawyer entity cannot advertise an offer for legal services or provide legal services to the public through licensed Florida lawyers. Respondents Riley and TIKD are engaged in the unlicensed practice of law by operating a nonlawyer entity that advertises and provides legal services to the public in return for payment from TIKD customers.

³ Respondents state in their TOS, “neither receipt of any services in connection with the TIKD Properties, nor any e-mail or other communication sent through the TIKD Properties ... will be treated as confidential.” TOS p. 1.

ARGUMENT

I. THE RESPONDENTS' CONDUCT CONSTITUTES THE PRACTICE OF LAW AND IS NOT AUTHORIZED

The Supreme Court of Florida has the inherent and exclusive jurisdiction to prohibit the unlicensed practice of law and has designated The Florida Bar as an official arm of the Court to investigate and seek prohibition of offenders engaged in the unlicensed practice of law. Art. V. Sec. 15 Fla. Const.; R. Regulating Fla. Bar 10-1.1, 10-1.2. Only this Court can determine whether an activity is the unlicensed practice of law and prevent unauthorized individuals or business entities from continuing to engage in prohibited conduct by issuing a civil injunction. Moreover, 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).

Whether conduct constitutes the unlicensed practice of law requires a two-part analysis. 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). Second, it must be determined whether the activity is authorized. *The Florida Bar v. Moses*, 380 So. 2d 412 (Fla. 1980). Here, Respondents' activity is the practice of law and is not authorized.

While “[i]t is generally understood that the performance of services in representing another before the courts is the practice of law,” in 1963 this Court developed what is now known as the *Sperry* test to determine whether an activity is the practice of law:

We think that in determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Sperry at 591.

All three elements of the *Sperry* test are met here. In the instant case, the nonlawyer Respondents offer and receive compensation from their customers for the legal matter of traffic defense before a traffic court. Clearly, whether you are adjudicated guilty or not guilty after receiving a traffic ticket affects the important legal rights of a person under the law. Whether the person retains or loses the privilege of driving is an important legal right. Whether the person has to pay a fine is an important legal right. Whether the person will have their automobile

insurance impacted is an important legal right. All of these legal rights and more are affected by the services offered by Respondents.

The reasonable protection of these important rights and property require that the person giving the advice possess a knowledge and skill of the law greater than that possessed by the average citizen. Representation of another in traffic court requires knowledge of the traffic laws, statutes, and rules of procedure. It is for this reason that a lawyer is required in traffic court if the individual decides not to represent themselves. Representation in traffic court is the service Respondents are offering to the public. Therefore, Respondents' activities constitute the practice of law.

As the conduct is the practice of law, 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). Generally, an activity that is the practice of law may be authorized by statute, court rule, and case law. There is no statute, court rule, or case law authorizing Respondents' conduct. The opposite is true. As more fully discussed below, this Court's case law prohibits the activities of Respondents as the unlicensed practice of law. *The Florida Bar v. We The People Forms and Service*

Center of Sarasota, Inc., 883 So. 2d 1280 (Fla. 2004); *The Florida Bar v.*

Consolidated Business and Legal Forms, Inc., 386 So. 2d 797 (Fla. 1980).

II. THE REFEREE MISAPPLIED THE FLORIDA SUPREME COURT CASE LAW PROHIBITING A NONLAWYER AND A NONLAWYER CORPORATION FROM OFFERING AND PROVIDING LEGAL SERVICES THROUGH FLORIDA LICENSED LAWYERS

The Referee's duty in this case was to apply this Court's precedent to the undisputed facts. Instead, the Referee departed from nearly 40 years of this Court's rulings and found Respondents' nonlawyer business may offer and provide traffic ticket legal defense services to the public.

While the Referee appears to concede drivers may need lawyers to resolve their traffic tickets, she fails to find that Respondents offer and provide the public traffic ticket legal defense services. Instead, the Referee infers Respondents do not control the lawyer-client relationship, finds Respondents do not render legal services, and arrives at the legal conclusion that Respondents' business model is not proscribed by this Court's rulings. ROR p. 6, 12, 13-16.

A. Respondents Offer to Provide Legal Services to the Public

Respondents argued, and the Referee found, TIKD offers and provides TIKD customers nothing more than a technology platform and a financial guarantee for drivers who have received a traffic ticket. ROR p. 6, 12. The Referee emphasized her view of Respondents' business model when she wrote:

We live in a busy, fast paced world, in which time can be a precious commodity. Getting a ticket can be more than just annoying and inconvenient. Fighting a ticket in court especially if more than one appearance is required, may result in loss of income depending on the driver's employment status. Just looking for an attorney can be confusing and overwhelming. The internet is full of traffic ticket lawyers and some traffic ticket lawyers even send out letters to drivers who have tickets offering representation.

After a careful review of the portions of TIKD's website submitted by The Florida Bar and TIKD's Terms of Service, including the FAQ's and the prominent disclaimers in the Terms of Service, I find that the materials do not constitute legal advice, and do not represent that Respondents are attorneys or competent to handle legal matters. TIKD provides a service and its customers pay for the convenience the service offers. No reasonable person could conclude, based on the evidence submitted to the Referee, that TIKD or Riley hold themselves out as providers of legal services.

ROR p. 16.

This view is based in part on inferences the Referee made in favor of the Respondents rather than in favor of The Florida Bar as required by the case law. *Moore v. Morris*, 475 So. 2d 666 (Fla. 1985); *Sawyerr v. Southeastern University, Inc.*, 993 So. 2d 141 (Fla. 2d DCA 2008). Not only are the inferences incorrect, the Referee's interpretation of the case law is too narrow. A nonlawyer can be found to have engaged in the unlicensed practice of law even if the nonlawyer does not hold out as a lawyer and does not appear in court. A nonlawyer can be found

to be engaging in the unlicensed practice of law by offering to provide legal services. This is the case here.

Both the offer of legal services and the provision of legal services by a nonlawyer entity have been defined by this Court as activities which constitute the unlicensed practice of law. *The Florida Bar v. We The People Forms and Service Center of Sarasota, Inc.*, 883 So. 2d 1280 (Fla. 2004); *The Florida Bar v. Consolidated Business and Legal Forms, Inc.*, 386 So. 2d 797 (Fla. 1980). Here, the evidence shows nonlawyer Respondents engaged in the practice of law by offering and providing traffic ticket legal defense services to the public. TIKD website pp. 1-22. Because Respondents are not licensed to practice law in Florida, TIKD engages licensed Florida lawyers to represent TIKD customers in court.

The fact that Respondents retain Florida lawyers to represent TIKD customers in court is undisputed. 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. An unlicensed practice of law 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.

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." Riley Aff ¶ 17.

The Referee infers that since Respondents assign the customer's case to a Florida licensed lawyer, Respondents are not engaging in unlicensed practice of law. The Referee ends her unlicensed practice of law analysis there. Therefore, she does not examine the issue of whether it is permissible for Respondents to contract with members of The Florida Bar to perform legal services for their customers and the relationship between the Respondents and the lawyers.

In making these inferences, the Referee ignores that the record shows that Respondents retain Florida lawyers to represent their customers, choose the

lawyers who 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 *We The People*, the nonlawyer corporation advertised legal services directly to their customers and employed a licensed Florida lawyer to provide legal services and give legal advice to their customers. This Court found this 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 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 nonlawyers in *We The People*, TIKD's advertising offers a legal service: legal defense in traffic court. Respondents' advertising implies TIKD helps resolve traffic tickets. For example, TIKD calls itself "your traffic ticket champion." TIKD website p. 3. In response to Respondents' solicitations, ticketed drivers seeking to resolve a traffic ticket submit traffic tickets to TIKD via a mobile app or the website. From the point Respondents accept payment to resolve

a customer's traffic case, they become legal service vendors. TIKD sets the price paid by a customer and the "flat fee per ticket defended" paid to the contract lawyer by TIKD. Riley Aff. ¶ 18. TIKD initiates the lawyer-client relationship on behalf of the customer and remains in contact with TIKD customers during the pendency of the traffic court case. Riley Stmt. 64: 21-25. Respondents then collect corporate profits each time a TIKD lawyer secures the dismissal from the traffic court. By applying the *Sperry* test and the holding in *We The People*, it becomes clear Respondents are engaged in the unlicensed practice of law.

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 their 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 these activities constituted the unlicensed practice of law and issued an injunction against the nonlawyer business. More specifically, this Court held:

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 payments from their customers, and, because Respondents cannot represent their customers in traffic court, they hire lawyers to provide the legal services Respondents cannot provide. TIKD sets the amount paid by customers for legal services, the retainers paid to lawyers by TIKD, and the terms for contract termination⁴. Respondent Riley described TIKD as a service which pays a lawyer for the customer but remains involved with the customer “throughout the process.” Riley Stmt. 64: 21-25.

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. It is irrelevant how the lawyer is employed. Rather, the activities of the nonlawyer entity are subject to this Court’s scrutiny. TIKD customers are offered a technology-based solution but the technology is merely a virtual door to a

⁴ Contract Exh. A, ¶¶ 2.1, 2.2, 3, 4.1-4.3.

nonlawyer owned and operated traffic ticket defense law firm. The activities of these 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 those legal services to their customers, and they all set the fees and control other aspects of a lawyer-client relationship. Therefore, Respondents are engaged in the unlicensed practice of law.

B. Respondents Control the Legal Services Provided to Respondent Customers

A common theme between *Consolidated* and *We The People* is the control the nonlawyer respondents had over the lawyer-client relationship. This Court's rulings in *Consolidated* and *We The People* are clearly analogous to Respondents' activity here. The same type of control that this Court found problematic in *Consolidated* and *We The People* is present here.

The Referee, however, finds otherwise. In finding no unlicensed practice of law, the Referee takes Respondents at their word that TIKD does not directly control TIKD lawyers and finds it permissible for nonlawyer Respondents to offer legal services to the public because she infers TIKD lawyers are "independent." ROR pp. 7-9, 12, 14-15. This inference is incorrect.

During a sworn statement before the Eleventh Judicial Circuit Unlicensed Practice of Law Committee "B," Respondent Riley describes TIKD's continued involvement with TIKD customers: "TIKD is a service part of which you're

paying for the legal service of a lawyer on their behalf, **managing** the process, giving them the convenience of technology, giving them updates throughout the process” Riley Stmt. 64: 21-25 (emphasis added).

Respondents’ business model necessitates a TIKD customer remain Respondents’ customer while a TIKD lawyer represents the TIKD customer in traffic court. Riley Aff. ¶ 17. Respondents remain involved because a TIKD customer is not due a refund and/or payment of fines and court costs until final disposition. Riley Aff. ¶¶ 7, 17; TOS pp. 3-4. Respondents retain Florida lawyers to represent their customers (Riley Aff. ¶ 11; TOS p. 3; Contract ¶¶ 1, 2.1-2.2 and Exh. A), choose the lawyers who will provide services to their customers (Riley Aff. ¶¶ 11-13; TOS pp. 3-4), determine what types of cases to forward to the lawyers (Riley Aff. ¶ 5; TOS p. 2), and set the fee their customers pay for legal representation in court. (Riley Aff. ¶ 6; TOS p. 3). Notably, if a TIKD customer does not wish to be represented by a particular TIKD lawyer, the customer’s only right is to cancel services. TOS pp. 3-4.

Notwithstanding this evidence, the Referee distinguishes *Consolidated* and *We The People* and states, “[U]nlike TIKD, the non-attorneys in those cases directly held themselves out as attorneys, directly provided legal services themselves, and/or directly controlled legal services provided by licensed attorneys.” ROR p. 13. The Referee seems to find that because the control is not

direct, Respondents are not engaging in the unlicensed practice of law. Whether the control is direct or indirect is not relevant. What is relevant is that the nonlawyer Respondents have a level of control over the lawyer-client relationship.

Here, the facts show Respondents both directly and indirectly control the lawyer-client relationship. Respondents engage lawyers, and profit from the legal services performed by licensed Florida lawyers. Respondents' business model permits the nonlawyers to indirectly control the legal services rendered by TIKD lawyers through the Services Agreement and TIKD's continuing relationship with TIKD customers. All relationships are within the control of Respondents. TIKD controls the financial transaction with the customer. All the financial benefits TIKD offers its customers hinge on the result of the legal services provided by TIKD lawyers. 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. Riley Aff. ¶¶ 11, 18, TOS pp. 3-4.

Like the nonlawyer entities in *Consolidated* and *We The People*, TIKD offers the services of Florida lawyers to the public and advertises an offer to provide a legal service, legal advice, or personal legal assistance. Like the company in *We The People*, TIKD initiates the lawyer-client relationship, sets the fees the lawyers are paid to defend TIKD customers before a court, and pays the lawyers for representing their customers. Like the corporation in *Consolidated*,

Respondents receive and control payment from their customers, and hire lawyers to provide the legal services Respondents cannot provide. Like the respondents in *Consolidated* and *We The People*, TIKD controls the financial transaction. The TIKD lawyer receives no payments from the TIKD customer; rather, Respondents pay the lawyers it retains a flat fee per ticket defended with Respondents retaining the balance of the customer charge during the entire length of the TIKD lawyer's legal representation.⁵ If the lawyer prevails, Respondents keep their share of the customer charge as income. Like the nonlawyer entities in *Consolidated* and *We The People*, Respondents profit from the work of members of The Florida Bar and are engaged in conduct this Court has defined as the unlicensed practice of law.

Ultimately, the services TIKD markets and TIKD customers purchase are traffic ticket legal defense services. As in *Consolidated* and *We The People*, the underlying purpose of TIKD is to offer and provide customers with a lawyer. Here, TIKD provides a contract lawyer to fight a traffic ticket before a court of law. As with the corporation in *Consolidated*, this case presents "the unique circumstance wherein the owners of a business are prohibited by law from rendering the services which they offer to the public." *Consolidated* at 798.

Without the lawyers and legal services they provide customers, Respondents have

⁵ Contract Exh. A, ¶¶ 2.1, 2.2.

nothing to market and no way to generate income. In short, TIKD customers purchase legal representation from TIKD to resolve their traffic ticket in court.

Rather than examining Respondents' conduct, the Referee concludes:

TIKD provides administrative and financial services consisting of a website to upload tickets, the hiring of an independent attorney at the customer's request and on the customer's behalf, the ability to pay by installments, and a financial guarantee. TIKD does not provide legal advice or representation to its customers. All legal advice and representation is provided by independent licensed Florida attorneys who are not employed or controlled by TIKD. This is uncontested. The Florida Bar's Petition alleges that TIKD provides **“traffic ticket legal defense services through members of The Florida Bar.”** Pet. at 4 (emphasis added).

ROR p. 12.

Here, Respondents operate a virtual law office as if they were a brick and mortar operation and use technology as a gateway to provide legal services. The Referee misapplies the law when she deems Respondents' business model is not subject to the Court's rulings in *Consolidated* and *We The People*. The Referee relies heavily on Respondents' assertions without considering the fact that Respondents control every facet of their relationship with the TIKD customer and, through the customer, the Florida lawyers. The Referee circumvents the fact that Respondents contract with TIKD lawyers to represent their customers in court⁶.

⁶ Referee makes no reference in her ROR to the language in the TIKD Services Agreements with attorneys who represent TIKD customers submitted under seal.

Although the TIKD Services Agreement with TIKD lawyers remains under seal, the agreement is part of the record before this Court. Among other things, the agreement includes guidelines related to legal services TIKD lawyers provide TIKD customers, payment and invoicing provisions related to the “flat fee per ticket defended” paid to TIKD lawyers, and termination provisions. Contract Exh. A, ¶¶ 2.1, 2.2, 3, 4.1-4.3.

As in *Consolidated*, Respondents’ claim that the TIKD Services Agreement prevents intervention or conflict and TIKD simply “pays the cost of an independent attorney who contracts with the driver separately and represents the driver against the traffic ticket in court” is plainly repudiated by the manner in which Respondents deliver legal services to the public. The facts show Respondent Riley operates an entity which profits from holding out as qualified to offer legal services to the public and by contracting with traffic ticket lawyers to represent its customers.

C. Respondents Are Holding Out as Capable of Providing Legal Services to the Public

The facts show Respondents advertise the services of TIKD lawyers 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.

TIKD website p. 5 (emphasis added).

Also, Respondents' advertising suggests TIKD can provide legal services and is the equivalent of or a substitute for a lawyer. TIKD website pp. 1-22. For example, the 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.

Website FAQ-1.

Here, the Referee focuses on the TIKD website disclosures and TIKD Terms of Service and finds Respondents' activities are not the unlicensed practice of law. The Referee states, "The web site and the Terms of Service make it explicitly clear that TIKD does not hold itself out to be a law firm. Any reasonable person who has reviewed the web site and the Terms of Service, as has this Referee, could not conclude otherwise." ROR pp. 15-16.

While Respondents may disclose TIKD is not a law firm, its advertising misleads the public with an offer to provide legal services. TIKD website pp. 1-22. 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. TIKD website p. 1-2. 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. TIKD website p. 1.

Respondents offer to provide the legal service of traffic ticket defense to their customers. 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 or a nonlawyer entity to offer to provide legal services to the public⁷. Moreover, this Court has consistently held that it constitutes the

⁷ 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.

unlicensed practice of law for a nonlawyer or a nonlawyer entity to hold out as able to render legal services to the public and to advertise in such a way as to cause the customer to rely on the nonlawyer to provide legal services. *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); *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978). The facts show 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.

Respondents' advertisements also cause the customer to rely on Respondents to handle their traffic ticket defense. Respondents' advertisements tout the benefit of using their services versus the services of a lawyer, assert that TIKD is a "better solution," and holds out as the customer's "traffic ticket champion." TIKD website p. 1. Not only are Respondents engaging in the unlicensed practice of law by offering to provide legal services, Respondents are engaging in the unlicensed

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).

practice of law by causing the customer to rely on Respondents to properly handle and resolve their traffic ticket in court.

Pursuant to this Court's previous holdings, this Court should find Respondents' activity of holding out as capable of rendering legal services is the unlicensed practice of law even though the legal work is performed by a member of The Florida Bar and enjoin the Respondents from engaging in this activity in the future.

D. Respondents' Conduct Is Not Authorized

Ordinarily, this Court's two-part analysis would require the Referee to determine whether Respondents' activity of engaging TIKD lawyers to represent TIKD customers is authorized. Since the Referee found Respondents do not engage in the unlicensed practice of law, there was no need for her to examine whether case law, statute, or court rules authorize Respondents' conduct.

Nevertheless, the Referee relies on lawyer ethics rules to sanction and authorize TIKD's contracting with Florida lawyers to represent its corporate customers in court and found:

The fact that TIKD, rather than the customer, pays the attorney does not convert TIKD's services into the practice of law. It is permissible for a third party to pay an attorney on behalf of a client, if the relationship is disclosed. See 4-1.8(f), 4-54. [sic] (d), R. Regulating Fla Bar. TIKD's Terms of Service disclose the relationship and the customer agrees to those terms prior to engaging TIKD. Here, the legal services provided by the lawyers

who represent TIKD customers are separate and distinct from TIKD, the information of the client is protected, and TIKD does not interfere with the attorney-client relationship.

ROR pp. 12-13.

Rule 4-1.8(f) regulates a lawyer's conduct when a third person compensates the lawyer. Rule 4-5.4(a) 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) address lawyer conduct and do not authorize nonlawyer Respondents or any for-profit nonlawyer enterprise to keep Florida lawyers on retainer to represent its customers.

The Referee improperly applied the Rules of Professional Conduct to carve out an exception to this Court's existing case law. If affirmed by this Court, the Referee's legal analysis would allow any nonlawyer or nonlawyer entity to engage licensed Florida lawyers or law firms to serve their customers, even when the sole purpose of the business entity is to offer legal services. While this Court has exclusive jurisdiction to carve out such an exception to its previous holdings, it has not done so.

Taken to its furthest extent, any nonlawyer, disbarred lawyer, or out-of-state lawyer could establish a nonlawyer entity to practice law and hire Florida lawyers to provide any type of legal services to the entity's customers. For example, a nonlawyer entity could retain lawyers to prepare Medicaid planning documents for

its customers, conduct this Court found constitutes 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 this Court 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.

Authorizing the Respondents' activities also has the possibility of leading to a conflict of interest which is likely to undermine the lawyer-client relationship. "The inherent conflict of interest between the legal needs of the client and the monetary policy of the corporation and how such a business structure permits unlicensed and unregulated persons to profit from the providing of services which by law they are prohibited from providing" is a basis for prohibiting the unlicensed practice of law. *We The People* at 1283-84. Here, the public is offered the services of TIKD lawyers who serve two masters, the ticketed drivers and the nonlawyer Respondents who assign and pay the lawyers. Stated another way, TIKD entices drivers to resolve their tickets by hiring TIKD to retain TIKD lawyers who answer to both Respondents and TIKD customers. The business

transaction offered by TIKD clearly creates a conflict of interest which is not plainly disclosed to the TIKD customer as required by Rule 4-1.8(f) of the Rules Regulating The Florida Bar.

As a further basis for her recommendation of no unlicensed practice of law, the Referee appears to view TIKD like a lawyer referral service. She finds Respondents' "involvement ends at identifying an appropriate attorney to represent the TIKD customer." ROR p. 14. The Referee's remarks at the hearing on December 11, 2018 revealed a similar understanding:

Now, I think the important part of this is the attorney aspect of it. The TIKD does not, as I read the facts, provide any kind of legal service or legal advice. What they do is, once they have gotten the ticket, which is uploaded, they then review it as to whether or not they're going to take it, which I just said, and then they get one of their attorneys -- and I don't mean "their attorneys." I mean a licensed Florida attorney who practices ticket defense and they pick one of the attorneys. The process is really irrelevant. **And they hookup, if you'll pardon the expression, the attorney with the driver.**

Tr. p. 6 (emphasis added).

In the Referee's view, TIKD advertises and charges customers to match them with a traffic lawyer. In other words, Respondents are acting as a qualifying provider. Respondents themselves dispute this because the services they offer and provide go beyond those a qualifying provider may provide. Florida lawyers may participate with qualifying providers only if the qualifying providers, among other

things, engage in no direct contact with prospective clients, receive no fee or charge that is a division or sharing of fees, and engage in no communication with the public that could lead prospective clients to reasonably conclude the provider is a law firm or directly provides legal services. R. Regulating Fla. Bar 4-7.22(d)(1-11).

Although Respondents admit that Respondent TIKD is not a lawyer referral service, Respondents flout the letter and intent of this rule by acting as a qualifying provider without following any of the requirements of the rule. Riley Stmt. p. 52:6-7. Unlike a qualifying provider, Respondents' relationship with TIKD customers does not end once Respondents match a customer to a lawyer. Rather, nonlawyer Respondents control the lawyer-client relationship by charging customers to pay "a flat fee per ticket defended" in court. Riley Aff. ¶ 18; Riley Stmt. 14:4-14. Respondents retain TIKD lawyers under contract to render legal services to TIKD customers, control the type of traffic tickets TIKD accepts, and assign TIKD lawyers. Respondents also remain in contact with customers by "giving them updates throughout the process." Riley Stmt. 64: 21-25. The Referee's view that Respondents are merely matching a customer with a lawyer is pivotal to her finding in favor of Respondents. As this view is incorrect, the Report of Referee must be rejected.

E. Respondents Must Be Enjoined to Protect the Public

The Referee found “no evidence that the consenting public interests are at risk because of the actions of TIKD, rather the contrary. TIKD furthers the consuming public’s interest by providing a speedy, efficient and relatively painless way to deal with traffic tickets.” ROR p. 11. The Referee appears to believe harm must be proven when alleging a nonlawyer or nonlawyer entity is engaged in the unlicensed practice of law. While “[t]he 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,” none of the rulings of this Court require evidence of harm. *The Florida Bar v. Moses*, 380 So. 2d 412, 417 (Fla. 1980). Rather, this Court protects the public from harm by maintaining “strict standards of competence and ethical responsibility to be reached prior to admission to practice law in Florida,” requiring that persons admitted to the practice of law “continue to adhere to these standards or suffer the disciplinary powers residing in this Court,” outlining the type of nonlawyer activity which constitutes the unlicensed practice of law and enjoining the offending activity. *Id.*

That Respondents do not adhere and do not have to adhere to the strict ethical standards set by this Court is evident by the record. For example, Respondents’ Terms of Service states that “neither receipt of any services in connection with the TIKD Properties, nor any e-mail or other communication sent

through the TIKD Properties . . . will be treated as confidential.” TOS p. 1.

Maintaining client confidentiality is a core tenet of the ethical obligations Florida lawyers must follow. R. Regulating Fla. Bar 4-1.6. This direct evidence is contrary to the inference drawn by the Referee that Respondents protect the client’s information. ROR p. 13. Respondents, not being bound by this Court’s rules, do not adhere to this core tenet.

That ensuring all those providing legal services in Florida adhere to ethical guidelines can be seen in this Court’s order adopting the qualifying provider rule. In that case, this Court found the rule amendments to the Rules Regulating The Florida Bar were “necessary to ensure that all services that connect prospective clients to lawyers conform to the Rules Regulating the Florida Bar and operate in a manner consistent with the public interest.” *In re Amend. to R. Regulating Fla. Bar 4-7.22 – Lawyer Referral Services*, 238 So. 3d 164, 166 (Fla. 2018). The inescapable conclusion is Respondents’ unregulated and prohibited conduct impacts the public and is likely to cause public harm by impacting the integrity of the practice of law.

All solicitation and advertising for TIKD’s services come from TIKD, are not subject to review by The Florida Bar, and are unregulated. All customer fees charged by TIKD are set by TIKD including the split of the fee TIKD pays to the lawyer. TIKD is not subject to the ethical limits placed on a Florida lawyer with

respect to paying a client's fines and court costs. Even if the Referee's finding is correct that TIKD charges simply to match a customer with a traffic lawyer, a finding The Florida Bar disputes, TIKD is operating in such a way as to avoid "ensur[ing] that all services that connect prospective clients to lawyers conform to the Rules Regulating The Florida Bar and operate in a manner consistent with the public interest." *Id.* Due to the inherent conflict of interest and likely harm posed to the lawyer-client relationship by Respondents' unregulated and prohibited conduct, Respondents should be enjoined from continuing to offer and render legal services.

CONCLUSION

Respondent Riley, a nonlawyer, operates a nonlawyer entity, TIKD, which is engaged in the unlicensed practice of law by holding out as qualified to offer legal services to the public and impermissibly providing the services of traffic ticket lawyers to its customers. The Referee's finding that Respondents did not engage in the unlicensed practice of law must be overturned on de novo review. This Court has original and exclusive jurisdiction to enjoin nonlawyer Respondents from operating a wholesale enterprise as if it were a law firm.

Therefore, The Florida Bar requests this Court find Respondents engaged in the unlicensed practice of law and enjoin Respondents Christopher Riley and

TIKD Services LLC from continuing to do so. More specifically, The Florida Bar requests this Court issue a permanent injunction preventing and restraining Respondents from holding out as capable of providing legal services and/or as qualified to handle a legal matter; offering to assist individuals with a legal matter; advertising in a fashion which may lead a reasonable lay person to believe Respondents are able to offer legal services to the public; rendering legal assistance to the public through a nonlawyer entity; operating a nonlawyer business as if it were a law firm by offering the public the services of lawyers; and/or otherwise engaging in the practice of law in the State of Florida, unless authorized to do so.

The Florida Bar respectfully requests oral argument and such other relief the Supreme Court of Florida deems appropriate and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the text herein is printed in Times New Roman, 14-point font, in compliance with Fla. R. App. P. 9.210.

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